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2010 MAY 13 PM 6:33

CITY OF OAKLAND
AGENDA REPORT

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Office of Mayor Ronald V. Dellums
DATE: May 18, 2010

RE: Supplemental Report And Resolution Authorizing The City Administrator To Provide A HUD Section 108 Loan To McKinney Griff, Inc., Dba Merritt Bakery & Restaurant ("Merritt Bakery") In An Amount Not to Exceed $150,000 To Preserve Approximately 55 Jobs Maintained At Merritt Bakery, and Authorizing the City Administrator to Negotiate Loan Terms Without Returning to Council

SUMMARY

During the May 11, 2010 Community and Economic Development (CED) Committee meeting, the Committee requested additional documentation relevant to the proposed loan to McKinney Griff, Inc., dba Merritt Bakery and Restaurant ("Merritt Bakery"). As noted on page 3 below, the requested documentation is provided herewith.

DISCUSSION

In addition, the Committee requested supplemental responses to the following questions or comments:

1) ***Address what steps have the owners taken to implement the recommendations relative to operations and most importantly to address the accountant's findings and recommendations.***

Response: The owners claim to have successfully implemented the following recommended operations improvements: (a) reduced the monthly operating losses by scaling back payroll burden, (b) updated the menu to diversify the dining selections and broaden the demographic appeal of the restaurant, and (c) retained a business consultant. A copy of a report from the Company is attached hereto. Staff will meet with the owners of the Company prior to the May 18, 2010 meeting of the City Council to gain further clarification on the Company's assertions.

2) ***Provide information that addresses whether the lenders, all of which are in line ahead of the City/Agency, have been approached with a specific repayment plan or otherwise renegotiate the repayment terms? Have they agreed?***

Response: The senior secured lenders of the business are: Wachovia / Wells Fargo Bank ("Wells Fargo"), OneCalifornia Bank FSC ("OneCal) and NorCal FDC ("NorCal"). The Mayor's office staff spoke with Russ Haycock, Executive Vice President & Chief Credit Officer for OneCalifornia Bank, Arthur Washington, Senior Vice President of Nor-Cal. We were not able to reach a representative of Wells Fargo.

In sum, there is agreement in principle on the following loan repayment framework:

(a) the senior lenders believe that Merritt Bakery should be required to make a "good faith" payment with part of the loan proceeds, if consummated. There was acknowledgment that it would not be feasible to "bring the lenders current", but that some meaningful payment should be negotiated and agreed upon.

(b) Merritt Bakery should be required to provide monthly unaudited financial statements and copies of bank account statements.

(c) Merritt Bakery should have regularly scheduled meetings with the bank creditors and a City staff member to facilitate better information flow and improved relations.

We did not attempt to contact unsecured creditors as they do not have a priority over potential claims by the City of Oakland. If the Council were to approve the proposed loan to Merritt Bakery, City staff would continue to work with the business owners, senior creditors and the landlord to facilitate better collaboration and working relationships.

3) ***Provide disclosure of what commitments staff has made to Merritt Bakery given the statements in the Fare Resources Report that propose the City has committed up to $800,00 in funding company.***

Response: Mayor' Office staff and Redevelopment Agency staff have met several times with the business owners over the past year. With regard to the statement in the Fare Resources Report, no staff member within the Mayor's Office, or the Redevelopment Agency has committed or promised any specific amount of funding to the Company. Specifically, Mayor's Office staff noted to Fare Resources and to the business owners prior to the issuance of the Report that it would not be realistic, nor well-received if the consultant was to propose a multi-million dollar funding amount. Additionally, Redevelopment Agency staff has clarified from time to time the procedural requirements for review and consideration of requested funding by Merritt Bakery. No promises or commitments have been made as to the requested $150,000 loan.

4) ***Additionally, the Committee requested the City Administrator create a mechanism to enforce the Transportation Demand Management Plan for the Lucky Supermarket adjacent to Merritt Bakery.***

Response: Details of the enforcement plan are being developed and will be presented by staff as soon as practical.

Attached to this Supplemental Report are the following documents:

1) 2010 Merritt Restaurant and Bakery Business Plan prepared by Fare Resources (the "Fare Resources Report")
2) Monthly Pro-Forma for 2010 –Including Debt Reimbursement (referred to as "Appendix A" in the Fare Resources Report)
3) Payroll Reports and Improvements* (referred to as "Appendix B" in the Fare Resources Report)
4) Iryna Accountancy Report (referred to as "Appendix B" in the Fare Resources Report, and cited by City Auditor Courtney Ruby during the CED Committee Meeting)
5) Proposed Lease Amendment (referred to as "Appendix D" in the Fare Resources Report)
6) Denis Mathewson (consultant to Merritt Bakery) Report on Parking (referred to as "Appendix E" in the Fare Resources Report)
7) AE3 Drawings for Parking and Façade Improvements (referred to as "Appendix F" in the Fare Resources Report)
8) Current Merritt Bakery Lease (referred to as "Appendix G" in the Fare Resources Report)
9) Company's Response to Iryna Accountancy Report
10) Copy of Letter from OneCalifornia Bank addressed to Agency staff.

Importantly, due to technology difficulties Fare Resources was not able to reproduce the "Payroll Reports and Improvements". Apparently this document was never delivered to Agency Staff, or to the Mayor's Office, and no copies could be obtained from Fare Resources or the business owners. However, the owners did provide reprints from ADP payroll services for September 2009 through April 2010. These materials support the Company's contention that its current payroll burden is approximately $110,000 per month (approximately $55,000 every two weeks). The documentation also shows that the Company's payroll burden was approximately $120,000 per month during the same time period in 2009. Therefore, attached to this report are reprints provided by the Company of its ADP Payroll reports for March and April 2009, as well as March and April 2010.

ACTION REQUESTED OF THE COUNCIL

Adopt a resolution authorizing the City Administrator to negotiate and enter into a Loan Agreement with McKinney Griff, Inc. dba Merritt Bakery, to lend $150,000 in HUD Section 108 funds to the business pursuant to such Loan Agreement without returning to Council.

Respectfully submitted,

Marisol G. Lopez
Chief of Staff
Mayor Ronald V. Dellums

Prepared By:
Theo Oliphant
Office of Mayor Ronald V. Dellums
Executive Director of Private Public Partnerships

Attachments

Approved as to Form and Legality

Deputy City Attorney

FILED
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OAKLAND

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OAKLAND CITY COUNCIL

REVISED

RESOLUTION NO.______________C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO PROVIDE A HUD SECTION 108 LOAN TO MCKINNEY GRIFF, INC., DBA MERRITT BAKERY & RESTAURANT ("MERRITT BAKERY") IN AN AMOUNT NOT TO EXCEED $150,000 TO PRESERVE APPROXIMATELY 55 JOBS MAINTAINED AT MERRITT BAKERY, AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE LOAN TERMS WITHOUT RETURNING TO COUNCIL

WHEREAS, the City of Oakland is committed to retaining small businesses that create job for Oakland residents; and

WHEREAS, McKinney Griff, Inc., the principals of Merritt Bakery & Restaurant ("Merritt Bakery") , are experienced business owners who need financial assistance to support the business operating cash flow and retention of 55 employees; and

WHEREAS, Merritt Bakery has received two Redevelopment Agency loans in the amount of $162,000 and $46,000 as interim debt financing to assist with the retention of jobs and liquidating outstanding debts; and

WHEREAS, Merritt Bakery is located at 203 East 18th Street, at 2nd Avenue in Oakland, California and the restaurant is widely viewed as a landmark, community asset with nearly 60 years of service to the City of Oakland and the Lake Merritt Community; and

WHEREAS, a surplus of HUD Regular Section 108 loan repayment funds have been identified and upon approval will be appropriated to fund the proposed loan in the amount of $150,000 from Fund No. 2108 (Community Development Block Grant (CDBG), Organization 88949 (CDBG), Account No. 78811 (Carryforward), Project No. G296310, Program No.YS11 and which will be requested to move to a spendable Fund No. 2108 (Community Development Block Grant (CDBG), Organization 88579 (Commercial Lending), Account No. 58311 (Loan Expenditures), Project No. G296310, Program SC04 (Commercial Lending); now, therefore, be it;

RESOLVED: That the City Council hereby authorizes a HUD Section 108 loan funded from surplus HUD Section 108 loan repayment funds in an amount not exceed $150,000, to Merritt Bakery to be used for working capital; and be it

FURTHER RESOLVED: That the City Council hereby authorizes the City Administrator to establish the terms of this loan without returning to Council, and authorizes the City Administrator to negotiate and execute loan documents in connection with the loan; and be it

FURTHER RESOLVED: That the making of a loan shall be contingent upon and subject to such appropriate terms and conditions as the City Administrator, or his designee may determine; and be it

FURTHER RESOLVED: That all agreements shall be approved as to form and legality by the City Attorney's Office and shall be placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, ______________________, 20______

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST:______________________________

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

ATTACHMENT 1

January | 2010

2010 Merritt Restaurant and Bakery Business Plan

Prepared by: Gabriel Cole, dba, Fare Resources

The Business Plan contained in this document is a guide to improving the overall functionality of the Merritt Restaurant and Bakery through thoughtful assessment, creation and proposed implementation of procedures and systems.

Fare Resources 980 Baker Street #3 San Francisco, CA 94115

Business Plan Index for Merritt Restaurant and Bakery

Business Plan Summary

BUSINESS PLAN SUMMARY

Introduction and Statement of Purpose

Gabriel Cole (Fare Resources), a Restaurant Consultant (Consultant), was contracted by the City of Oakland (City) to draft this Business Plan to assess the proposed expansion and contraction of Merritt Restaurant and Bakery (Company). The reason for this was to determine how to boost sales, efficiently pay back outstanding loans, retain jobs and regenerate the volume and success with which Merritt operated at in its peak (2001), with year-ending revenue of $5 million.

The strategy outlined in this plan will address the need to revamp operations, proactively reach a decision regarding a parking issue disrupting the restaurant and construct tenant improvements to provide an updated aesthetic to ensure Merritt's sustained growth and profitability.

Marketing Research And Parking

Current trends in the restaurant industry point to price and local sourcing as the most important factors for people who choose to eat out. A comparison of similar menu items with other restaurants in Oakland shows that the Company's prices are higher than its competitors. However, the Company prioritizes customer service as the main goal with all managers and employees that work in the organization.

Fare Resources advises Merritt to advertise and start a promotional campaign for new menu items and other concepts after developing and adjusting internal, cost-savings, and tracking methods before taking on larger changes.

Fare Resources believes that customer parking issues should be addressed by implementing the following suggestions upon an agreement between the City of Oakland and the Company:

1) Post Signage immediately on 2nd Avenue and in front of Merritt Bakery designating parking for Merritt Bakery only.
2) Hire a security guard or parking coordinator with the power to write tickets or tow vehicles (especially during peak times), to facilitate patrons parking and to enforce who is parking where.
3) Explore reconfiguration of 2nd Avenue to increase parking from 21 to 32 spaces.

4) Explore building a multi deck parking unit behind the Merritt where there are currently 41 parking stalls.

Fare Resources and the Company believe that the Company's landlord, Lucky's Grocer (Merritt's neighbor) and the City of Oakland created the parking problem. Fare Resources and the Company also believe that it is the City of Oakland's responsibility to expedite and resolve the parking situation.

Adaptability within Current Conditions
Fare Resources believes that there are other ways to increase sales without contributing to the existing parking problems. The business component that has the most potential for growth is in the offering of wholesale baked goods, wedding and birthday cakes and catering deliveries. Merritt has the potential to become a small-scale food processor by increasing the volume of popular baked goods for wholesale purchase. Fare Resources advises targeting pre-existing accounts to determine further demand.

To complement the suggestion to expand wholesale accounts, Fare Resources suggests hiring a Sales Manager or promoting a current employee to expand wholesale accounts. The Company already has the infrastructure in place to execute this expansion. However, the Company still desperately needs to separately track and monitor wholesale, catering and bakery accounts, along with adjusting many other financial tracking methods for streamlined efficiency.

Marketing Healthy Products
Fare Resources estimates that between 60%-70% of all food served at Merritt Bakery is processed and served from food sources containing additives, chemicals and other non-food related ingredients. The recommendation from Fare Resources is to adjust at least 10% of menu items to include locally-sourced produce and/or freshly-prepared food.

Sales Trend

There is a great need for the Company to adapt conceptually and operationally to meet fluctuating trends for conventional restaurant models. Fare Resources encourages the Company owners to improve their ability to properly track and account for profit and losses and recommends implementation of the Iryna Accounting Corporation Suitability Analysis' findings and recommendations. The inconsistency in Accounting and

Bookkeeping practices make it difficult to fully assess prior financials and forecast the progression of sales for the Company.

Restaurant Improvements

The Company is calculating recipe and menu items manually. Fare Resources recommends a program software named Recipe Manager (or something similar) which will accurately and efficiently tracks and monitors food costs. The program allows entry of new inventory prices, immediately adjusting menu prices.

Menu Overhaul

1) Align menu prices based on direct costs instead of raising prices when sales dwindle
2) Move most profitable items to first and last sections of menu
3) Add strategic menu items as "decoy prices"

Increasing Check Averages

Fare Resources recommends a training regimen for restaurant servers to use sales techniques to encourage customers to spend more money.

Secret shopper evaluations can be used to assess the sales techniques being used by servers and timeliness of food preparation. The same evaluation strategy can be used at the bakery and to-go counter.

Operational Improvements for Profit Maximization

The Company has already begun to implement some suggestions such as: costing out of recipe and menu items, restructuring and reducing labor, and tracking and reducing inventory. There is still a need to continue to analyze menu costing and purchasing procedures and trends within the financial systems to better track each area of costs, sales and profit. Accurate cost control on all levels is of critical importance to track profits and increase the bottom line.

Restaurant/Food Cost Saving Suggestions:

- To ensure menu item consistency, review job descriptions for line cook and prep cooks. Other improvements to implement in kitchen area:
  - Create and monitor preparation lists for each station.
  - Thorough use of recipe book that is seldom used to ensure menu consistency and quality.
  - Labeling of raw product to ensure proper rotation and use.

    - On-Task monitoring to include cleaning and preparation duties during slow times.
    - Retraining by a certified Health Inspector or ServSafe Manager to adhere to proper Hazard Analysis and Critical Control Points (HAACP) to avoid permanent shutdown by the Health Department.

Other Suggestions:

- Use perishable products for one menu item to turn into another, referred to as the Value Added Products (VAP's).
- Prepare center of plate items in-house as opposed to buying items already prepared.
- Instead of buying pre-mixes for pastries and sauces for menu plates, Fare Resources suggests making those items in-house.
- Implementation and posting of Waste Logs and preparation lists to track spoilage and monitor cost of goods.
- Current product purchase practice requires an employee to spend time driving and shopping. Fare Resources recommends meeting with outside food vendors to meet or beat prices that Company is currently paying. Delivery of goods will allow Company to save on labor costs. Recommended distributors are: Greenleaf, Bi-Rite and Veritable Vegetable.
- Continue to record inventory and utilize vendors to minimize grocery store visits.

Labor

The Consultant recommends the development and creation of a Kitchen Manager role to monitor and manage the kitchen properly. The lack of chain of command in the kitchen creates serious risk in a high cost area of business. With no clear communication line to upper management in the back-of-house and limited consistent input from upper management in the daily kitchen operations, communication is faulty between kitchen staff and upper management.

The critical areas that need to be prioritized through better kitchen management relies in controlling the amounts of food waste due to an over abundance of prepped food, 10% weekly loss of product due to spoilage and misuse, lack of cleanliness procedures which has generated numerous citations by Department of Health, on-task monitoring and a general lethargy leading to loss of man hours and wages.

Business Site Expansion

Consultant recommendation is to renovate and build out structure after parking stalls are installed along 2nd Avenue. Other factors that do not help to prioritize business expansion and renovations right away are:

- The company does not have adequate capital for renovations.
- Operational and sales increment recommendations need to be addressed before executing on tenant improvements.
- Lease stipulates that tenants will pay for any capital improvements.

The Mayor's Office Director of Public Private Partnership, Othetis Oliphant, has been referred within this Plan with a commitment to infuse $700,000-800,000 for tenant improvements and cash flow injection to keep the Company stable.

The business plan has designs provided by AE3 Partners for outdoor improvements and to add parking along 2nd Avenue through capital improvements to increase the available parking from 21 to 32 parking spaces. The Company and Fare Resources would like to have the parking scheme implemented but hold off on other tenant/façade improvements until the Company becomes profitable and brings business debt obligations current.

Business Site Contraction

Fare Resources and Company concluded that contraction of the company would be detrimental to the Merritt. Customers and employees might not be satisfied with such changes and the disturbing construction time involved in this process would potentially add to the problems.

Debt Obligation/Workout Plan

The recommendation focuses on the basic premise to have the Company owners sit down with lenders to introduce to them its current financial situation with the commitment to adopt Iryna Accountancy Corp.'s suggestions. The debt repayment suggestion could be addressed with the quoted $800,000 from the City of Oakland's proposed loan in order to avoid interest rate inflation and possible foreclosure. Other suggestions supported by Fare Resources include:

- Establish business transparency by providing monthly financial package to include: profit and loss statement, balance sheet, sales report from POS system, copies of all bank statements and reconciliation reports and copies of credit card statements.

- Delegation of Control to Lenders to approve or co-sign all expenses above $5,000 was not approved by Charles Griffis (Whose current title is Independent consultant for Merritt Bakery.) This recommendation was in the Accountant report submitted at the end of December but amended before the Company owners signed off on implementation agreement in January 20th 2010.
- Integrating POS system with main accounting software.
- Retaining and reconciling all financial data and hiring a full time position to take on these duties.

If all internal control changes are implemented, Fare Resources estimate the Company can generate monthly savings of $20,000 -$30,000. If the Company does not default with landlord until December 2010 it will receive $150,000, which can be used to continue to leverage and distribute it towards paying all debt obligations at time of disbursement.

Consultant and Company Proposed Financing Assistance Chart

Description	Proposed Financing Source	Amount
Immediate Cash Flow to keep business afloat	Mayor's Office Staff	$300,000
Business Debt Default and Lenders Work Out	Mayor's Office Staff	$100,000
Renovations to building after additional Parking is provided	Mayor's Office	$400,000
$50,000 Monthly Compensation for loss of revenue until Additional Parking is in place (estimated for 12 months)	City of Oakland	$600,000
Total		**$1,400,000**

BUSINESS PLAN

History of Merritt and Legal Structure

Merritt is located at 203 East 18th Street at 2nd Avenue in Oakland, California and occupies 12,900 square feet of commercial restaurant and retail storefront. It has been a landmark restaurant in the Lake Merritt community since 1952. It offers patrons from every walk of life a quick service, diner and coffee concept as well as a full-service bakery specializing in wedding cakes. It has seen numerous owners, and for the last 11 years has been owned and operated by Mckinney Griff, Inc., (Company). The Company purchased Merritt in December 1998 and grew sales 100% in their first three years of operations. Sales peaked at $5 million in 2001. At that time the Merritt employed over 100 workers.

The Merritt seats 170 guests in the restaurant. It is open seven days a week and operates from 6:00 a.m. to 10:00 p.m. on Sunday through Thursday and 6:00 a.m. to 12:00 a.m. on Fridays and Saturdays. The restaurant is open 365 days a year.

The Merritt is owned by McKinney Griff, Inc., a California corporation created in 1998 for the purpose of purchasing and operating the Merritt. The principals of this corporation, Patricia Tyler Griffis and Charles Griffis, have 70 years of combined business management experience. Their extensive fast food and restaurant operational experience includes owning and operating numerous Popeye's Famous Fried Chicken, Chicken Charlie's and McDonald's.

They have tried to overcome prolonged obstruction to their establishment during a two-year span (October 2003 to August 2005) of construction caused by their neighbor, Albertson's grocer (currently Lucky's). The number of parking spaces allotted to Merritt customers during that time was reduced from 265 to 26. The construction on Albertson's lasted 27 months, 18 months beyond the original project estimate.

Merritt offers strong benefits to the economy and community, most notably:

- It's an African American and female-owned business.
- Employs 58 employees, 90% whom live within Oakland's borders and come from 13 different ethnicities.
- The restaurant is an Oakland institution and landmark with more than half a decade of service to patrons.

- It is part of the Lake Merritt Master Plan, a city initiative beautifying the lake and improving access to residents.
- The principals have operated more than 30 other quick-service food establishments.

Ms. Griffis manages the strategic direction of the organization, while Mr. Griffis is responsible for daily operations, finance, business development and staff training. They employ a strong management team, which has more than 60 years of combined experience in the foodservice industry and is capable and committed to adapting and growing the business to the strong establishment it was in years past. Susan Sotello acts as General and Counter Manager; Joe Barham is the Restaurant Manager; and Amanda Coronado is the Bakery Manager.

Merritt sales consist of five revenue streams: restaurant, bakery, to-go bar, lotto and ATM. These are the five cost centers and areas for operational improvements Fare Resources will investigate throughout this plan. As a result of a fledgling economy, a parking situation that stymied the Merritt, and an overall lack of control over the internal operations, Merritt is in need of assistance in order to regain its economic stability.

Marketing Research and Plan

Consumer demands shift constantly and customer desires have a significant effect on how restaurants operate and adapt. Many current trends in the restaurant industry (including fast-food) point to price and local sourcing as the most important factors for people who choose to eat out, and these are two key areas for growth.

Mr. Griffis has stated that Merritt serves quick-service American fare, indicating his commitment to pleasing the customer while offering a home-style experience. The fast food industry has taken steps to change its image by offering healthy and sustainable options.

One of the leading forecasters of top restaurant trends is National Restaurant Consultants, Incorporated. In an article titled "Top Trends for 2010", it states, "*Consumers are more value conscious today, and discretionary income is under pressure like never before, and restaurant sales reflect this. The restaurant industry in general will see a sharp downturn* *in key sectors. The restaurant operators that will succeed are those that have a clearly defined a food/value relationship that makes sense for the guest. We have recently seen in some major players a reduction in portion size and lower quality, but not price. This will not work for their guests. The allocated food dollars will be scrutinized more closely and an inferior product or poor service will not be tolerated. No second chances if the guest experience is negative, just no return visit."*

Health.com surveyed the nation's 100 largest fast-food chains, as defined by the number of locations, and found many have created menus that look more and more like what we'd cook ourselves if we had the time. Menus include items ranging from nutritious soups and healthy salads to fresh whole grains and sensible desserts.

Not only are the tastes and desires of customers changing, so are the types of people who may potentially eat at the Merritt. There have been major shifts in Oakland demographics in the last 10 years, particularly the influx of whites (up 6%) and the decrease of African Americans (down 6%). The two largest age groups in Oakland are 25-34 at 18.1% of the population and 55 and over with 17.9% of the population. These are two crucial market segments on which Fare Resources recommend the Merritt research and eventually focus advertising.

At the moment, Fare Resources advise the Company not to advertise and promote Merritt for a couple of key reasons. First and foremost we think it is of critical importance to develop and adjust internal, cost-savings and tracking methods before taking on more complex business adjustments, such as advertising new menu promotions or concepts. Second, we believe the Merritt needs to immediately address the parking issues as outlined in the parking section later in this document. However, we feel there are other ways to increase sales without contributing to the existing parking problems.

Keeping up with food and beverage trends is crucial to developing the right menu mix. Each year the National Restaurant Association (NRA) each year surveys professional chef members of the American Culinary Federation. The latest survey, conducted in 2009, was based on the input of more than 1,800 chefs. Respondents ranked 214 items by how trendy they would be in 2010.

The NRA cited trends in an article dated December 31st, 2009. Chefs ranked "sustainability" as the top ranked culinary theme for 2010. The runner-up was "farm/estate-branded ingredients", and another of the top five contenders included "nutrition and simplicity". Chefs are feeling the demand from restaurant customers to modify menus and sourcing practices to use sustainable ingredients in simple, healthy dishes. A recent survey of restaurant patrons in the US southwest region of the U.S. compliments the NRA chef survey results cited above. This consumer survey, sponsored by the International Food and Agribusiness Management Association (IFAMA), showed that price is the primary factor determining consumer choice for restaurant menu items. However, the use of locally grown ingredients was the second highest determinant, ranked ahead of the type of restaurant.

Overall consumer interest in the concepts of sustainable, organic and locally-produced food has grown tremendously in the past decade. Much of this interest has developed in conjunction with the growing awareness of environmental and health issues. Consumers are increasingly conscious of how their daily choices, from food to fuel, have an impact on environmental and social change. This is most apparent in the Bay Area.

Adaptability within the Local Market

Due to its progressive politics and longstanding farming traditions, coupled with the fact that 90% of the worlds produce can be grown in California, the metropolitan areas are at the cutting edge of the local and healthy food trend.

Fare Resources foresee the largest area for increased sales, while not taking up any additional parking stalls, is in the offering of wholesale baked goods, wedding and birthday cakes and catering deliveries. These areas have an established client base, and with a strong strategic marketing effort, we anticipate these as high yield areas for Merritt. This offering utilizes Merritt's long-term brand recognition and community involvement and relies on a system that doesn't need much additional infrastructure. Specifically, Merritt currently pays wages to support the increase in business, purchases appropriate food supplies, has ample storage for products and owns a truck to make deliveries. We advise targeting pre-existing accounts to determine further demand in this area and provide additional contacts and leads for growth.

SFGate.com featured an article in October of 2009 titled, "Food processing plants make a comeback in Oakland." We envision Merritt growing to be a small-scale food processor itself, drastically increasing the volume of popular baked goods for wholesale purchase. Backing the case to expand Merritt's production the article states, "This is part of the food revolution, which has made people more conscious about what they eat and how far it has traveled to their table," said Richard Walker, a geography professor at UC Berkeley, who has written extensively on the Bay Area's role in food production. "People's tastes seem to be changing, but Americans are still very accepting of commercial, standardized foods."

A sample of the food companies recently opened in Oakland shows a trend toward gourmet tastes or environmental, healthy sensibilities, and small-to medium-size production facilities. A recommendation to source local and sustainable produce would be our first step to improve product quality; however, as of January 2010, it is a difficult to see the advantages. Due to the Southwestern freeze (mainly in Florida) and dismal weather conditions, it is not an ideal time to search for possible cost saving, highly marketable produce and apply these proposed changes. We advise waiting until the spring or summer and watching as seasonal and local prices rebound with the weather.

Marketing Healthy Products

The Company has already altered its menu to reduce food costs by removing daily specials that weren't selling. It has also begun taking monthly inventory and more closely monitoring food costs.

It is estimated that 60% to 70% of all food served at Merritt is processed and served from food sources containing additives, chemicals and other non-food related ingredients. As overall health and specific food sources become increasingly important to consumers, we suggest altering at least 10% of current menu items to include locally-sourced produce and freshly-prepared food.

The modification of menu items should be carefully considered and executed with 60% to 70% of all top-selling, high-profit margin items to remain. Of the additional menu items, we suggest altering at least 10% to more well-rounded and healthy options. For example, instead of using romaine lettuce, Merritt could use locally-grown mixed greens. This substitution has many benefits. It will bolster the Merritt's marketability, keep dollars in the local economy, add to the aesthetic look of the salad and reduce the labor costs associated with prepping and chopping of romaine lettuce. Additionally, because the lettuce is chopped, it becomes oxidized and spoils sooner which reduces its shelf life and increases the likelihood of waste.

Note: On 12/27/09 the Company purchased approximately 10 pounds of conventionally grown green cabbage at $0.89 a pound. On the same day, Veritable Vegetable (the largest *organic produce supplier in the country) sold organic and locally grown green cabbage for $0.54 a pound. With proper planning, Merritt would save approximately $16 per case (45 pounds), while being able to market organic and locally-grown produce.*

Catering and Wholesale Bakery

Targeting and soliciting pre-existing clients for additional and more consistent sales within the catering business and wholesale department will offer opportunities for diversifying revenues. Current long-term catering clients include:

- Local 250 and Local 1021
- Red Cross
- Gatorade
- Clorox
- Scottish Rite
- KTVU – Channel 2
- Greater St. John Missionary Baptist Church

By expanding the sale of goods in large quantities, the Company expands the Merritt brand while immediately increasing revenue. This does not greatly inflate direct costs and could provide expansion to a new market segment. Other areas for possible catering and wholesale growth include targeting:

- Local, family-owned supermarkets and corner stores
- Local institutions and corporations such as hospitals, churches, sports teams, schools, government branches and large companies with more than 100 employees

Wedding Cakes

Modern Baking acknowledges, "Cakes continue to dominate as the largest sales category in bakery departments. In-store bakeries' broad selection of cakes for any occasion draws customers and high profit margins, making the category key to a bakery's success." We suggest developing the wedding cake department by contacting and soliciting these key areas to further develop growth and sales:

- Contact wedding planners and ask to be placed in wedding registries
- Attend local wedding conferences and expos
- Use substantial customer base and brand to solicit additional clients

Smaller Portions Gain Traction

Reducing the portion size of everything from pizza to burgers, to cupcakes and entrees is on everybody's list for continuing trends in 2010. This trend is more prevalent with desserts and sweets, especially in the elder demographics. As the obesity and health concerns like diabetes continue to increase, especially in America, so does the need for watching caloric intake and diet habits.

A growing sub-category in a bakery's offerings are individual desserts. These comprise a variety of products sold by the slice or in smaller serving sizes, including cheesecakes, tiramisu and parfaits. The national average sales of individual desserts increased 28% over 2009, and across all regions individual desserts grew compared to the previous year.

Developing Wholesale Accounts

Fare Resources suggest hiring a Sales Manager (or promoting a current employee) to acquire and bolster the wholesale accounts listed above. There is great potential within the wholesale bakery, wedding cake and catering business for the Company to mature while utilizing its existing labor and relying on its current resources.

With solid infrastructure already in place, including a commercial delivery vehicle and driver, adequate physical space to hold additional product and a staff to expedite the production, we see these as key ways to generate additional sales.

Currently the Company does not separately track and monitor wholesale, catering and bakery accounts, and we recommend inputting and aligning these revenue streams within its Point of Sales (POS) and financial tracking (QuickBooks) systems immediately. This organized and effective method will improve the Company's overall business growth.

Other Ideas for Sales Growth Include:

- Extended hours of operations, creating additional jobs and revenue.
- Advertise Merritt as a family and locally-owned business.
- A promotional idea based on the lack of parking asking patrons to bring in their bus ticket, prove they rode their bicycle or walked there to receive a free cup of coffee.
- Offer senior discounts due to the already large number of older patrons.

- Gain more knowledge of new customer base from over 300 Yelp (a powerful and innovative user-generated critique website) reviews about Merritt
- Utilize the power of online, social media outlets such as Yelp and Facebook to appeal to Oakland's shifting demographic. There are already more than 300 Yelp reviews to use to the Company's advantage.
    - Buy cheap advertising space to appeal to a new, untapped market segment (white, middle-aged, working class)

Comment Card
One immediate action we suggest is for Merritt to conduct a simple survey offer comment cards with its dropped checks to more appropriately gauge customer information. This will give patrons a chance to voice feedback and provide instant and valuable research. Some sample questions include the following:

- How many times have you been to Merritt in the last 12 months?
  - 1-5
  - 5-25
  - 25-100
- How many times in your lifetime have you been to Merritt?
  - 1-5
  - 5-25
  - 25-100
- Did you walk, ride a bicycle, take public transportation or drive here?
- Did you enjoy your meal?
  - I really enjoyed it
  - It was just okay
  - I've had better
- What would you like to see the Merritt improve on? ____________
- What is your favorite thing about Merritt? ____________________
- Please leave your email address if you are willing to be contacted in the future by Merritt for information, deals and news. ____________________

Menu Overhaul

One of the most immediate areas for improvement is within menu pricing. As noted in an article from QSR Magazine titled, "*Finding the Balance: Increasing menu prices remains the easiest way for quick serves to recoup losses in a sagging economy but risks customer loyalty*." Striking the right balance that works for everyone is key. "Consumer perception often stands as the most looming impediment to menu price hikes, perhaps rightfully so in today's economic climate where tightened discretionary spending forces consumers to dine at home more often. Such a hurdle urges many quick-serves to investigate how they can raise prices most effectively, efficiently, and with sensitivity for the consumer in mind."

Raising the prices of sides and beverages is probably the easiest way to get margins back in line while encountering the least amount of resistance. Also reformatting the menu itself remains a simple trick for veiling price increases. Below are three ways in which we recommend altering prices while attempting to maintain customer loyalty:

1. Align menu prices based on direct costs.
It is our understanding that Merritt has increased its menu prices three times over the last year in an attempt to garner profits. This has negatively impacted its customer base and alienated first time customers who patronize Merritt for perceived affordable prices, as that has been its concept over the years. With the recent computing of menu cost analysis by the Company, Merritt has an opportunity to price its menu based on profit margins rather than dwindling sales.

2. Move the most profitable items to be first and last in a menu section.
The first price in a section will sell more, just because it's first. The last item is also a strong position. Once you know the gross profit of each item, make the changes. Sales of both will increase, as will the overall profit. The same logic applies to specials and desserts. Everyone has an opinion about menu design, but make sure decisions are best for the bottom line.

3. Add an expensive item as a "decoy price."
Consumers love value so we encourage considering a variety of factors when choosing top prices to charge. Decoy pricing is a good example. For example, consider a menu with main courses in the $10-$20 range with nothing over $20.95. If you added one more item for $23.50, all the other prices look more reasonable.

Even if this expensive item doesn't sell, it's done the work of repositioning value on the menu.

Increasing Check Averages

Up-selling is essentially a practice of making suggestions aimed at getting the guest to spend more money. It is a valuable marketing strategy, but it must be trained and practiced in order to be effective as a sales technique. Restaurant servers, cashiers and kitchen staff who have contact with the customer should know appropriate and effective ways to up-sell menu items. Up-selling does not always come naturally, and, therefore, we recommend making it a part of the training regimen.

By offering tips and suggestions to restaurant workers and servers at the start of every shift, as well as during initial training sessions, this has potential to being a great addition to sales. Food Service Warehouse, a one-stop shop for all restaurant needs offers the following suggestions to managers and lead servers to help staff to up-sell:

- **Allow servers to taste menu items.** Provide opportunities for servers to taste menu items, including daily specials.
- **Train in menu knowledge.** Make menu knowledge a priority, so servers can speak intelligently about the preparation and quality of food.
- **Suggest vivid descriptions.** Offer ideas for how to use colorful language when describing dishes. For example, avoid simply offering "a slice of chocolate pie" and instead up-sell "an exquisite slice of delicate chocolate mousse pie with a drizzle of caramel." The second description makes a big difference in sales and experience.
- **Role play with servers.** Role play with servers to demonstrate how to ask questions or offer more items.
- **Provide rewards.** Hold contests and offer incentives for servers who sell the most dessert or daily special, giving food or gift cards as prizes.

We encourage the Company to employ a secret shopper to assess the sales strategies of servers and timeliness of food preparation, to assess food quality and to review the overall efficiency of the restaurant. This can also be done in the bakery and to-go bar areas.

Competitors Menu Prices

Fare Resources wanted to highlight a few menu prices from direct competitors of Merritt to show what may be leading to additional loss of revenue from dissuaded customers due to increasingly high menu prices.

- Lake Chalet – Merritt's closest competitor in terms of proximity and menu offerings offers a Caesar salad for $9.00. Merritt offers its Caesar salad for $11.95.
- The Terrace Room – Offers a "Terrace Club" with organic chicken breast, apple wood bacon, tomato, avocado, organic field greens and lemon aioli at $11.00 while Merritt offers its Turkey Club for $12.50.
- Home of Chicken and Waffles – Offers three pieces of chicken wings and a waffle for $10.25 while Merritt offers the same dish for $13.00

Menu Layout and Aesthetics

The reprinting of Merritt's menus costs $12 each, with a minimum print run of 100. This results in a $1,200 expense each time a menu price is altered. To save on printing costs, we advise switching to a paper menu, non-laminated, until menu cost analysis is complete.

We have met with a graphic designer regarding the general layout and look of the current menu to discuss adjustments. The designer suggested the following menu design improvements:

- Change menu background color and consider including red, which has been proven appetizing to patrons
- Hire a food stylist to re-shoot menu pictures
- Consider using the cover of the current menu as the background throughout to maintain integrity of Merritt as a classic institution
- Consider switching to an easier to handle, 8.5x11 menu (similar to the current specials menu Merritt uses)
- Reposition menu options to make it easier to read

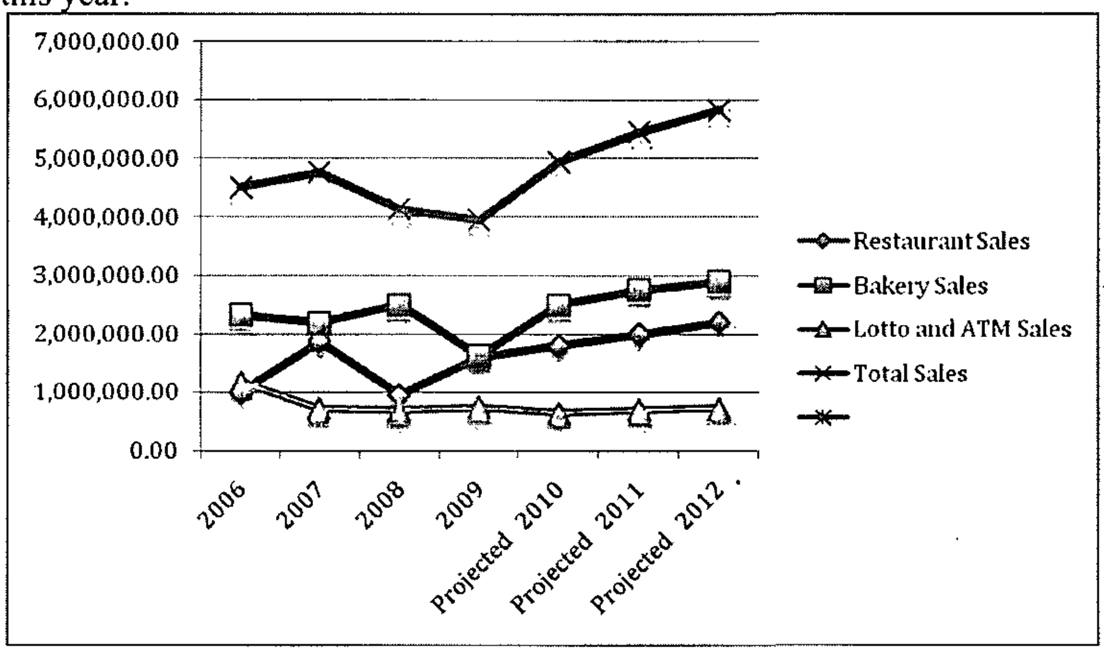
Merritt has recently created a daily specials menu, which has been selling well since inception. We encourage them to continue to develop and up-sell profitable menu items.

Sales Trends

As new restaurants in Oakland continue to open and defy conventional restaurant models, there is an increasing need not only to adapt conceptually as well as operationally. One noticeable pitfall to Merritt's business is the ability to properly track and account for profits and losses. The holes in the Company's accounting practices, as outlined in the Iryna Accounting Corporations Suitability Analysis, (Appendix B) make it difficult to fully assess prior financials and forecast the progression of sales for the Company.

Overall sales of Merritt have fluctuated over the last four years as it has been operating at a loss since at least 2006. However, it is important to point out that in fiscal year 2009, the Company reduced its labor costs by 3%, cost of goods by 25% and operating expenses by 10%. This results in a turnaround of roughly $550,000, as noted below.

Fare Resources foresee positive sales increasing in fiscal year 2010 (see chart below) for a number of reasons. As the economy rebounds and customers are more apt to dine out and two current trends are comfort food and affordability, both of which the Merritt will covet in this coming year. Due menu changes, in price and product, improvements to the building and facade and the addition of patio seating, we assume restaurant sales will increase by a minimum of 5%. Coupled with an increase in wholesale bakery accounts and a strong effort to acquire those accounts, we know the Merritt can show a profitable gain this year.



Operational Improvements for Profit Maximization

We encourage the Company to use the following suggestions as a basis for overhaul opportunities, which we feel are not only warranted, they are necessary. A number of key operational changes must be made in order to maximize profit and business security. These changes, once implemented and monitored, will contribute to a higher gross profit, significant marketing opportunities and more efficient use of labor and food costs. This will immediately increase the bottom line.

It should be noted that the Company has already begun to implement some suggestions below including but not limited to: costing out of recipe and menu items, restructuring and reducing labor, and tracking and recording inventory. There is a definite need to further analyze menu costing, inventory and purchasing procedures and trends within the financial systems to better track each area of costs, sales and profit. This will lead to a better understanding of areas for growth and improvement.

Tracking exact cost from end products to raw materials is always a challenging endeavor for the fast-paced food service industry. However, highly accurate cost control on all levels is of critical importance to profits and the bottom line.

Restaurant Improvements

Merritt Restaurant Manager Joe Barham has projected that on average, six to 10 groups of patrons per day are seated and immediately leave after viewing the high menu prices. With guest table averages hovering around $25 this equates to roughly $200 a day and $6,000 a month in lost revenue.

Currently the Company is manually calculating recipe and menu items, and although this is a profitable step forward, there are now very accurate and efficient technological systems for tracking and monitoring food costs. One such piece of software is Recipe Manager. This program helps businesses to calculate at the smallest possible level, on a per-unit basis from a single ingredient portion, calculated directly from inventory purchases. All unit conversions are performed automatically when ingredients (inventory) are added to recipes. Both the single portion and complete recipe cost is generated for the user. A price can be entered for further analysis of profit margins.

Recipe Manager will provide a list of ingredients that contribute to this recipe's cost. For each ingredient, there is a cost that is tallied into the total recipe cost information. Based on the recipe's yield (for example, our hypothetical recipe yields 55 orders), the portion (for example, each single portion or serving of this recipe equals nine ounces), and the number portions (the total number of portions you can get out of the yield), values will determine the exact, actual costs. Cost values are tracked to the penny by a single portion (in this example, a single nine ounce portion of a jambalaya recipe costs the restaurant $0.51) or all portions (in this example, the entire yield of 55 portions costs the restaurant exactly $27.98 to produce). From these cost numbers a profit margin can be derived when a price is entered. With this kind of complete cost tracking by recipe or portion, you can additionally track costing for an entire menu. Additionally, this program allows you to enter new inventory prices, immediately altering your menu prices and giving you an exact snapshot of that item as food prices fluctuate.

Restaurant/Food Cost-Saving Suggestions:

- Review job descriptions for each prep and line cook to ensure menu item consistency, proper use of inventory, product utilization, minimizing of waste are proper employee protocol. Areas for improvement within the kitchen include:
    - Create and monitor preparation lists for each station of the kitchen
    - Thorough use of the recipe book which has been created yet is seldom used
    - Labeling of product to ensure proper rotation and use
    - On-task monitoring, including cleaning and preparation duties during slow times
    - Retraining by a certified Health Inspector or ServSafe Manager to ensure all staff are adhering to proper Hazard Analysis and Critical Control Points (HAACP). This guarantees the health and safety of all workers and patrons and can be of serious detriment if not addressed in a timely manner. Getting shut down again by the Health Department could lead to the indefinite closure by the Department and create the possibility for permanent closure of Merritt through horrible press.
- Continue to record inventory (weekly for center of plate items and monthly for dry goods and less expensive food items) resulting in minimal visits to the grocery store, more concrete purchasing decisions and effective forecasting of cost of goods.

- Create and log food waste daily and align preparation lists using the foresight of previous waste logs.
- Utilize products that may go to waste such as turning a special prime rib one day into a soup the following day. We refer to these as Value Added Products and see an abundance of opportunities in this area.
- Prepare center of plate items in-house as opposed to buying items already prepared. For example: Merritt spends $1.17 a pound on 8-way chicken — its highest selling menu item. Buying whole chickens would save $0.38 per pound and an average of $600 per month. This is also a great opportunity to use extra chicken pieces such as necks and backs for stocks. This would not only increase margins and reduce food costs, purchasing whole chickens would also add quality and marketability by offering products made from scratch.
- Rather than buying pre-made mixes and sauces, the Merritt should investigate making items in-house such as donuts and breads, waffle mix, spaghetti sauce and chili. This would save money and increase the value of each product made.
- We advise implementing and posting waste logs and preparation lists to track spoilage and more closely monitor costs of goods and end of year deductions. Once this process is put in place, we estimate a monthly savings of 10% of monthly food costs or $3,000 per month.
- Meet with outside food vendors to discuss the possibility of matching or beating prices the Company is currently paying. Vendors would also deliver goods and allow Merritt to save on labor costs. Its current purchasing practices require an employee to spend time driving and shopping.
    - Given the Company's current credit roadblocks and vendor credit application process, we have talked to a number of distributors (Greenleaf, Bi-Rite and Veritable Vegetable) who will accept a check on delivery (COD) until the Company has proven it can meet regular payment obligations. Eventually, this will also be an effective way to build good credit.

Labor

The number of people employed by the Company has been steadily declining over the years. In 2002 Merritt employed 100 full and part time workers, in 2007 it employed 86, and it currently employs only 49. This has been a difficult decision for the Company given its strong loyalty to its employees, but was done out of necessity as a result of dwindling profits. Based on ADP's (Merritt's payroll company) Statistical Summary Merritt has reduced its monthly labor costs by 50% since 2006. However, in fiscal year 2009, the company was still more than 12% above the national average for labor in restaurants, at 44% (Appendix B).

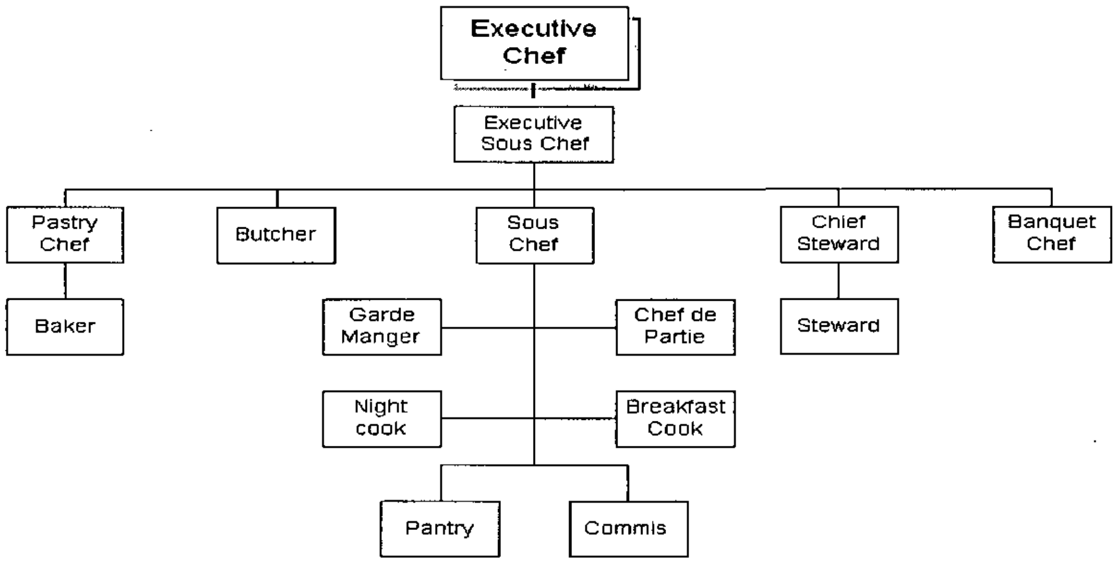
There are certain employees earning higher wages than the general market wage for those particular jobs at the Company. It is recommended, especially in today's job market, the Company and management hold an employee review for each individual to assess value, work ethic and compensation.

Teamwork is a vital asset to any successful business, and it is estimated that there are 13 ethnicities working at Merritt. With numerous native dialects spoken at Merritt, it is critical to have strong communication with an emphasis on teamwork and accountability. There needs to be a more clear and direct chain of communication between owners and management, management and employees, and employees and patrons. It is also important for management and owners to be stern and diligent with employee protocol. Follow-through, reprimand, praise and accountability all need proper attention and care.

The lack of a chain-of-command in the kitchen creates serious risk in a high cost area of business. With no clear communication line to upper management in the back-of-house and limited consistent input from upper management in the daily kitchen operations, we see the lack of direction and communication between kitchen staff and upper management in critical areas such as: food waste from an over abundance of prepped food, non-labeling of products resulting in a minimum of 10% weekly loss of product due to spoilage and misuse, lack of cleanliness procedures (as cited on numerous occasions by the Department of Health), on-task monitoring and a general lethargy leading to loss of man hours and wages.

The development and creation of a Kitchen Manager role is imperative to monitor and manage the kitchen properly. We recommend expanding current job descriptions and re-training and monitoring employee tasks (daily, weekly and quarterly). We also think creating and outlining an Organizational Chart (example below) for employees is a critical component to smoothing kitchen operations.

Kitchen Organization Chart



Reducing Fixed and Variable Costs

We have found other ways in which the Company can save money beyond the core areas of business. Two are listed below.

In a report provided by Pacific Gas and Electric's (PG&E) Food Service Technology Center, titled: "Promoting Energy Efficiency in Food Service", by following their suggestions, it is estimated the Company could save an average of $5,548.00 annually.

With proper planning and preparation lists restaurants can save a lot of time and money. For example, instead of running water in the sink over a case of chicken for hours to defrost it, plan properly and put it in the fridge the night or two before. This simple task will save hundreds if not thousands of dollars a year on labor, food and quality costs.

Using wise purchasing decisions for service ware, such as buying re-useable ramekins instead of plastic ramekins, is a great way to save money. Three disposable containers to a salad equate to $22.00/case in cups and $27.00/case in soufflé lids. We estimate they use a case of each a month, a value of $49.00 per month.

Parking Improvements

We have provided a detailed outline with help from a Retail Property Professional (Denis Mathewson) to address and ultimately resolve the parking issues facing the Merritt. We think the Company's landlord, Lucky's, and the City created the parking problem. We are aware that a Transportation Demand Management Plan (TDMP) is necessary before administering building permits and one was not performed in 2002 before the issuing of permits to Lucky's. We are aware of a lack of 67 stalls in the parking center occupied by Merritt and Lucky's. We are also aware of a recent TDMP (created in 2009) but have been told it is not being enforced. Below are facts outlined by Mr. Mathewson to further explain the parking situation.

1. The new Albertsons, now Lucky's, increased the size of their market from 17,800 square feet (sf) to 36,400 sf. Additionally, Lucky's closed its store on Lakeshore Boulevard resulting in a sharp increase in volume and need for parking at the Lucky's near the Merritt.
2. The absence of a TDMP in 2002 resulted in a parking variance that decreased the parking stalls required by City code from 253 to 186. Forty of the 186 stalls are located behind the restaurant and are inaccessible to customers. The 146 stalls in front) provide 2.86 stalls per 1000 sf. verses the required five stalls per 1000 sf. A TDMP would have addressed the parking needs of the expanded center and should have provided parking mitigation measures to increase the number of on-site stalls as a condition for the permits of the new market.
3. The recommendations in the 2009 TDM Plan concerning the enforcement of the two-hour parking limit and excessive use of the rear parking by venders is not currently enforced by Lucky.
4. The Merritt needs more parking close to the entrance of the restaurant. The addition of roof parking for Lucky and or exclusive use of the parking in front of the Merritt for the restaurant should provide a solution to the demonstrated parking problem.

If up to 40% of Lucky's 27,000 weekly customers did not use a car, the center would still have to accommodate over 16,000 Lucky customers per week. *Note:* See my October 31 report for details. Compounding the parking woes is the fact that it has been observed that customers of businesses across 18th Street use some of the parking stalls in front of the Merritt.

We see four possible scenarios to address the parking issue. However, we are not experts in these matters so we have taken suggestions from other professionals in the field and will leave the final decision up to the City and the Company:

1. Phase 1 – Post signage immediately on 2nd Avenue and in front of Merritt designating parking for the Merritt.
2. Phase 1 – Hire a security guard or parking coordinator with the power to write tickets or tow vehicles (especially during peak times), to facilitate patrons parking and enforce who is parking where.
3. Phase 2 – Explore reconfiguration of 2nd Avenue to include an additional 13 parking spaces (as outlined by AE3 partners, Appendix F).
4. Phase 2 – Explore building a multi-deck parking unit behind the Merritt where there are currently 41 parking stalls.

Since the City did not require a TDMP report in 2002 before issuing Albertson's building permits we think it is the city's responsibility to expedite and resolve the parking situation, while reaching an agreement with the lenders to support Merritt and further guaranty the Company's loans, if necessary. We recommend the City make haste and resolve this issue before incurring additional fees and negatively affecting the Company's need for immediate customer expansion. We worry that an increase in customers, due to a strategic marketing campaign, will result in additional grievances with both existing loyal customers and first time visitors.

The Company is also convinced that many of their customers have already been dissuaded by more than two years of construction and the five years of lack of parking. This has abruptly or steadily deterred patrons from Merritt since 2003. Given this older demographic, research provided and our general conclusions, we urge the City and the Company reach resolution as soon as possible.

Business Site Expansion

Fare Resources was tasked with re-configuring the Merritt building to bolster sales and increase its marketability. After further review of relevant information we have concluded that it is not currently a good time to renovate or construct the building unless the expansion/addition of parking stalls is handled. Factors contributing to this are as follows:

- Merritt does not have adequate capital for renovations.

- There are more pressing matters which need tending, as outlined in this Business Plan, before Merritt undertakes façade or tenant improvements (TI).
- The current Merritt lease stipulates the Company pay for all TI and general maintenance of the property including: "All heating, lighting, plumbing, electrical and air conditioning installations made by tenant shall be and become the property of Landlord upon installation and not be deemed trade fixtures." (June 1st, 2009 Lease, Merritt Restaurant and Bakery and Landlord, Garrett P. Scales and Lilia Ticen).

On January 14th, 2010, the Company and its private consultant, Denis Mathewson (Retail Property Services) met with officials from the Mayor's Office, Theotis Oliphant and Marisol Lopez to discuss a workout plan. Fare Resources received an email from Mr. Mathewson, outlining the Mayor's Office desire to help the Company regain its economic strength. Fare Resources then met with Mr. Oliphant the following day, on January 15th and he confirmed the Mayor's Office willingness to help.

He stated that he had witnessed the need for more parking and did not see any on site parking solution in close proximity to the restaurant. He mentioned the widening or closure of 2nd Avenue as a possibility and said that he thought, but was not sure, that the City traffic staff was addressing this problem. He said that the Mayor's Office was prepared to spend $700,000 to $800,000 to make tenant improvements to Merritt and again inject cash flow to keep the Company stable.

Mr. Griffis has said that with the remodeling, continued internal controls and a solution to its parking shortage, they could increase the sales to $5 million annually within 18 months from the date of completion of improvements and parking resolution.

We have included plans created by AE3 Partners (Appendix F), at the Company's request for future renovations to the building. They have presented a scenario providing Merritt with an outdoor patio, opening of the windows to expose patrons to 2nd Avenue, widening of the street to include more parking stalls and improving the interior. All of these improvements would drastically help the Company in important areas. However, we recommend these plans not be implemented (except the proposed parking scenario) until the Merritt shows a profitable return for a minimum of three months, including debt reimbursements.

It is our understanding that the Company has additionally applied for two grants (TI and façade improvements) from the City of Oakland totaling $65,000. We think this money would be well spent on recessed lighting and a stripping of the current wooden wall paneling to instantly and cost-effectively provide the Merritt with an aesthetic facelift. We would hope this can take place as soon as possible.

Business Site Contraction

Fare Resources was originally contracted by the City of Oakland, represented by Roberto Costa. Mr. Costa is a Business Development Specialist for the Economic Development Division of the City of Oakland. He was our direct contact and liaison throughout this process. He originally tasked us with drafting two Business Plans proposing both expansion and contraction of Merritt's building. We understand it was Mr. Costa's goal to effectively address the reduction of overall costs to the Merritt within both scenarios. Mr. Costa noted on numerous occasions that one of the most important components of this Plan was appeasing Mr. Griffis and the Company so they would be happy and willing to implement suggested improvements.

When Fare Resources began exploring the contraction scenario and discussing possible reductions of physical space, we realized it would be very difficult to present a scenario that addressed contracting the building and appealed to the Company. We discussed the idea at length with Sarah Blaylock, Real Estate Professional at Retail West who helped draft the Letter of Intent (LOI). She agreed that contracting the space was unmanageable for the Company. We deduced the potential hardships to the Company and took these into account when preparing the LOI (Appendix D).

We further expressed to the Company the possible effects of reduced menu offerings, the space that Merritt occupies and the staff they employ. They were not pleased with these ideas and for good reason. They would be further cutting jobs and losing their friends, allies and number one marketing voice. They would undertake a renovation process for a currently unknown and highly unlikely tenant, instead of renovating to suit their needs and have to listen to customer complaints about their favorite missing menu items. After developing the two scenarios, as even possible yet highly improbable routes, we came to the conclusion that these would both be potentially detrimental to the Company.

Two possible plans arose: carve-out and renovate three to five thousand square feet of space. Either renovate the front of the Merritt, where the bakery counter currently resides. Or, renovate the back-of-house, which houses production facilities and storage space. Both of these scenarios present troubling problems to the Company.

The first proposal would demolish the prime and long-term retail space, directly in front of the parking lot where Merritt has built its brand and customers have come to know them. It is highly unlikely for the Company to invest in the costs to move the bakery counter (presumably, knock out seating in the restaurant).

The other alternative would not affect the prime retail bakery counter, but would instead make room for a tenant in the back-of-house (which does not have visible store front space or an accessible customer entrance). The back section we discussed leads to the loading dock of Lucky's and the employee parking lot that incurred a lack of parking and accessibility since the Lucky's was expanded.

Both of these scenarios require the Company to pay for renovations, as the landlords have clearly stated in the lease (Appendix G) they will not pay for any building reconfigurations. We see these scenarios as not only detrimental to the volume and sales that Merritt can potentially attain, but would add to the parking pitfalls with another tenant occupying space in the Center.

These facts are compounded by the lack of desire (even if the funds became available) from the Company to give away space to a new tenant especially since the lease makes it difficult for the Company to attract another tenant. All these reasons equate to a failed contraction scenario.

Debt Obligation/Workout Plan

It is our recommendation that the Company meet with all current lenders (Wells Fargo, Nor Cal, One Cal and City of Oakland) and deliver a thorough presentation of its current financial situation. This will demonstrate areas in which it currently has plans to improve the bottom line and begin to pay back the outstanding loans listed below. We think it is necessary for the Company to exude transparency and full disclosure to lenders as they have expressed interest in discussing with the Company ways to renegotiate payments.

Currently the Company owes $823,840 to four lenders:

1. One Cal $218,016
2. Nor-Cal $100,000
3. Wells Fargo $343,325
4. City of Oakland $162,000

Fare Resources strongly encourages the adoption of Iryna Accountancy Corporation's (Iryna) suggestions outlined in Appendix B. One of the objectives outlined in the accounting analysis would be to adopt a debt repayment plan (we suggest using the Mayor's Office $800,000 proposed loan to start lender repayment) to avoid interest rate inflation and possible foreclosure. We are also aligned with all of Iryna's additional suggestions including: establishing business transparency and delegating control to lenders, integrating a POS system with main accounting software, retaining and reconciling all financial data and hiring a full-time position to take on these duties.

Once internal cost control changes are implemented, we forecast a monthly savings amount of $20,000 to $30,000 ($15,000 in kitchen control procedures, $6,000 in increased patronage from menu price adjustments that align more accurately with food costs, $500 from PG&E proposed energy improvements, and $5,000 in expansion of wholesale and catering accounts). This is manageable from monitoring and tracking internal systems more carefully and adhering to the basic cost saving/retaining principals outlined in this plan. We are only scratching the surface and know there are other ways to reduce costs and increase profits.

Once the Company successfully operates with these changes, the additional revenue can be injected straight to the bottom line. We hope the Company would use these funds to stay current with rent and direct costs. With the proposed $800,000 from the Mayor's Office, the Company could immediately start to repay lenders. If the Company is able to avoid default with its landlord, it will receive $150,000 in December 2010. The Company could potentially use this financial accrual as leverage and eventually distribute it towards a workout plan designed with all lenders.

Of the proposed $800,000 it has been discussed (with the Company) that $400,000 would be invested in the facade and tenant improvements. This would immediately appeal to customers through a more visible storefront on 2nd Avenue and the addition of an outdoor patio on that side facing the lake.

Of the remaining $400,000, we suggest $300,000 be injected into the Company to float cash flow burdens over the next six months. This $50,000 a month injection would secure a break-even amount for six months. Let it be known that the Company is currently averaging a loss of $50,000.

The remaining $100,000 would be used to begin repayment to lenders and act as adequate debt payments for 18 months, see Appendix A. This would appeal to lenders and ensure the Company stays out of default.

At the request of One Cal, we contemplated the resale value of Merritt but do not see a positive scenario for either the Company or One Cal. At this time there are seemingly insurmountable inhibitors facing the Company and we do not foresee the Company being able to reimburse any lender besides Wachovia, which was the initial lender to the Company. We foresee numerous roadblocks if the lenders attempt to foreclose and sell the Merritt's assets:

- Landlord oriented Lease and the Prohibited Assignments (section 17 of Lease, attached) whereas the Landlord would not approve the Lease transfer to new tenant, making Merritt still liable.
- Tenant rights to assign and sublet the building are minimal at best.
- It's highly unlikely the contraction would be approved by the landlord and would almost certainly result in a price hike, possibly charging the Company triple net
- All maintenance responsibilities fall on the tenant and make the tenant more apprehensive.
- Lack of parking is an obvious problem and will only increase if a new tenant arrives.
- The age and depreciation value on equipment is marginal but was not fully taken into account due to lack of an adequate assessment of assets.
- Lack of inventory assets, especially due to the fact that Merritt does not sell alcohol, which can sometimes be the most "liquid" asset in a restaurant
- The building is old, and coupled with the extensive improvements needed, make it difficult to see this arrangement coming to fruition.

Proposed Financing

It should be noted that we do not feel the need to affix a grand total to the amount the City float the Company to resolve all issues. Rather, we feel there is a need for the City to pay the average dollar amount the Company has been losing monthly (roughly $50,000) in order to break-even. It is our recommendation that the City cover this amount until they have adequately resolved the parking issues facing the Merritt.

The Mayor's Office has proposed funding up to $800,000 to the Company. We are offering further suggestions that may yield capital gains and increase Merritt's bottom line.

- The Company has already applied for façade and tenant improvement grants. We recommend follow-through of these applications
- Secure funds from Measure DD, a $198 million Oakland City park bond measure.
- Investigate funds from the Enterprise Zone, which gives employers tax credits for hiring new workers.

Conclusion

We are pleased to hear that the City is open to providing parking improvements and injecting capital to the Merritt. We strongly advise the Company meet with City officials involved in this process (CEDA staff as well as Mayor's Office staff, mainly Mr. Oliphant and Ms. Lopez), its lenders, Mr. Mathewson and anyone else proposing to help with this situation. It is of the utmost importance to openly communicate with all parties to come to amicable debt repayments terms. We also recommend the Company present an Action Plan to the parties mentioned above outlining the revival of the Merritt.

The Company and its managers have the combined experience and knowledge to implement the above mentioned procedures and systems and should see a positive cash flow scenario within six months of implementation of certain procedures. We hope the Company use this as a tool to locate other areas of interest and savings to regain its status. Below are some examples covered in this Business Plan and we guarantee more will emerge after their thoughtful completion:

- Exude complete transparency with lenders, City officials and landlord.
- Proactively work with the City to best resolve the parking issues.
- Create and adhere to all the internal cost control methods you can think of
- Create a marketing strategy with a marketing professional to implement changes for sustained growth.
- Configure Aloha (POS system) and QuickBooks operating procedures for more effective and efficient financial monitoring.
- Instill new management procedures including updated employee handbook and training, new job descriptions and on-task spreadsheets (cleaning, preparation and waste).
- Clean house from front to back, adjust menu prices and layout as well as update the interior and exterior of the building to appeal to customers

Merritt has the infrastructure to drastically expand its wholesale and catering business immediately, which will not increase the adverse effects of limited parking and will only marginally contribute to additional overhead and expenses. They are also in need of updates throughout their business. We want to stress the importance of adding innovative techniques and systems to adapt and adjust their concept and identity. We feel it is critical to do this while maintaining the integrity and classic brand that has kept the Merritt open since 1952.

Appendix:

A - Monthly Pro-Forma for 2010 - Including Debt Reimbursement

B - Iryna Accountancy Report

C - Payroll Reports and Improvements

D - LOI

E - Denis Mathewson Report

F - AE3 Drawings for Parking and Façade Improvements

G - Current Merritt Lease

Date: 1/26/10

Cash Flow Forecast - 12 Months															
Month:	**9-Nov**	**9-Dec**	**10-Jan**	**10-Feb**	**10-Mar**	**10-Apr**	**10-May**	**10-Jun**	**10-Jul**	**10-Aug**	**10-Sep**	**10-Oct**	**10-Nov**	**Totals**	
Receipts		Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	
Restaurant sales	116,710	120,000	123,000	118,000	115,000	110,000	125,000	80,000	80,000	80,000	130,000	150,000	150,000	**1,497,710**	A
Bakery sales	132,137	140,000	145,000	160,000	180,000	200,000	210,000	210,000	210,000	210,000	210,000	210,000	210,000	**2,427,137**	B
Lotto, ATM and scratcher sales	54,604	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	**774,604**	
City funded loan - Does not effect Sales				800,000										**800,000**	C
Possible lease amendment														**0**	
Total Receipts	**303,451**	**320,000**	**328,000**	**1,138,000**	**355,000**	**370,000**	**395,000**	**350,000**	**350,000**	**350,000**	**400,000**	**420,000**	**420,000**	**5,499,451**	
Payments															
Food Supplies	36,544	35,000	33000	32,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	**406,544**	
Payments to creditors				3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	**30,000**	
Salaries and wages	90,101	98,000	95,000	93,000	90,000	87,000	85,000	85,000	85,000	85,000	85,000	85,000	85,000	**1,148,101**	
Employee benefits	188	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	**24,188**	D
Payroll taxes	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	**104,000**	
Rent	14,500	14,500	14,500	14,500	14,500	14,500	14,500	14,500	14,500	15,500	15,500	15,500	15,500	**192,500**	
Utilities	34,200	17,000	17,000	17,000	17,000	17,000	17,000	17,000	17,000	17,000	17,000	17,000	17,000	**238,200**	E
Repairs and maintenance	1,731	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	**25,731**	F
Insurance	9,124	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	**111,124**	
Telephone	900	900	900	900	900	900	900	900	900	900	900	900	900	**11,700**	G
Employee payroll expenses	6,210	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	**90,210**	H
Advertising	3,000	350	350	350	350	350	350	350	350	350	350	350	350	**7,200**	I
Marketing/promotion	500	500	500	500	500	500	500	500	500	500	500	500	500	**6,500**	J
Professional fees	17,050	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	**113,050**	K
Auto fees	453	450	450	450	450	450	450	450	450	450	450	450	450	**5,853**	
Miscellaneous	1,502	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	**25,502**	
Loan repayments				5,000	5,200	5,400	5,600	5,800	6,000	6,500	6,500	6,500	6,500	**59,000**	
Tax payments	9,180	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	**309,180**	
Construction						100,000		200,000		100,000				**400,000**	L
Total Payments	**233,183**	**229,200**	**224,200**	**229,200**	**224,400**	**321,600**	**219,800**	**420,000**	**220,200**	**321,700**	**221,700**	**221,700**	**221,700**	**3,308,583**	
Cashflow Surplus/Deficit (-)	**70,268**	**90,800**	**103,800**	**908,800**	**130,600**	**48,400**	**175,200**	**(70,000)**	**129,800**	**28,300**	**178,300**	**198,300**	**198,300**	**2,190,868**	
Opening Cash Balance	**0**	**70,268**	**161,068**	**264,868**	**1,173,668**	**1,304,268**	**1,352,668**	**1,527,868**	**1,457,868**	**1,587,668**	**1,615,968**	**1,794,268**	**1,992,568**		
Closing Cash Balance	**70,268**	**161,068**	**264,868**	**1,173,668**	**1,304,268**	**1,352,668**	**1,527,868**	**1,457,868**	**1,587,668**	**1,615,968**	**1,794,268**	**1,992,568**	**2,190,868**		

ATTACHMENT 2

Date: 1/26/10

Normally we would perform three year cash flow projections as a standard financial procedure. However, due to the insufficient bookkeeping and inacurate and inconsistent monitary values at every level we have chosen to only include one year. Once accurate financial information has been acquired for a minimum of three months, we suggest forecasting take place for three years.
Assuming construction is underway by June (after three months of profitable growth) and restaurant traffic is slow (for three months during construction) due to construction in sections of the dining area. Once complete *(ideally by the end of August) the Grand Re-*opening in September could potentially increase sales by 30-40% in the restaurant almost overnight.
Assuming the rapid growth of the wholesale bakery
Proposed loan from the City in Febuary would presumably be a cash injection and allow the Company to do with it what it would like
The Company decreased employee benefits by 50% from '07-'08 and spiked back in '09 to +25% of '08 expenses
Assuming the company takes the advise of PG&E and implements more energy efficient tactics once it has the captol to do so (Mar '10). We also have experience in wastewater and energy efficient techniques in the kitchen and restaurant and would be happy to share our knowledge (and perhaps lead a training) for employees of cost and earth saving techniques
We encourage the Company to have numerous General Contractors out to bid on possible building improvements while the remodeling is taking place. This will determine if proposed building modifications (repairs that equate to continued matenance) would be worthwhile over the long run. We obviously advise this only if it is within the Companies budget.
Cell phone charges will continue to inflate this expense. Is it possible to set-up wireless internet for customers of Merritt?
Iryna suggests cost savings of $10,000 a year by switching to a cheaper payroll company
We suggest the Company find more cost efficient marketing and advertising methods as they have spent too much money in these areas with little to no gain. The Company spent $70,000 on advertising in '07 and $34,000 in '08 but have since curbed it's promotional budget and have seemingly spent roughly $10,000 in '09
This has been one of the greatest areas of expense fluctuation as Mr. Griffis pays himself a salary from here as well as legal (which have been many over the years) and consulting. We hope that Mr. Griffis will continue to take a pay cut (as he already did in '09) until the Company has recovered. We think it is still important to pay yourself but creating a livable budget and adjusting your salary so as to benefit the company will aide in business security for the time being
Assuming four payments totaling $400,000 to be dispursed to AE3 incrementally throughout the renovation project

ATTACHMENT 3

Liability Recap	Taxes Debited	Federal Income Tax	2,442.30			
		Earned Income Credit Advances	.00			
		Social Security - EE	3,108.31			
		Social Security - ER	3,108.30			
		Social Security Adj - EE	.00			
		Medicare - EE	726.97			
		Medicare - ER	726.94			
		Medicare Adj - EE	.00			
		COBRA Premium Assistance Payments	.00			
		Federal Unemployment Tax	356.67			
		State Income Tax	654.75			
		State Unemployment Insurance - EE	.00			
		State Unemployment/Disability Ins - ER	2,051.89			
		State Unemployment Insurance Adj - EE	.00			
		State Disability Insurance - EE	551.47			
		State Disability Insurance Adj - EE	.00			
		Workers' Benefit Fund Assessment - EE	.00			
		Workers' Benefit Fund Assessment - ER	.00			
		Local Income Tax	.00			
		School District Tax	.00			
		Total Taxes Debited Acct. No. XXXXXX6471 Tran/ABA XXXXXXXXX		13,707.90		Total Liability
		Total Amount Debited From Your Account			13,707.90	13,707.90
	Bank Debits and Other Liability	Checks		41,406.42		55,114.32
		Direct Deposit		.00		55,114.32
		Adjustments/Prepay/Voids		397.48		55,511.80
	Taxes - Your Responsibility	None This Payroll				55,511.80 Includes Adjustments that are your responsibility

Liability Recap	Taxes Debited	Federal Income Tax	1,875.66				
		Earned Income Credit Advances	.00				
		Social Security - EE	3,414.63				
		Social Security - ER	3,414.58				
		Social Security Adj - EE	.00				
		Medicare - EE	798.54				
		Medicare - ER	798.57				
		Medicare Adj - EE	.00				
		Federal Unemployment Tax	397.38				
		State Income Tax	401.41				
		State Unemployment Insurance - EE	.00				
		State Unemployment/Disability Ins - ER	2,036.80				
		State Unemployment Insurance Adj - EE	.00				
		State Disability Insurance - EE	605.61				
		State Disability Insurance Adj - EE	.00				
		Workers' Benefit Fund Assessment - EE	.00				
		Workers' Benefit Fund Assessment - ER	.00				
		Local Income Tax	.00				
		School District Tax	.00				
		Total Taxes Debited Acct. No. 0820000345		Tran/ABA 121182056	13,743.18		
	Other Transfers	ADP Check Acct. No. 0820000345		Tran/ABA 121182056	46,558.25		Total Liability
		Total Amount Debited From Your Account				60,301.43	60,301.43
	Bank Debits and Other Liability	Direct Deposit			.00		60,301.43
		Adjustments/Prepay/Voids			.00		60,301.43
	Taxes - Your Responsibility	None This Payroll					
							60,301.43

Liability Recap	Taxes Debited	Federal Income Tax	2,208.61			
		Earned Income Credit Advances	.00			
		Social Security - EE	2,936.73			
		Social Security - ER	2,936.74			
		Social Security Adj - EE	.00			
		Medicare - EE	686.80			
		Medicare - ER	686.82			
		Medicare Adj - EE	.00			
		COBRA Premium Assistance Payments	.00			
		Federal Unemployment Tax	308.66			
		State Income Tax	571.75			
		State Unemployment Insurance - EE	.00			
		State Unemployment/Disability Ins - ER	1,763.27			
		State Unemployment Insurance Adj - EE	.00			
		State Disability Insurance - EE	521.00			
		State Disability Insurance Adj - EE	.00			
		Workers' Benefit Fund Assessment - EE	.00			
		Workers' Benefit Fund Assessment - ER	.00			
		Local Income Tax	.00			
		School District Tax	.00			
		Total Taxes Debited Acct. No. XXXXXX6471 Tran/ABA XXXXXXXXX		12,613.38		Total Liability
		Total Amount Debited From Your Account			12,613.38 -	12,613.39
	Bank Debits and Other Liability	Checks		39,357.56		51,970.94
		Direct Deposit		.00		51,970.94
		Adjustments/Prepay/Voids		.00		51,970.94
	Taxes - Your Responsibility	None This Payroll				51,970.94

Liability Recap	Taxes Debited	Federal Income Tax	1,824.46			
		Earned Income Credit Advances	.00			
		Social Security - EE	3,285.97			
		Social Security - ER	3,285.99			
		Social Security Adj - EE	.00			
		Medicare - EE	768.47			
		Medicare - ER	768.50			
		Medicare Adj - EE	.00			
		Federal Unemployment Tax	368.94			
		State Income Tax	390.10			
		State Unemployment Insurance - EE	.00			
		State Unemployment/Disability Ins - ER	1,890.62			
		State Unemployment Insurance Adj - EE	.00			
		State Disability Insurance - EE	589.01			
		State Disability Insurance Adj - EE	.00			
		Workers' Benefit Fund Assessment - EE	.00			
		Workers' Benefit Fund Assessment - ER	.00			
		Local Income Tax	.00			
		School District Tax	.00			
		Total Taxes Debited Acct. No. 0820000345 Tran/ABA 121182056		13,166.28		
	Other Transfers	ADP Check Acct. No. 0820000345 Tran/ABA 121182056		43,997.03		Total Liability
		Total Amount Debited From Your Account			57,163.31	57,163.31
	Bank Debits and Other Liability	Direct Deposit		.00		57,163.31
		Adjustments/Prepay/Voids		529.25		57,692.56
	Taxes - Your Responsibility	None This Payroll				57,692.56 Includes Adjustments that are your responsibility

Liability Recap	Taxes Debited				
		Federal Income Tax	2,203.21		
		Earned Income Credit Advances	.00		
		Social Security - EE	2,956.37		
		Social Security - ER	2,956.37		
		Social Security Adj - EE	.00		
		Medicare - EE	691.41		
		Medicare - ER	691.41		
		Medicare Adj - EE	.00		
		COBRA Premium Assistance Payments	.00		
		Federal Unemployment Tax	264.80		
		State Income Tax	558.02		
		State Unemployment Insurance - EE	.00		
		State Unemployment/Disability Ins - ER	1,522.62		
		State Unemployment Insurance Adj - EE	.00		
		State Disability Insurance - EE	524.52		
		State Disability Insurance Adj - EE	.00		
		Workers' Benefit Fund Assessment - EE	.00		
		Workers' Benefit Fund Assessment - ER	.00		
		Local Income Tax	.00		
		School District Tax	.00		
		Total Taxes Debited Acct. No. XXXXXX6471 Tran/ABA XXXXXXXXX	12,368.73		Total Liability
		Total Amount Debited From Your Account		12,368.73	12,368.73
	Bank Debits and Other Liability	Checks	39,016.65		51,385.38
		Direct Deposit	.00		51,385.38
		Adjustments/Prepay/Voids	745.73		52,131.11
	Taxes - Your Responsibility	None This Payroll			52,131.11 Includes Adjustments that are your responsibility

Net Pay			
	Checks	44,936.82	
	Direct Deposits	.00	
	Subtotal Net Pay		44,936.82
	Adjustments	.00	
	Total Net Pay Liability (Net Cash)		44,908.82

Taxes			You are responsible for Depositing these amounts		Amount debited from your account			
Federal	Agency	Rate	EE withheld	ER contrib.	EE withheld	ER contrib.		
	Federal Income Tax				1,699.65			
	Earned Income Credit Advances							
	Social Security				3,316.31	3,316.30		
	Medicare				775.60	775.59		
	Federal Unemployment Tax					319.02		
	Subtotal Federal				5,991.56	4,410.91	10,402.47	
State	CA State Income Tax				416.14			
	CA State Unemployment/Disability Ins-ER	4.1000				1,634.99		
	CA State Disability Insurance-EE				588.32			
	Subtotal CA				1,004.46	1,634.99	2,639.45	
	Total Taxes		.00	.00	6,996.02	6,045.90	13,041.92	
	Amount ADP Debited From Account 0820000345		**Tran/ABA 121182058**					13,041.92

Excludes Taxes That Are Your Responsibility

Other Transfers					
	ADP Check			44,936.82	
	Amount ADP Debited From Account	0820000345	Tran/ABA 121182058		44,936.82
Total Amount ADP Debited From Your Accounts					57,978.74

Liability Recap	Taxes Debited	Federal Income Tax	2,278.68			
		Earned Income Credit Advances	.00			
		Social Security - EE	2,962.06			
		Social Security - ER	2,962.02			
		Social Security Adj - EE	.00			
		Medicare - EE	697.45			
		Medicare - ER	697.41			
		Medicare Adj - EE	.00			
		COBRA Premium Assistance Payments	.00			
		Federal Unemployment Tax	233.30			
		State Income Tax	665.78			
		State Unemployment Insurance - EE	.00			
		State Unemployment/Disability Ins - ER	1,341.47			
		State Unemployment Insurance Adj - EE	.00			
		State Disability Insurance - EE	529.08			
		State Disability Insurance Adj - EE	.00			
		Workers' Benefit Fund Assessment - EE	.00			
		Workers' Benefit Fund Assessment - ER	.00			
		Local Income Tax	.00			
		School District Tax	.00			
		Total Taxes Debited Acct. No. XXXXXX6471 Tran/ABA XXXXXXXXX	12,327.21		Total Liability	
		Total Amount Debited From Your Account		12,327.21	12,327.21	
	Bank Debits and Other Liability	Checks	39,515.67		51,843.08	
		Direct Deposit	.00		51,843.08	
		Adjustments/Prepay/Voids	570.66		52,413.74	
	Taxes - Your Responsibility	None This Payroll			52,413.74	Includes Adjustments that are your responsibility

Statistical Summary Recap

MERRITT RESTAURANT
Company Code: LL4
Region Name: SANTA CLARA REGION

Batch: 7088
Quarter Number: 2
Service Center: 075

Period Ending: 04/11/2010
Pay Date: 04/15/2010
Current Date: 04/12/2010

Week 15

Liability Recap	Taxes Debited	Federal Income Tax	1,850.84			
		Earned Income Credit Advances	.00			
		Social Security - EE	3,406.47			
		Social Security - ER	3,408.41			
		Social Security Adj - EE	.00			
		Medicare - EE	796.72			
		Medicare - ER	796.66			
		Medicare Adj - EE	.00			
		Federal Unemployment Tax	302.19			
		State Income Tax	389.92			
		State Unemployment Insurance - EE	.00			
		State Unemployment/Disability Ins - ER	1,546.73			
		State Unemployment Insurance Adj - EE	.00			
		State Disability Insurance - EE	604.41			
		State Disability Insurance Adj - EE	.00			
		Workers' Benefit Fund Assessment - EE	.00			
		Workers' Benefit Fund Assessment - ER	.00			
		Local Income Tax	.00			
		School District Tax	.00			
		Total Taxes Debited Acct. No. 0820000345 Tran/ABA 121182058		13,102.35		Total Liability
	Other Transfers	ADP Check Acct. No. 0820000345 Tran/ABA 121182058		45,754.12		
		Total Amount Debited From Your Account			58,856.47	58,856.47
	Bank Debits and Other Liability	Direct Deposit		.00		58,856.47
		Adjustments/Prepay/Voids		1,036.46		59,892.93
	Taxes - Your Responsibility	None This Payroll				
						59,892.93 Includes Adjustments that are your responsibility

Liability Recap	Taxes Debited	Federal Income Tax	2,375.70			
		Earned Income Credit Advances	.00			
		Social Security - EE	3,104.85			
		Social Security - ER	3,104.88			
		Social Security Adj - EE	.00			
		Medicare - EE	726.11			
		Medicare - ER	726.14			
		Medicare Adj - EE	.00			
		COBRA Premium Assistance Payments	.00			
		Federal Unemployment Tax	204.64			
		State Income Tax	614.13			
		State Unemployment Insurance - EE	.00			
		State Unemployment/Disability Ins - ER	1,176.68			
		State Unemployment Insurance Adj - EE	.00			
		State Disability Insurance - EE	550.87			
		State Disability Insurance Adj - EE	.00			
		Workers' Benefit Fund Assessment - EE	.00			
		Workers' Benefit Fund Assessment - ER	.00			
		Local Income Tax	.00			
		School District Tax	.00			
		Total Taxes Debited Acct. No. XXXXXX6471 Tran/ABA XXXXXXXXX		12,583.98		Total Liability
		Total Amount Debited From Your Account			12,583.98	12,583.98
	Bank Debits and Other Liability	Checks		41,026.28		53,610.26
		Direct Deposit		.00		53,610.26
		Adjustments/Prepay/Voids		742.94		54,353.20
	Taxes - Your Responsibility	None This Payroll				54,353.20 includes Adjustments that are your responsibility

Liability Recap	**Taxes Debited**	Federal Income Tax	1,866.36			
		Earned Income Credit Advances	.00			
		Social Security - EE	3,431.72			
		Social Security - ER	3,431.76			
		Social Security Adj - EE	.00			
		Medicare - EE	802.54			
		Medicare - ER	802.59			
		Medicare Adj - EE	.00			
		Federal Unemployment Tax	252.24			
		State Income Tax	464.07			
		State Unemployment Insurance - EE	.00			
		State Unemployment/Disability Ins - ER	1,292.76			
		State Unemployment Insurance Adj - EE	.00			
		State Disability Insurance - EE	608.87			
		State Disability Insurance Adj - EE	.00			
		Workers' Benefit Fund Assessment - EE	.00			
		Workers' Benefit Fund Assessment - ER	.00			
		Local Income Tax	.00			
		School Distict Tax	.00			
		Total Taxes Debited Acct. No. XXXXXX0345 Tran/ABA XXXXXXXXX		12,952.91		
	Other Transfers	ADP Check Acct. No. XXXXXX0345 Tran/ABA XXXXXXXXX		46,933.58		**Total Liability**
		Total Amount Debited From Your Account			59,886.49	59,886.49
	Bank Debits and Other Liability	Direct Deposit		.00		59,886.49
		Adjustments/Prepay/Voids		130.08		60,016.57
	Taxes - Your Responsibility	None This Payroll				
						60,016.57 Includes Adjustments that are your responsibility

ATTACHMENT 4

Iryna Accountancy Corporation

1212 Broadway, #616, Oakland, CA 94612

Accounting Suitability Analysis

Merritt Restaurant & Bakery

Prepared for City of Oakland, Economic Development Division

December 2009

TABLE OF CONTENTS

EXECUTIVE SUMMARY

During the engagement we performed accounting suitability analysis for one City of Oakland business retention client - Merritt Restaurant & Bakery.

We reviewed and analyzed the client's 2006, 2007, and 2008 financial statements and compiled 2009 statements.

Other objectives consisted of:
- Introduce better bookkeeping practices to the client.
- Recommend ledger amendments.
- Provide solutions for changes implementation.

Project Approach

Over the course of the engagement we:
- Conducted five site visits to the client's location to review operations and gather information.
- Interviewed COO, general manager, bookkeeper and independent accountant
- Reviewed the QuickBooks file.
- Compiled payroll information based on statements prepared by ADP.
- Reviewed bank statements for three bank accounts (account 4022 - general; account 4023 - lotto; account 6471 – payroll) and identified any unusual transactions.
- Confirmed account status with the largest vendor, Jetro, in order to estimate Cost of Goods Sold.
- Assessed cost of payroll services provided by ADP and provided recommendations on reducing these costs.
- Developed aging accounts payables and aging accounts receivables reports.
- Analyzed credit card charges.
- Reviewed client's federal tax filings (Forms 1120) for years 2005 – 2008 to obtain historical information.
- Analyzed and compared fixed assets information available from different sources: tax filing, QuickBooks, and invoices provided by the client.
- Compiled client's personal balance sheet.
- Compiled Merritt Restaurant & Bakery 2009 profit and loss statement (1/1/09 – 12/15/09) and balance sheet (12/15/09).
- Met with client's major lenders to understand their intentions, goals and concerns.
- Performed financial data analysis and comparison with the industry trends obtained from "2009 Restaurant Industry Forecast" prepared by National Restaurant Association and "Restaurant Industry Operations Report," 2007-2008 editions, prepared by National Restaurant Association and Deloitte.

EXECUTIVE SUMMARY

- Communicated with Central City East Redevelopment Area representative to review progress and troubleshoot.
- Provided Report and Recommendations to Central City East Redevelopment Area representative and the client to use as reference for future action plans.

Summary of Findings

The client has a fragmented and disintegrated accounting and recordkeeping system. The existing accounting system does not provide timely accounting information. It is highly possible that the information is not complete and accurate because it is gathered from many different sources and is not reconciled. Any deviations and errors are fixed at the end of the year only by recording significant accounting adjustments.

The client has a point of sale system (POS), which is primarily used for order processing. The POS is not integrated with the QuickBooks accounting software. Sales recorded in POS are not reconciled with the sales recorded in QuickBooks. Daily sales are tracked by the COO in an excel spreadsheet. This is a poor and inefficient system that requires a significant improvement.

The majority of client's customers pay by cash and a significant portion of business expenses are also paid by cash. Using cash for these transactions poses a lot of inherent risk and requires there to be good internal control. The client thus far has failed to demonstrate the existence of the adequate and necessary control regarding the use of cash. It was noted that some cash expenses, payments made via phone, and wire transfers are not recorded in the QuickBooks system. Petty cash funds are replenished from cash collected, but not deposited to the bank.

The client uses thirteen different credit cards to make business purchases. Credit card purchases are not itemized and not recorded in the QuickBooks system. Credit card statements and bank statements for three business accounts are not reviewed or reconciled.

The client commingles personal and business funds, by paying non-business expenses from the business funds. Five out of thirteen credit cards used within the business are personal accounts. The client is using three bank accounts, which are all opened on the name of an LLC, rather than that of the client. This practice allows transferring all cash earned on the corporate level to an unrelated LLC, leaving corporate accounts empty. It represents a significant risk and creates a possibility of gross misuse of funds.

The above summarized findings are significant deficiencies that create many opportunities for potential fraud, errors, and employee and management abuse. The current recordkeeping system prohibits receiving accurate and complete accounting data.

EXECUTIVE SUMMARY

Recommendations

The following reconditions aim to improve the business accounting and reporting system, control around cash, revenue and expenses, as well as create a basis and conditions for renegotiating terms on existing loans, and ensure lenders support in the future.

- Hire a part or full time financial director that will establish and implement adequate accounting controls, based on the finding and recommendations provided in this report. The qualified candidate should have prior restaurant experience, QuickBooks knowledge and a solid accounting background.
- Record all necessary adjustments, payroll information, bank reconciliations, credit card charges, sales and cash expenses for 2009 into the QuickBooks system.
- Develop a payment plan to the existing lenders based on reasonable revenue/expense expectations. Lenders approval for the repayment plan is required.
- Improve business transparency to lenders by developing and providing them with monthly financial packages. The monthly financial packages should include: profit and loss statement, balance sheet, sales report from the point of sale system, copies of all bank statements and reconciliation reports for all bank statements, and copies of credit card statements.
- Discuss with lenders the possibility of assigning an outside co-signor appointed by lenders, who will approve and co-sign all expenses above $5,000.

PART I: FINDINGS

Finding #1

Point of Sale system is not integrated with the main accounting system.

Risk

- Unrecorded sales in the QuickBooks.
- Uncollected and unpaid sales tax to the Board of Equalization.
- Misappropriation of cash.

Proposed Solution

Integrate the current Aloha POS system with the accounting QuickBooks software.

Finding #2

Inventory purchases and sales are not tracked in the accounting system.

Risk

- COGS is not tracked and unknown.
- Ending inventory on hands is unknown.
- Inventory flow is not properly tracked.
- Historical inventory information for future planning does not exist.
- Information to calculate product profitability does not exist.
- Inventory spoilage/shortages/theft cannot be identified.

Proposed Solution

Create inventory items in the POS and the accounting system (QuickBooks). All items purchased should be recorded in the QuickBooks. All sales recorded in the POS should be daily synchronized with the QuickBooks. This will provide information about COGS and ending inventory on a daily basis.

At the end of the week/month/year, a physical inventory count should be performed and reconciled with the accounting records, and inventory short/over should be reflected in the system and investigated.

PART I: FINDINGS

Finding #3

Fixed assets recorded in the corporation's tax filing and the accounting system are not complete and do not match. There is no fixed asset master file exists.

Risk

- Fixed assets are understated/ overstated.
- Depreciation expense is understated/ overstated.
- Company's income statement and balance sheet are not accurate.
- Theft and misplacement of fixed assets cannot be identified.
- Information to plan future fixed assets acquisitions does not exist.

Proposed Solution

Create a fixed assets master file list in the QuickBooks. Develop a fixed assets policy that will indicate protocol and procedure on capitalization and depreciation. The physical inventory count should be performed annually, and all obsolete, disposed, lost, etc. fixed assets should be recorded in the system accordingly.

Finding #4

Bank statements are not reconciled.

Risk

- Misappropriation of cash, fraudulent transactions and errors by a bank cannot be identified.
- Ending cash balance is unknown.
- Non-sufficient funds charges occur.
- Expenses made outside the accounting department such as phone wire transfers, etc. are not recorded in the system.

Proposed Solution

Reconcile bank statements monthly. Investigate and record all reconciling items accordingly.

PART I: FINDINGS

Finding #5

Bank accounts for the business are opened on the name of Merritt Bakery Café LLC.

Risk

- Cash recorded on these accounts does not legally belong to the client.
- Commingling of the corporate and the LLC funds.
- Opportunity for theft/misappropriation of cash.
- Understatement of corporate cash.

Proposed Solution

Transfer all funds from the LLC accounts to the client's accounts as soon as possible. A corporation is a separate entity and it cannot commingle its funds with any other entities. All bank accounts used by the corporation should be opened on the name of the corporation.

Finding #6

There is no document retention policy and procedure; currently some documents (older than 1 year) are being discarded.

Risk

- Not compliance with Federal and State regulations. Governmental bodies (IRS, FTB, and BOE) require retaining support for income/ expenses for at least five years.
- No adequate support for recorded transactions. The IRS, FTB can disallow unsupported expenses.

Proposed Solution

Develop and establish a document retention policy. Identify an on-site or off-site storage facility for preserving financial/accounting information for the past five years, as well as long-term contracts for the life of the contracts.

PART I: FINDINGS

Finding #7

Personal and corporate funds are commingled. Business purchases are paid by personal credit cards and personal expenses are paid by the corporation.

Risk

- Piercing the corporate veil that will cause the business owner to be personally responsible for the business errors and faults. The corporation can lose its liability limitation rights.
- Business expenses paid by personal credit cards can be rejected by tax authorities and an additional tax can be imposed on the corporation if expenses are not properly documented (through an expense reimbursement).
- Personal expenses are erroneously classified as business expenses.
- Interest expenses on personal credit cards are incorrectly classified as business expenses.
- Purchases made on the personal credit cards are not recorded timely into the QuickBooks that can cause understatement of expenses.

Proposed Solution

Use business credit cards only for business purchases. Business purchases made by personal credit cards should be reimbursed to a card holder, and payments made by the corporation on personal credit cards should be paid back to the corporation. A corporation should be treated as a separate entity, no commingle of personal and corporate funds is allowed.

Establish and implement an expense reimbursement policy. If an employee/owner incurs some (should be an exception) business charges on his/her personal credit card, the expense reimbursement report should be filed and recorded within 60 days.

PART I: FINDINGS

Finding #8

Credit card charges are not systematically recorded in the accounting system. Credit card charges are not itemized, but rather recorded as a lump sum.

Risk

- All charges recorded on credit cards assumed to be COGS; however, some charges are interest expenses, processing fees, etc. that cause COGS to be overstated.
- Credit card statements are not reviewed and reconciled; thus, unauthorized transactions cannot be identified.
- The business uses thirteen credit cards that accumulate significant charges monthly. Therefore, monthly COGS and other expenses are understated since recorded once a year.

Proposed Solution

Create and implement credit card policy and procedures.

Prepare a list of credit cards used by the business. Record and itemize credit card charges, and reconcile credit card statements on monthly basis. Management should review statements and investigate any unknown transactions monthly.

Finding #9

Expenses paid by two petty cash funds ($500 and $5,000) are not recorded in the accounting system.

Risk

- The expenses paid by these funds are not recorded in the accounting system; therefore, COGS and other expenses are understated.
- Funds are replenished with cash from check registers; therefore, revenue is underreported.
- Opportunity for cash theft and misplacement is created by using funds from undeposited revenue.
- Financial statements are not accurate.

PART I: FINDINGS

Proposed Solution

Develop and implement cash handling policy and procedures. Petty cash funds should be replenished from cash recorded as revenue. Support for expenses paid by cash funds should be delivered to the accounting department and recorded in the accounting system. A petty cash ledger should be reconciled and reviewed weekly.

Finding #10

No adequate segregation of duties in cash handling exists.

Risk

- Theft/misappropriation of cash.
- Errors in recording cash transaction.
- Unauthorized use of funds.

Proposed Solution

Establish an adequate control around cash to ensure separate employees perform the following duties:

a. opening mail
b. depositing checks
c. cutting checks and recording transactions
d. signing checks

Support for all expenses paid by cash funds should be delivered to the accounting department and properly recorded in the accounting system.

Finding #11

Management does not perform periodic review of the financial information.

Risk

- Unapproved transactions can be recorded.
- Unapproved vendors/customers can be used/ served.
- Management decisions are not supported on the most recent accurate data.

PART I: FINDINGS

Proposed Solution

Develop and prepare monthly financial packages for management review and approval.

The package should include:

a. copies of all bank statements
b. bank reconciliations of all bank statements
c. balance sheet as of last day of the period
d. income statement year-to-date
e. income statement for the month
f. revenue recorded in POS reconciled with the amount recorded in the accounting system.

Finding #12

Payroll information is not recorded in the system on the timely basis.

Risk

- Current payroll expenses are understated since recorded once every 3-7 months.

Proposed Solution

Establish and implement payroll recording procedure and policies. Payroll expenses should be recorded bi-weekly.

Finding #13

The company cuts and signs checks without intention to mail them due to insufficient funds.

Risk

- Checks can be misplaced/stolen.

Proposed Solution

Cut checks only when the company intends to mail them.

PART I: FINDINGS

Finding #14

The business owner is treated as an independent contractor.

Risk

- The IRS can challenge this treatment and reclassify the payment as dividends or payroll and assess an additional tax.

Proposed Solution

Reclassify payments to the owners as dividends or payroll. The business owner does not fall under the "independent contractor" category. The business owner was paid $100,000 and $5,000 in 2008 and 2009, accordingly.

Finding #15

The corporation treats sales tax as an operating expense.

Risk

- Sales tax collected is recorded as revenue. Therefore, the revenue is overstated.
- Sales tax remitted to the BOE is recorded as an operating expense. Because of this, expenses are overstated.
- Sales tax collected is not reconciled with sales tax paid. Therefore, sales tax can be under or over paid.
- There is no sales tax collected support in case of an audit conducted by the BOE.

Proposed Solution

Record necessary adjustment to properly reflect sales tax collected and paid. Collected sales tax should not be recorded as the corporation's revenue. Likewise, remitted sales tax should not be treated as a corporation's expenses.

Sales tax collected should be recorded as a liability in the corporation's accounting system and once it is paid to the BOE, the liability should be eliminated. Sales tax collected should be reconciled monthly with sales tax paid.

PART I: FINDINGS

Finding #16

Loan from the shareholder in amount of $500,000 is not properly documented.

Risk

- The IRS can disallow to treat $500,000 as a loan to the corporation if it is not properly documented.

Proposed Solution

Draft a note payable to the shareholders, which states the amount, due date and the interest on the loan. The note payable should be signed and properly filed.

Finding #17

There is no payment schedules established to pay lenders.

Risk

- Unknown amount of accumulated interest of unpaid balances.
- Unknown notes payable maturity balances.

Proposed Solution

Create a payment schedule for all outstanding notes payable (One California Bank, Nor-Cal, Wells Fargo, City of Oakland, the shareholder).

PART I: FINDINGS

Finding #18

The corporation is using one of the most expensive payroll providers, ADP.

Risk

- Payroll processing is very expensive.

Proposed Solution

Consider to switch to more affordable payroll processing provider.

The company can switch to another payroll processing provider. Others to consider:

Paychex - http://smallbusiness.paychex.com/payroll/
Paychex offers smaller businesses the comprehensive services of a national payroll provider, backed by dedicated, local Payroll Specialists. This rare combination helps clients easily manage employee information and simplify the entire payroll process from processing to payday.

E-chx, Inc - http://www.e-chx.com/
The premier small business payroll outsourcing company, E-chx delivers tailored payroll solutions designed to meet the individual needs of every client. From complete payroll tax preparation and administration, to services like real-time Internet payroll reporting, direct deposit, and specific reports designed for the accounting community. With award-winning customer service and a state-of-the-art payroll platform, E-chx provides the best of both worlds: great service at a great price.

The client can retain the same type of services and receive in average between $4,000-$5,000/year cash savings by switching to Paychex, and between $7,000-$9,000/year by switching to E-chx.

To ensure a smooth transition, the switch needs to be done before the first 2010 check date, which is 01/03/2010. Mid-year transition can be implemented as well, with more preparation work and cooperation from ADP.

PART II: RECOMENDATIONS

The below recommendations need to be implemented as soon as possible, in order for management and outside users to obtain accurate financial information for the year ended December 31, 2009.

Hire Finance Director

Need to hire a part or full time finance director, who will establish and implement an adequate accounting control, based on the finding and recommendations provided in this report. The qualified candidate should have prior restaurant experience, QuickBooks knowledge and solid accounting background.

To ensure that the qualified candidate is hired, it is recommended to involve a recruiting agency or qualified CPA in the interview process. It is desired that the candidate has an experience with accounting policies and controls implementation.

New internal policies around cash collection/disbursement, revenue recording, fixed assets recording, management oversight, expense reimbursement, etc. can be developed internally by finance director or an independent consultant.

Record 2009 Transactions in the QuickBooks System

Need to record necessary adjustments, payroll information, bank reconciliations, credit card charges, sales and cash expenses for the year ended December 31, 2009 in the QuickBooks system.

The client's year-end is December 31, and the accurate accounting information has to be completed and presented for 2009 income tax filing, sales tax filing and other outside users.

The QuickBooks file does not have information for six months of revenue, payroll, and some cash expenses. Credit card charges are not recorded in the QuickBooks as well. Records can be updated by a new finance director or by an independent accountant that the client had been using in the past.

PART II: RECOMENDATIONS

Develop Debt Payment Plan

Need to develop a repayment plan for the existing lenders, based on reasonable revenue/expenses expectations. Obtain lenders approval for the repayment plan.

Lenders support is critical for future business success. Lenders can obtain court orders to collect funds, disregarding whether or not the business can afford to repay loans.

To ensure uninterrupted business operations and eliminate unnecessary legal fees and large interest charges, as well as penalties that can be imposed by lenders, the corporation should develop a reasonable repayment plan, based on the current business performance and obtain lenders approval of the repayment. There is a possibility that lenders will agree to less than original monthly payments as long as business demonstrates its intentions to pay debts.

Establish Business Transparency

Improve business transparency to lenders by developing and providing monthly financial packages to lenders. Monthly financial packages should include: profit and loss statement, balance sheet, sales report from the POS system, copies of all bank statements and reconciliation reports for all bank statements, and copies of credit card statements.

As a continuation of the effort to restore relationship and obtain lenders support, the client needs to ensure that lenders receive the most recent information about the client's performance. Monthly financial packages will provide necessary transparency.

Delegate Control to Lenders

Need to discuss with lenders the possibility to assign an outside co-signor appointed by lenders, who will approve and co-sign all expenses above $5,000.

It is a necessary additional control procedure that can be temporarily (for a period of 12 months) implemented to increase lenders cooperation. By offering lenders to participate in the cash disbursement process, the client allows lenders to be closely involved in the operations and control business expenses.

PART III: FINANCIAL STATEMENTS

MCKINNEY GRIFF INC. (Merritt Restaurant & Bakery)
BALANCE SHEET (Estimated)
December 15, 2009

		2009	
ASSETS			
CASH			
Cash on hands	$	5,500	a
Cash in bank		15,567	b
	$	21,067	
DEPOSITS		29,304	c
ACCOUNTS RECEIVABLES		4,216	d
INVENTORY		48,262	e
FIXED ASSETS			
Depreciable assets - cost		839,751	f
Accumulated depreciation		(410,017)	g
	$	429,734	
OTHER ASSETS			
Intangible assets		775,000	h
Goodwill impairment		(390,980)	h
	$	384,020	
Total assets	$	916,603	
LIABILITIES			
Accounts payable		196,097	i
Accrued payroll		32,000	j
Note Payable		823,342	k
Loan from a shareholder		500,000	l
	$	1,551,439	
SHAREHOLDER'S EQUITY			
Capital stock		-	
Retained earnings		(634,836)	
Total liabilities and Shareholder's Equity	$	916,603	

PART III: FINANCIAL STATEMENTS

MCKINNEY GRIFF INC. (Merritt Restaurant & Bakery)
BALANCE SHEET (Estimated)
December 15, 2009

a. Amount represents cash in 2 safes (small safe has in average $500, and large safe has in average $5,000).
b. Amount represents cash in 3 bank accounts (account 4022 - general; account 4023 - lotto; account 6471 – payroll).
c. Balance represents a deposit made to PG&E.
d. Balance is based on AR aging report. See Appendix D.
e. Amount is based on the client's QB file. Agreed that this is an average amount of inventory the client keeps on hands.
f. Amount is based on tax filing for the year ended 12/31/2008. No significant purchases were made in 2009.
g. Balance is based on tax filing for the year ended 12/31/2008. Depreciation for 2009 was estimated based on the prior years' depreciation expenses.
h. Balance is based on tax filing for the year ended 12/31/2008. The goodwill impairment test should be performed to estimate the correct goodwill amount.
i. Amount is based on the outstanding AP invoices. See Appendix C.
j. Amount represents accrued payroll expense for the period 12/07/09 - 12/15/09.
k. Amount represent total outstanding notes payable:

One California Bank	$218,015.87	11/24/2009
Nor-Cal	$100,000.00	12/15/2009
Wells Fargo	$343,325.68	9/10/2009
City of Oakland	$162,000.00	12/15/2009

l. Amount is estimated by the client. No formal agreement exists.

PART III: FINANCIAL STATEMENTS

MCKINNEY GRIFF INC. (Merritt Restaurant & Bakery)
INCOME STATEMENT (Estimated)
For the period January 1, 2009 through December 15, 2009

		2009	
REVENUE	$	3,097,035	a
COST OF GOODS SOLD			
Food and supplies		830,734	b
Labor cost		1,250,232	c
Total COGS	$	2,080,966	
GROSS PROFIT	$	1,016,069	
EXPENSES			
Advertisement & Promotion		6,601	
Auto Expenses		7,552	
Dues & Subscriptions		520	
Depreciation Expense		99,000	d
Employees Payroll Expenses		85,488	
Employees Benefits		28,001	
Fees & Charges		41,660	
Insurances		101,104	
Interest Expenses		37,603	e
Office Expenses		22,126	
Professional Expenses		220,207	
Repairs & Maintenance		26,178	
Rents & Leases		69,022	
Taxes & Licenses		233,020	
Telephones & Communication		10,533	
Utilities		196,744	
Uniforms		1,000	
Penalties & Fines		1,621	
Postage		818	
Miscellaneous		1,258	
Total Expenses	$	1,190,057	
NET ORDINARY INCOME	$	(173,988)	
OTHER INCOME/EXPENSE			
OTHER INCOME		708,031	
OTHER EXPENSE		621,734	f
NET OTHER INCOME	$	86,297	
NET INCOME	$	(87,691)	

PART III: FINANCIAL STATEMENTS

MCKINNEY GRIFF INC. (Merritt Restaurant & Bakery)
INCOME STATEMENT (Estimated)
For the period January 1, 2009 through December 15, 2009

a. Amount is based on daily sales amounts provided by the client.
b. Information obtained from the QB file, cc statements, Jetro's sales report and estimated cash purchases.
c. Information obtained from ADP statements.
d. Amount represents estimated depreciation and amortization expense based on the prior year tax filing.
e. Amount includes $31,000 interest on loan from Wachovia.
f. Amount was annualized to reflect 12 months worth of expense.

PART III: FINANCIAL STATEMENTS

PERSONAL FINANCIAL STATEMENT
Patricia Tyler Griffis and Charles Griffis
15-Dec-09

Assets	**Amount in Dollars**	
Cash - checking accounts	$ -	
Cash - savings accounts	-	
Certificates of deposit	-	
Securities - stocks / bonds / mutual funds	-	
Notes & contracts receivable	-	
Life insurance *(cash surrender value)*	-	
Personal property *(autos, jewelry, etc.)*	50,000	a
Retirement Funds *(e.g. IRAs, 401k)*	-	
Real estate *(market value)*	2,200,000	b
Other assets *(specify)*	180,000	c
Other assets *(specify)*	500,000	d
Total Assets	**$ 2,930,000**	

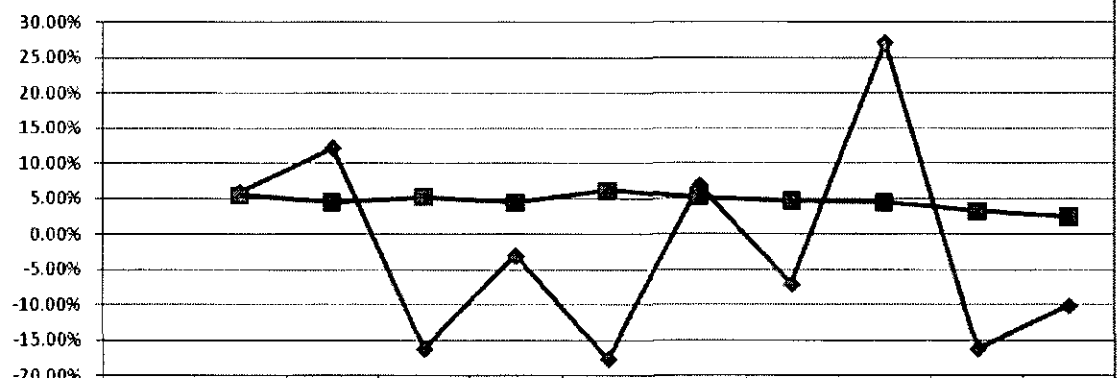
Liabilities	**Amount in Dollars**	
Current Debt *(Credit cards, Accounts)*	$ -	
Notes payable *(describe below)*	-	
Taxes payable	-	
Real estate mortgages *(describe)*	1,678,000	e
Other liabilities *(specify)*	-	
Other liabilities *(specify)*	-	
Total Liabilities	**$ 1,678,000**	
Net Worth	**$ 1,252,000**	

a. Estimated market value of personal car, Chevrolet Corvette
b. Estimated market value of 3 properties: primary residence in San Francisco and 2 investment condos at Bellevue Towers
c. Cost of inventory (miniature house dolls) owned by the client
d. Loan to Merritt Restaurant & Bakery. Patricia Tyler Griffis is 100% shareholder of the Merritt Restaurant & Bakery. Future analysis is needed to estimate the market value of the restaurant.
e. Estimated value of outstanding mortgages on real estate properties

PART IV: DATA ANALYSIS AND COMPARISON

Restaurant-Industry Sales Increase

Figure 1 below shows the sales growth of the restaurant industry since 1999, based on the National Restaurant Association annual forecasts (see Appendix A). The industry demonstrates growth average of 5% annually, with the slight growth reduction to 3% and 2% in 2008 and 2009, respectively.



	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Client %		5.85%	12.26%	-16.14%	-2.96%	-17.60%	6.95%	-7.04%	27.17%	-16.10%	-10.06%
Industry		5.50%	4.60%	5.30%	4.50%	6.20%	5.30%	4.70%	4.50%	3.30%	2.50%

Figure 1: Sales Growth Comparison

The data also shows client's sales changes (based on the client-provided sales amounts). The client's sales fluctuated significantly compare to the industry performance:

2001 – 12.26% increase
2002 – 16.14% decrease
2003 – 2.96% decrease
2004 – 17.6% decrease
2005 – 6.95% increase
2006 – 7.04% decrease
2007 – 27.17% increase
2008 – 16.10% decrease
2009 – 10.6% decrease

The significant increase in the client's sales in 2007 and sales drops in 2008 and 2009 do not correlate with the industry trends. Future detailed analysis needs to be performed to explain such deviations.

PART IV: DATA ANALYSIS AND COMPARISON

Income Statement Comparison

The data below is based on the annual report prepared by National Restaurant Association and Deloitte & Touche LLP (see Appendix B). The data was collected from 223 respondents in the full service restaurants (Average Check per Person Under $15). Approximately three-fifths (60.5%) of the respondents represent independent restaurants and 57.9% reported that they were the sole occupant of their location. Restaurants with American menu themes represent 50.2% of this sample.

According to the report, up to 10 % variance by line item does not constitute an abnormal deviation. Variance is more than 10% needs to be investigated and analyzed. The client's Salaries and Wages expenses (including Employee Benefits) fluctuate between 12% and 20% above the industry average. It indicates that the corporation pays more than average same size restaurant. Salaries and Wages cost need to be analyzed in details, and ways to reduce payroll cost needs to be proposed.

Income Statement 01/01/2009 - 12/31/2009	Client (Dollars)	Client (% of Sales)	Restaurant Industry Report	Variance (+ or -)
Sales	$3,097,035	100.00%	100.00%	
Cost of Sales	$830,735	26.82%	31.50%	-4.68%
Gross Profit	$2,366,300	73.18%	68.50%	4.68%
Operating Expenses				
Salaries and Wages (incl Employee Benefits)	$1,363,721	44.03%	31.70%	12.33%
Direct Operating Expenses	$233,020	7.52%	6.60%	0.92%
Music and Entertainment	$0	0.00%	0.10%	-0.10%
Marketing	$6,601	0.21%	1.90%	-1.69%
Utility Services	$196,744	6.35%	3.90%	2.45%
Restaurant Occupancy Costs	$69,022	2.23%	5.40%	-3.17%
Repairs and Maintenance	$26,178	0.85%	1.60%	-0.75%
Depreciation	$99,000	3.20%	1.80%	1.40%
Other Expense/(Income)	-$86,297	-2.79%	0.50%	-3.29%
General & Administrative Expenses	$238,812	7.71%	2.60%	5.11%
Corporate Overhead	$168,329	5.44%	0.90%	4.54%
Total Operating Expenses	$2,315,130	74.75%	61.10%	13.65%
Interest Expense	$37,603	1.21%	0.90%	0.31%
Other Expenses	$1,258	0.04%	1.00%	-0.96%
Income Before Income Taxes	-$87,691	-2.83%	5.50%	-8.33%

PART IV: DATA ANALYSIS AND COMPARISON

Income Statement 01/01/2008 - 12/31/2008	Client (Dollars)	Client (% of Sales)	Restaurant Industry Report	Variance (+ or -)
Sales	$3,464,158	100.00%	100.00%	
Cost of Sales	$1,231,212	35.54%	31.50%	4.04%
Gross Profit	$2,232,946	64.46%	68.50%	-4.04%
Operating Expenses				
Salaries and Wages (incl Employee Benefits)	$1,602,167	46.25%	31.70%	14.55%
Direct Operating Expenses	$305,071	8.81%	6.60%	2.21%
Music and Entertainment	$0	0.00%	0.10%	-0.10%
Marketing	$33,099	0.96%	1.90%	-0.94%
Utility Services	$199,146	5.75%	3.90%	1.85%
Restaurant Occupancy Costs	$101,614	2.93%	5.40%	-2.47%
Repairs and Maintenance	$42,174	1.22%	1.60%	-0.38%
Depreciation	$110,895	3.20%	1.80%	1.40%
Other Expense/(Income)	-$63,993	-1.85%	0.50%	-2.35%
General & Administrative Expenses	$271,655	7.84%	2.60%	5.24%
Corporate Overhead	$189,028	5.46%	0.90%	4.56%
Total Operating Expenses	$2,790,856	80.56%	61.10%	19.46%
Interest Expense	$23,802	0.69%	0.90%	-0.21%
Other Expenses	$32,047	0.93%	1.00%	-0.07%
Income Before Income Taxes	-$613,759	-17.72%	5.50%	-23.22%

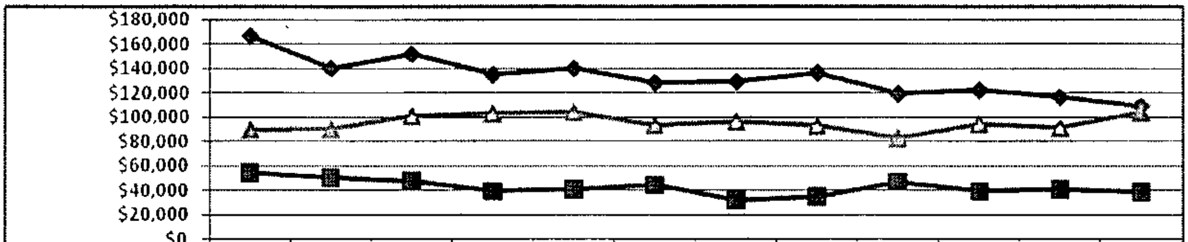
Income Statement 01/01/2007 - 12/31/2007	Client (Dollars)	Client (% of Sales)	Restaurant Industry Report	Variance (+ or -)
Sales	$4,059,093	100.00%	100.00%	
Cost of Sales	$1,131,580	27.88%	31.50%	-3.62%
Gross Profit	$2,927,513	72.12%	68.50%	3.62%
Operating Expenses				
Salaries and Wages (incl Employee Benefits)	$1,754,428	43.22%	31.70%	11.52%
Direct Operating Expenses	$361,502	8.91%	6.60%	2.31%
Music and Entertainment	$0	0.00%	0.10%	-0.10%
Marketing	$63,908	1.57%	1.90%	-0.33%
Utility Services	$207,358	5.11%	3.90%	1.21%
Restaurant Occupancy Costs	$190,382	4.69%	5.40%	-0.71%
Repairs and Maintenance	$51,915	1.28%	1.60%	-0.32%
Depreciation	$115,920	2.86%	1.80%	1.06%
Other Expense/(Income)	-$104,990	-2.59%	0.50%	-3.09%
General & Administrative Expenses	$259,786	6.40%	2.60%	3.80%
Corporate Overhead	$191,927	4.73%	0.90%	3.83%
Total Operating Expenses	$3,092,136	76.18%	61.10%	15.08%
Interest Expense	$30,929	0.76%	0.90%	-0.14%
Other Expenses	$4,036	0.10%	1.00%	-0.90%
Income Before Income Taxes	-$199,588	-4.92%	5.50%	-10.42%

PART IV: DATA ANALYSIS AND COMPARISON

Income Statement 01/01/2006 - 12/31/2006	Client (Dollars)	Client (% of Sales)	Restaurant Industry Report	Variance (+ or -)
Sales	$3,366,748	100.00%	100.00%	
Cost of Sales	$840,028	24.95%	32.30%	-7.35%
Gross Profit	$2,526,720	75.05%	67.70%	7.35%
Operating Expenses				
Salaries and Wages (with Empl. Benefits)	$1,816,458	53.95%	34.00%	19.95%
Direct Operating Expenses	$277,161	8.23%	6.60%	1.63%
Music and Entertainment	$0	0.00%	0.20%	-0.20%
Marketing	$42,944	1.28%	2.10%	-0.82%
Utility Services	$208,277	6.19%	3.60%	2.59%
Restaurant Occupancy Costs	$141,527	4.20%	5.50%	-1.30%
Repairs and Maintenance	$47,474	1.41%	1.60%	-0.19%
Depreciation	$134,827	4.00%	1.70%	2.30%
Other Expense/(Income)	-$414,368	-12.31%	0.30%	-12.61%
General & Administrative Expenses	$292,960	8.70%	2.40%	6.30%
Corporate Overhead	$180,143	5.35%	2.10%	3.25%
Total Operating Expenses	$2,727,403	81.01%	61.20%	19.81%
Interest Expense	$10,381	0.31%	0.50%	-0.19%
Other Expenses	$3,075	0.09%	1.10%	-1.01%
Income Before Income Taxes	-$214,139	-6.36%	4.90%	-11.26%

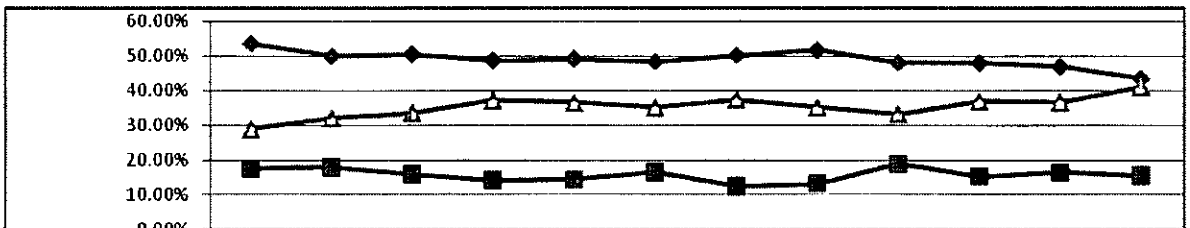
PART IV: DATA ANALYSIS AND COMPARISON

Sales by Department - GoBar, Bakery and Bakery-accounts



	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec*
C/S - GoBr	$166,675	$140,303	$151,662	$134,976	$139,990	$128,569	$129,351	$136,569	$119,415	$122,795	$116,711	$109,252
Bakery	$54,176	$50,529	$47,692	$39,274	$40,883	$44,242	$31,923	$34,968	$46,954	$39,314	$40,833	$39,033
Bakery (acct)	$89,882	$90,071	$100,938	$102,862	$104,047	$93,599	$96,384	$92,995	$82,855	$94,359	$91,304	$103,744

Figure 2: Sales by Department (GoBar, Bakery and Bakery-accounts - $)



	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec*
C/S - GoBr	53.64%	49.95%	50.50%	48.71%	49.13%	48.26%	50.20%	51.63%	47.91%	47.88%	46.90%	43.35%
Bakery	17.43%	17.99%	15.88%	14.17%	14.35%	16.61%	12.39%	13.22%	18.84%	15.33%	16.41%	15.49%
Bakery (acct)	28.93%	32.06%	33.61%	37.12%	36.52%	35.13%	37.41%	35.15%	33.25%	36.79%	36.69%	41.16%

Figure 3: Sales by Department (GoBar, Bakery and Bakery-accounts - %)

Charts above (Figure 2 and Figure 3) show 2009 monthly departments' sales (GoBar, Bakery and Bakery-accounts) in relation to overall sales (excluding sales from Lotto).

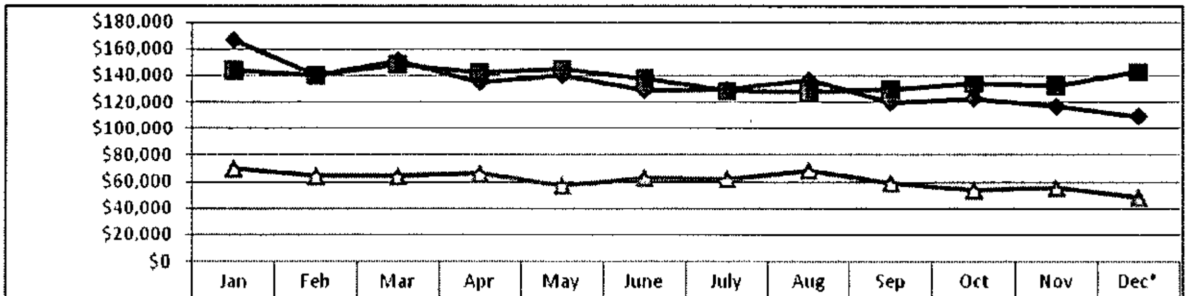
GoBar sales
The monthly department sales to overall sales is decreasing, starting with ~54% in January 2009 and declining to ~43% in December 2009.

Bakery sales
The monthly sales to overall sales are stable averaging about 13%-18% per month.

Bakery - accounts
The monthly department sales to overall sales is increasing, starting with ~29% in January 2009 and increasing to ~41% in December 2009.

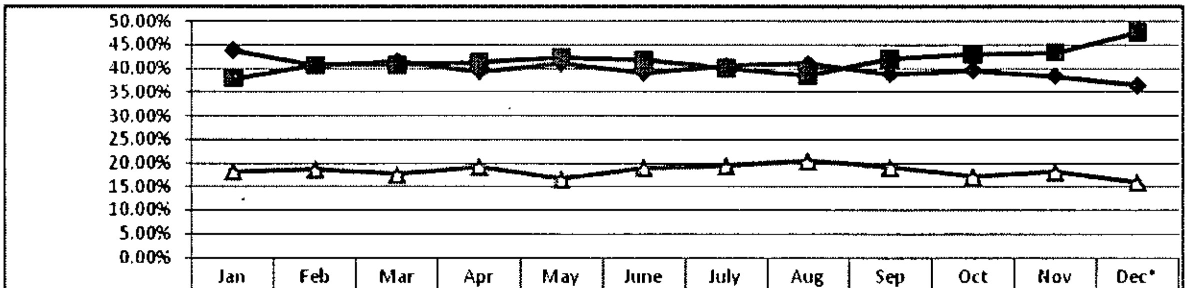
PART IV: DATA ANALYSIS AND COMPARISON

Sales by Department - GoBar, Overall Bakery and Lotto



	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec*
C/S - GoBr	$166,675	$140,303	$151,662	$134,976	$139,990	$128,569	$129,351	$136,569	$119,415	$122,795	$116,711	$109,252
Bakery	$144,059	$140,600	$148,630	$142,136	$144,930	$137,840	$128,307	$127,964	$129,809	$133,672	$132,136	$142,777
Lotto	$69,923	$64,438	$64,413	$66,235	$56,999	$62,981	$62,269	$68,581	$59,021	$53,821	$55,292	$48,116

Figure 4: Sales by Department (GoBar, Overall Bakery and Lotto - $)



	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec*
C/S - GoBr	43.79%	40.63%	41.58%	39.31%	40.94%	39.03%	40.43%	41.00%	38.74%	39.57%	38.37%	36.40%
Bakery	37.84%	40.71%	40.75%	41.40%	42.39%	41.85%	40.11%	38.41%	42.11%	43.08%	43.45%	47.57%
Lotto	18.37%	18.66%	17.66%	19.29%	16.67%	19.12%	19.46%	20.59%	19.15%	17.35%	18.18%	16.03%

Figure 5: Sales by Department (GoBar, Overall Bakery and Lotto - %)

Charts above (Figure 4 and Figure 5) show 2009 monthly departments' sales (GoBar, Overall Bakery and Lotto) in relation to overall sales. Bakery and Bakery- accounts sales are combined.

GoBar sales
The monthly department sales to overall sales is decreasing, starting with ~44% of overall sales in January 2009 and declining to ~36% in December 2009.

Bakery Overall sales
The monthly department sales to overall sales is increasing, starting with ~38% of overall sales in January 2009 and increasing to ~48% in December.

Lotto
The monthly sales are stable averaging about 16-21% per month.

APPENDIX A: 2009 RESTAURANT INDUSTRY FORECAST

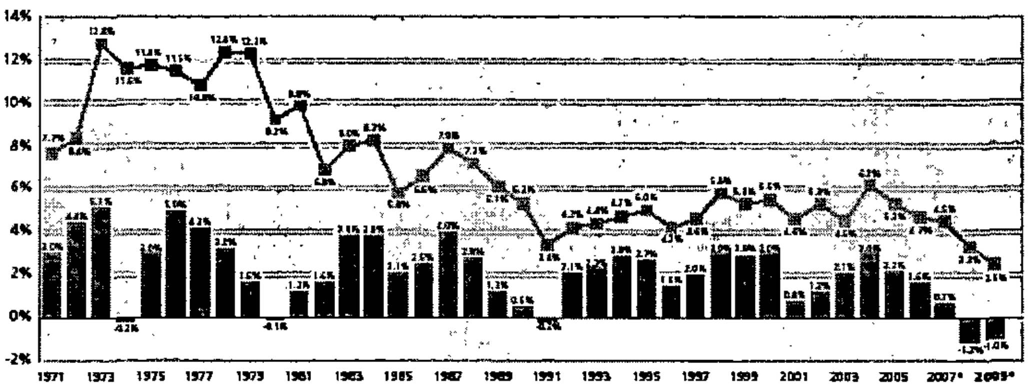
2009 RESTAURANT INDUSTRY FORECAST

RESTAURANT-INDUSTRY SALES

[CHART 1.2]

39 Years of Restaurant-Industry Sales: 1971-2009

This chart shows the sales growth of the restaurant industry since 1971, when the National Restaurant Association first issued its annual forecast. Here you can see the growth in the number of dollars spent each year, and that number adjusted for inflation.



■ Current-dollar growth ■ Real (inflation-adjusted) growth

* Growth rates are estimated for 2005 to 2007 and projected for 2008 and 2009. Providing final estimates for restaurant-industry sales from previous years is an ongoing process. The National Restaurant Association's Restaurant TrendMapper offers updated sales estimates as they become available. Visit www.restaurant.org/trendmapper to learn more.

Source: National Restaurant Association

[CHART 1.3]

Restaurant-Industry Sales Over Five Years: 2005-2009

This chart includes estimated restaurant-industry food-and-drink sales data from 2005, 2006 and 2007, along with the National Restaurant Association's projections for 2008 and 2009. The data for 2005, 2006 and 2007 have been updated to reflect the latest information available. The chart includes yearly sales-growth figures for key segments of the restaurant industry.

	2005 Estimated F&D Sales ($000)	2006 Estimated F&D Sales ($000)	'05-'06 Percent Change	2007 Estimated F&D Sales ($000)	'06-'07 Percent Change	2008 Projected F&D Sales ($000)	'07-'08 Percent Change	2009 Projected F&D Sales ($000)	'08-'09 Percent Change
COMMERCIAL RESTAURANT SERVICES	$445,078,442	$466,925,339	4.9%	$487,909,000	4.5%	$503,403,380	3.2%	$515,964,882	2.5%
Eating places	329,597,828	345,641,729	4.9%	360,620,769	4.3%	369,906,906	2.6%	377,898,733	2.2%
Fullservice restaurants	165,170,335	172,536,932	4.5%	179,093,335	3.8%	181,053,362	1.1%	182,873,996	1.0%
Limited-service restaurants	136,903,266	143,912,713	5.1%	150,820,523	4.8%	157,456,626	4.4%	163,754,891	4.0%
Cafeterias, grill-buffets and buffets	5,092,356	5,250,219	3.1%	5,087,462	-3.1%	5,021,325	-1.3%	4,940,984	-1.6%
Social caterers	5,281,527	5,667,078	7.3%	6,041,105	6.6%	6,276,708	3.9%	6,402,242	2.0%
Snack and nonalcoholic beverage bars	17,150,344	18,274,787	6.6%	19,578,344	7.1%	20,088,885	2.6%	19,926,620	-0.8%
Bars and taverns	15,001,593	15,601,657	4.0%	16,147,715	3.5%	16,632,146	3.0%	17,097,846	2.8%
TOTAL EATING-AND-DRINKING PLACES	$344,599,421	$361,243,386	4.8%	$376,768,484	4.3%	$386,539,052	2.6%	$394,996,579	2.2%
NONCOMMERCIAL RESTAURANT SERVICES	$41,416,164	$42,456,800	2.5%	$44,624,816	5.1%	$46,742,888	4.7%	$47,779,338	2.2%
MILITARY RESTAURANT SERVICES	$1,732,056	$1,811,377	4.6%	$1,904,865	5.2%	$2,026,777	6.4%	$2,113,577	4.3%
TOTAL INDUSTRY SALES	$488,226,662	$511,193,516	4.7%	$534,438,681	4.5%	$552,173,045	3.3%	$565,857,797	2.5%

Source: National Restaurant Association

www.restaurant.org | National Restaurant Association

APPENDIX B: RESTAURANT INDUSTRY OPERATION REPORT

Exhibit A-12

Full Service Restaurants (Average Check Per Person Under $15)
Statement of Income and Expenses - Ratio to Total Sales*

	Type of Establishment					
	Food Only			Food and Beverage		
	Lower Quartile	Median	Upper Quartile	Lower Quartile	Median	Upper Quartile
Sales						
Food	100.0%	100.0%	100.0%	69.6%	82.1%	92.9%
Beverage	N/A	N/A	N/A	7.1	17.9	30.4
Total Sales	100.0	100.0	100.0	100.0	100.0	100.0
Cost of Sales						
Food	29.0	33.0	36.8	29.0	32.9	38.4
Beverage	N/A	N/A	N/A	25.3	30.0	35.9
Total Cost of Sales	29.0	33.0	36.8	28.5	32.2	35.8
Gross Profit	63.0	66.6	70.5	63.7	67.7	71.6
Operating Expenses						
Salaries and Wages (Including Employee Benefits)	29.6	35.0	40.4	30.3	34.0	38.6
Direct Operating Expenses	3.1	5.8	10.1	3.7	6.6	9.5
Music and Entertainment	0.0	0.1	0.2	0.0	0.2	1.3
Marketing	0.7	1.5	3.2	1.1	2.1	3.8
Utility Services	2.4	3.8	5.1	2.7	3.6	4.8
Restaurant Occupancy Costs	4.4	6.2	9.6	3.3	5.5	8.4
Repairs and Maintenance	0.9	1.5	2.2	1.0	1.6	2.5
Depreciation	0.9	1.7	3.0	0.9	1.7	3.0
Other Expense/(Income)	0.2	1.7	5.9	(0.6)	0.3	2.1
General & Administrative Expenses	0.9	2.0	4.2	0.9	2.4	4.5
Corporate Overhead	0.0	2.6	6.5	0.0	2.1	5.5
Total Operating Expenses	52.5	62.4	70.2	53.1	61.2	67.4
Interest Expense	0.0	0.8	2.0	0.0	0.5	2.3
Other Expenses	0.0	0.5	2.2	**	**	**
Income Before Income Taxes	0.2%	5.7%	10.7%	0.0%	4.9%	13.0%

Note: Computations include respondents that provided zeros and numerical amounts
* All ratios are based as a percentage of total sales except food and beverage costs, which are based on their respective sales
** Insufficient data
N/A Not applicable

APPENDIX B: RESTAURANT INDUSTRY OPERATION REPORT

Exhibit A-12

Full Service Restaurants (Average Check Per Person Under $15)
Statement of Income and Expenses - Ratio to Total Sales*

	Type of Establishment					
	Food Only			Food and Beverage		
	Lower Quartile	Median	Upper Quartile	Lower Quartile	Median	Upper Quartile
Sales						
Food	100.0%	100.0%	100.0%	71.5%	86.8%	93.8%
Beverage	N/A	N/A	N/A	6.2	13.2	28.5
Total Sales	100.0	100.0	100.0	100.0	100.0	100.0
Cost of Sales						
Food	29.8	33.3	36.8	28.7	32.5	37.7
Beverage	N/A	N/A	N/A	24.6	28.0	34.0
Total Cost of Sales	29.8	33.3	36.8	28.1	31.5	35.1
Gross Profit	63.2	66.7	70.2	64.9	68.5	71.9
Operating Expenses						
Salaries and Wages (including Employee Benefits)	29.0	33.6	39.6	27.7	31.7	37.4
Direct Operating Expenses	3.0	5.6	9.2	4.3	6.6	10.3
Music and Entertainment	0.0	0.0	0.1	0.0	0.1	1.1
Marketing	0.8	1.5	3.5	0.9	1.9	4.3
Utility Services	2.8	3.7	4.9	2.9	3.9	4.9
Restaurant Occupancy Costs	4.3	6.2	8.5	3.2	5.4	7.9
Repairs and Maintenance	1.0	1.6	2.1	1.1	1.6	2.4
Depreciation	0.8	1.7	3.2	0.7	1.8	4.1
Other Expense/(Income)	(0.7)	0.2	4.2	(0.5)	0.5	4.4
General & Administrative Expenses	1.1	3.8	6.0	1.7	2.6	5.0
Corporate Overhead	1.1	2.7	4.5	0.0	0.9	3.1
Total Operating Expenses	50.4	60.7	67.1	53.3	61.1	67.8
Interest Expense	0.2	0.9	2.2	0.1	0.9	2.3
Other Expenses	0.0	0.3	1.3	0.0	0.0	1.6
Income (Loss) Before Income Taxes	0.2%	5.4%	12.8%	0.3%	5.5%	11.4%

Note: Computations include respondents that provided zeros and numerical amounts
* All ratios are based as a percentage of total sales except food and beverage costs, which are based on their respective sales
N/A Not applicable

APPENDIX C: AP AGING REPORT

	Current	1 - 30	31 - 60	61 - 90	> 90	TOTAL
Airgas, Inc	102.78	0.00	104.78	0.00	0.00	207.56
Anthem Blue Cross	122.00	188.00	84.00	0.00	0.00	394.00
ARCTIC REFRIGERATION	0.00	925.86	2,283.05	0.00	0.00	3,208.91
AT&T	236.91	0.00	0.00	0.00	0.00	236.91
BakeMark	0.00	0.00	0.00	0.00	0.00	0.00
Bako Products, Inc	0.00	0.00	3,572.91	0.00	0.00	3,572.91
Bank of America	0.00	0.00	0.00	0.00	0.00	0.00
Bay Area Service Company	0.00	537.32	0.00	0.00	0.00	537.32
Board of Equalization	7,097.54	0.00	0.00	0.00	0.00	7,097.54
Brinks	523.18	528.36	583.77	583.77	422.91	2,641.99
Challenge Dairy Products, Inc.	3,700.86	2,027.25	0.00	0.00	0.00	5,728.11
CHASE AUTOMOTIVE FINANCE	0.00	0.00	0.00	0.00	0.00	0.00
CocaCola USA	32.92	65.84	0.00	0.00	0.00	98.76
COMCAST	0.00	0.00	0.00	0.00	4,964.85	4,964.85
Dan Martinelli Poultry	1,247.22	2,620.91	4,652.74	0.00	0.00	8,520.87
Dawn Food Products, Inc.	9,747.75	10,471.01	7,390.92	0.00	0.00	27,609.68
Del Monte Meat Co. Inc.	2,580.50	2,537.00	2,292.00	0.00	0.00	7,409.50
DEPARTMENT OF FOOD AND AGRILCULTURE	100.00	0.00	175.16	0.00	0.00	275.16
Donald R. White, Tax Collector	0.00	434.44	0.00	0.00	0.00	434.44
EBMUD	0.00	1,287.65	1,155.49	1,374.68	0.00	3,817.82
FERRARI FINANCIAL SERVICES, INC.	0.00	0.00	0.00	0.00	0.00	0.00
GMAC	0.00	0.00	0.00	0.00	0.00	0.00
GOLDEN EAGLE INSURANCE	0.00	4,101.75	0.00	0.00	0.00	4,101.75
Gourmet Xpress	0.00	1,538.45	1,523.15	167.80	0.00	3,229.40
JBS BakeService	2,921.95	1,694.35	0.00	0.00	0.00	4,616.30
JOEL H. SATOVSKY	575.00	284.14	25.00	58.71	1,051.50	1,994.35
Kaiser Permanente	0.00	0.00	5,642.00	0.00	0.00	5,642.00
Linton Paper & Supply, Inc.	358.49	0.00	504.02	0.00	0.00	862.51
Majestic Insurance Company	2,567.00	0.00	0.00	3,895.00	0.00	6,462.00
Otis Spunkmeyer, Inc.	768.00	0.00	0.00	0.00	0.00	768.00
Peerless Coffee Company	2,149.41	1,746.84	1,914.62	0.00	0.00	5,810.87
PG&E	9,705.83	0.00	13,121.16	0.00	0.00	22,826.99
Reassure America Life insurance Company	1,374.70	0.00	0.00	0.00	0.00	1,374.70
ROBERT L. HARRISON	0.00	0.00	800.00	0.00	0.00	800.00
SAFE CREDIT UNION	0.00	1,067.74	0.00	0.00	0.00	1,067.74
SafeAmerica	0.00	0.00	0.00	0.00	0.00	0.00
Stanley Access Tech	0.00	0.00	0.00	0.00	528.48	528.48
State Board of Equalization	0.00	800.00	0.00	0.00	0.00	800.00
Stern & Goldberg, Attorneys at Law	0.00	1,050.00	0.00	0.00	1,487.50	2,537.50
Supreme Interiors, Inc.	0.00	0.00	0.00	0.00	0.00	0.00
TELEPHONETICS, INC.	0.00	0.00	0.00	0.00	199.95	199.95
TROY COMMUNICATIONS	200.00	0.00	0.00	0.00	0.00	200.00
US Food Service	0.00	0.00	0.00	0.00	0.00	0.00
WACHOVIA DEALER SERVICES, INC.	0.00	336.24	0.00	0.00	0.00	336.24
Wachovia Small Business Capital	0.00	7,000.00	0.00	0.00	0.00	7,000.00
Waste Management of Alameda County	0.00	1,822.05	1,753.08	146.64	0.00	3,721.77
Accrued payroll for the period 12/7-12/15 (estimated)	32,000.00	0.00	0.00	0.00	0.00	32,000.00
Outstanding cc balances (estimated)	44,460.57	0.00	0.00	0.00	0.00	44,460.57
TOTAL	122,572.61	43,065.20	47,577.85	6,226.60	8,655.19	228,097.45

APPENDIX D: AR AGING REPORT

	Current	1 - 30	31 - 60	61 - 90	> 90	TOTAL
A. Ozowara	0.00	0.00	0.00	0.00	0.00	0.00
AAA	0.00	0.00	0.00	0.00	0.00	0.00
Abag Plan	0.00	0.00	0.00	0.00	0.00	0.00
AECOM Technical Services (Earth Tech)	0.00	0.00	93.40	0.00	0.00	93.40
AFSCME, AFL-CIO	0.00	0.00	0.00	0.00	0.00	0.00
American Express	0.00	0.00	0.00	0.00	0.00	0.00
AT&T	0.00	0.00	0.00	0.00	0.00	0.00
Bellevue Club #543	0.00	0.00	0.00	0.00	0.00	0.00
C&L Produce *	0.00	0.00	0.00	0.00	0.00	0.00
C.B.DELI	0.00	0.00	0.00	0.00	0.00	0.00
CA Emergency Phy (Med America)	0.00	0.00	0.00	0.00	0.00	0.00
Cambridge Systematics	0.00	0.00	0.00	0.00	-57.45	-57.45
City of Oakland	0.00	0.00	0.00	0.00	0.00	0.00
Clorox, Ms Chang (1) time	0.00	0.00	0.00	0.00	0.00	0.00
College of Alameda	0.00	0.00	0.00	0.00	0.00	0.00
Computer Science Corp (CSC)	0.00	0.00	0.00	0.00	76.45	76.45
Concentra Medical Centers-Oakland	0.00	0.00	0.00	0.00	-76.45	-76.45
E B M U D	0.00	32.00	0.00	0.00	0.00	32.00
E. Oakland Multipurpose Center	0.00	0.00	0.00	0.00	0.00	0.00
E. Q. E. International	0.00	0.00	0.00	0.00	0.00	0.00
E.COMENPRIX	0.00	0.00	0.00	0.00	0.00	0.00
El Torrito	0.00	0.00	0.00	0.00	0.00	0.00
Emerald Rock Production	0.00	0.00	0.00	0.00	0.00	0.00
FAMILY SUPPORT SERVICES OF THE BAY AREA	0.00	37.95	0.00	0.00	0.00	37.95
Fantasy Food	0.00	0.00	0.00	0.00	0.00	0.00
Forte Software	0.00	0.00	0.00	0.00	0.00	0.00
Geo Matrix Consultants	0.00	0.00	0.00	0.00	66.70	66.70
George L.	0.00	0.00	0.00	0.00	0.00	0.00
Give Something Back.	0.00	0.00	0.00	0.00	0.00	0.00
Greater St.John Missionary Baptist Church	0.00	200.48	0.00	0.00	0.00	200.48
GWILLIAM, IVARY	0.00	0.00	53.20	0.00	0.00	53.20
Health Care Workers	0.00	0.00	0.00	0.00	0.00	0.00
HEALTH NET	0.00	0.00	0.00	0.00	0.00	0.00
JHinojosa	0.00	0.00	0.00	0.00	0.00	0.00
Job Consortium	0.00	0.00	0.00	0.00	0.00	0.00
KAISER	0.00	0.00	0.00	0.00	0.00	0.00
Kaiser - HRD	0.00	0.00	0.00	0.00	0.00	0.00
KAISER - Legal Department	0.00	0.00	0.00	0.00	0.00	0.00

APPENDIX D: AR AGING REPORT

KAISER - Phy Benefits	0.00	0.00	0.00	0.00	0.00	0.00
Kaiser Foundation Health Plan, Inc	0.00	0.00	0.00	0.00	0.00	0.00
KTVU - Channel 2	0.00	54.45	0.00	0.60	0.00	55.05
Lakeshore Towers	0.00	306.50	0.00	53.50	0.00	360.00
LEO'S PHARMACIES	0.00	0.00	0.00	0.00	0.00	0.00
Local # 1021	0.00	146.31	0.00	0.01	-100.59	45.73
LOCAL#1000	0.00	445.46	589.05	0.00	606.01	1,640.52
Matrix International	0.00	0.00	0.00	0.00	0.00	0.00
Matson Navigation Co.	0.00	131.45	0.00	0.00	104.45	235.90
MERRIMAK CAPITAL CO, LLC.	0.00	0.00	0.00	0.00	0.00	0.00
Morgan Stanley-ONLINE	0.00	0.00	0.00	0.00	0.00	0.00
North American Title Co.	0.00	0.00	0.00	0.00	0.00	0.00
Oakland City Attorney	0.00	0.00	0.00	0.00	0.00	0.00
Oakland Fire Dept	0.00	0.00	0.00	0.00	0.00	0.00
Oakland Police Department	0.00	0.00	0.00	0.00	0.00	0.00
Oakland Police Officers Assoc	0.00	0.00	0.00	0.00	6.00	6.00
Oakland Portside Assc./ Barnes & Noble	0.00	0.00	0.00	0.00	0.00	0.00
Oakland Unified School District	0.00	0.00	0.00	0.00	29.33	29.33
Owens Brockway	0.00	0.00	0.00	0.00	0.00	0.00
Pacific Bell Public Telephone	0.00	0.00	0.00	0.00	0.00	0.00
Paine Webber	0.00	0.00	0.00	0.00	0.00	0.00
Peerless Coffee Co*	0.00	0.00	131.45	405.65	0.00	537.10
Port of Oakland	0.00	0.00	0.00	0.00	0.00	0.00
PPS	0.00	0.00	0.00	0.00	0.00	0.00
PROVATO, INC.	0.00	0.00	0.00	0.00	0.00	0.00
R. Vasquez	0.00	0.00	0.00	0.00	0.00	0.00
Rapid Logic, Inc.	0.00	0.00	0.00	0.00	0.00	0.00
RIDES	0.00	0.00	0.00	0.00	0.00	0.00
SEIU United Health. Work.-West(Local 250)	0.00	178.75	0.00	0.00	0.00	178.75
Self Care Inc.	0.00	0.00	0.00	0.00	0.00	0.00
University of California	0.00	168.75	0.00	0.00	0.00	168.75
Uribe in Associates Co.	0.00	0.00	0.00	0.00	0.00	0.00
Versata	0.00	0.00	0.00	0.00	0.00	0.00
Vision Software Tools, Inc.	0.00	0.00	0.00	0.00	0.00	0.00
WEBVAN	0.00	0.00	0.00	0.00	0.00	0.00
Wind River Systems, Inc.	0.00	208.80	254.65	69.60	0.00	533.05
TOTAL	**0.00**	**1,910.90**	**1,121.75**	**529.36**	**654.45**	**4,216.46**

ATTACHMENT 5

Gabriel Cole
980 Baker St. #3
San Francisco, CA 94115

January 19, 2010

H. Ward Dawson Trusts
Garrett P. Scales
P.O. Box 1729
Ross, CA 94957

RE: Request for Amendment to Lease - Merritt Restaurant & Bakery
203 East 18th Street
Oakland, California

Dear Garrett:

I am writing to you on behalf of Charles Griffis and Patricia Tyler Griffis to request your consideration of the following amendments to the Lease by and between Garrett P. Scales and Lilia Ticen, Successor Co-Trustees of the Trust Created Under the Last Wills of H. Ward Dawson and Eleanor Dawson Abbott ("Landlord") and McKenny Griffis, Inc., a California corporation, and Patricia Tyler Griffis, individually (collectively, "Tenant") dba Merritt Restaurant and Bakery.

As you know, Merritt Restaurant and Bakery is a longstanding institution in Oakland, and a treasured member of the local community. That being said, I am sure you are also aware that my client has experienced financial and operational hardship in recent years. This is in part due to impediment on access and parking caused by construction within the Center, and also stemming from a need to adapt the concept and menu to suit the changing demographic and current market demands. My client has been working cooperatively with the City of Oakland and specialized consultants to devise and implement an action plan to refresh and revitalize the Merritt Restaurant & Bakery so that it may once again reach full its potential as a place for the local community to gather, dine and celebrate. After consulting with a local retail broker, we've been advised to ask that you consider the following amendments to the Lease as a part of this plan. We believe these changes are an important step to making my client's business stronger, and more sustainable, while also allowing you the Landlord to participate in that success.

Term: Tenant's current Term shall be reduced to Ten (10) years, expiring on August 31, 2019. Tenant shall be granted Two (2) five (5) year Options to Extend the Lease, provided Tenant has not been in default at any time within the last five (5) years of the then current Term. If Tenant decides to extend the Lease, Tenant shall give written notice to Landlord of its election to

	exercise its Option no less than Two Hundred Seventy (270) days before the expiration of the then current Term.
Minimum Annual Rent:	Minimum Annual Rent shall be reduced to the following Schedule, provided Tenant agrees to pay Percentage Rent on an annual basis as described below. Years 1-5: $12.50 per square foot, per year, NNN Years 6-10: $14.50 per square foot, per year, NNN Option Period 1: Ninety (90%) of then current Fair Market Value. Option Period 2: Ninety (90%) of then current Fair Market Value.
Percentage Rent:	Minimum Annual Rent shall be versus the sum of Five Percent (5%) of gross sales. Tenant shall report sales monthly and pay percentage rent payments annually.
Premises:	In the event Tenant procures a subtenant which is Acceptable, both Landlord and Tenant that desires to Lease a portion of Tenant's current Premises not to exceed five thousand (5,000) square feet, in a location mutually agreeable to Landlord and Tenant, for a Term of no less than Five (5) years (hereafter "Approved Subtenant"), Tenant's Premises in the Lease shall be reduced by the amount of square footage exclusively used by the Approved Subtenant and Landlord shall negotiate a Lease directly with Approved Subtenant. Tenant shall be responsible for any brokerage commissions resulting from the lease to Approved Subtenant. Upon execution of a Lease by and between Landlord and the Approved Subtenant, and execution of the Amendment to Lease reducing the square footage of Tenant's Premises, Tenant's Minimum Annual Rent and NNN expenses shall be reduced proportionately on a per square foot basis, and Tenant's further obligations under the Lease shall be limited to the newly amended Premises. Landlord shall not unreasonably withhold approval and acceptance of subtenant.

This Letter is neither an offer to amend nor a commitment to enter into a lease amendment, and shall not constitute a commitment by the Tenant to agree to such amendments. Rather, this letter is merely intended as the basis for negotiations. The terms and conditions of any agreement between Landlord and Tenant are subject to the review and approval of counsel for both Landlord and Tenant as contained in a lease agreement and any necessary amendments to the lease. The preparation, revision or delivery of any lease amendments for examination and discussion shall in no event be deemed to be an offer to accept such amendments but shall merely be a part of the negotiations between Landlord and Tenant.

Sincerely,

Gabriel Cole

CC: Charles Griffis, Merritt Restaurant & Bakery
Patricia Tyler Griffis, Merritt Restaurant & Bakery
Roberto Costa, City of Oakland

ATTACHMENT 6

RETAIL PROPERTY SERVICES

12 MONTE AVENUE
PIEDMONT, CA 94611

TELEPHONE: 510.332.4071
FAX: 510.654.0252
EMAIL:
DENISMATHEWSON@COMCAST.NET

C. DENIS MATHEWSON
PRINCIPAL
SEPTEMBER 8,2009

MR. CHARLES GRIFFIS
MERRITT RESTAURANT AND BAKERY
203 EAST 18TH STREET
OAKLAND, CA 94606

PARKING MERRITT RESTAURANT

DEAR MR. GRIFFIS:

IN ACCORDANCE WITH YOUR REQUEST, I HAVE REVIEWED THE CITY FILES IN REFERENCE TO THE PARKING VARIANCE GRANTED TO ALBERTSONS IN AUGUST 2002 AND HAVE THE FOLLOWING OBSERVATIONS AND RECOMMENDATIONS. THESE RECOMMENDATIONS ARE MADE IN ANTICIPATION OF YOUR APPLICATION FOR FINANCIAL ASSISTANCE FROM THE CITY TO REMODEL THE RESTAURANT AND BAKERY. THESE RECOMMENDATIONS ONLY ADDRESS PARKING AND TRAFFIC CONCERNS AND DO NOT ADDRESS ANY OPERATIONAL OR MERCHANDISING ISSUES.

1: A TRANSPORTATION DEMAND MANAGEMENT PLAN (TDMP) AS REQUIRED PRIOR TO THE CITY ISSUING A BUILDING PERMIT WAS NOT DONE UNTIL AFTER THE ALBERTSONS WAS BUIILT AND OPENED.

I BELIEVE THAT A TDMP PRIORNEWCONSTRUSTION WOULD HAVE ADDRESSED THE FOLOWING CONCERNS AND PROVIDED FOR MITIGATING MEASURES TO LESSEN THE NEGATIVE IMPACT CONCERNING TRAFFIC AND PARKING DURING AND AFTER THE CONSTRUCTION OF A NEW MARKET.

A: INADEQUATE PARKING FOR THE RESTAURANT DURING AND AFTER CONSTRUCTION.

B: LIMITED ACCESS TO THE REAR PARKINGLOT WHEN SECOND AVENUE WAS CLOSED DURING CONSTRUCTION.

C: LIMITED ACCESS TO THE MAIN PARKING AREA IN FRONT OF THE STORE DURING CONSTRUCTION.

D: USE OF PARKING IN FRONT OF THE RESTAURANT BY CONSTRUCTION WORKERS DURING CONSTRUCTION.

E: THE DESIGNATION OF A TRANSPORTATION COORDINATOR TO OVERSEE COMPLIANCE WITH THE AFOREMENTIONED CONCERNS DURING THE CONSTRUCTION PERIOD.

2: THE MAY 16, 2002 ESA PARKING ANALYSIS SUPPORTS THE PARKING VARIANCE IN ANTICIPATION OF CUSTOMERS USING AC TRANSIT AND WALKING FROM THEIR RESIDENCE TO USE THE RESTAURANT. NOTE: ALMOST ALL THE RESTAURANT CUSTOMERS USE A CAR TO COME TO THE CENTER.

RETAIL PROPERTY SERVICES

12 MONTE AVENUE
PIEDMONT, CA 94611

TELEPHONE: 510.332.4071
FAX: 510.654.0252
EMAIL:
DENISMATHEWSON@COMCAST.NET

3: THE STUDY HAD NO WAY TO ANTICIPATE THE TRANSFER OF BUSINESS AND ACCOMPANYING TRAFFIC TO THE CENTER WITH THE CLOSURE OF THE LUCKY ON LAKESHORE ONE MILE NORTH OF THE CENTER.
THE ESA STUDY INCUDES THE 40 PARKING STALLS BEHIND THE RESTAURANT IN ITS PARKING COUNT. WHILE THESE STALLS ARE USED BY THE RESTAURANT AND MARKET EMPLOYEES, THEY SHOULD NOT BE INCLUDED IN THE CUSTOMER PARKING COUNT. THIS LOT IS ONLY ACCESSABLE FROM SECOND AVENUE WITH ONLY SIDEWALK ACCESS ALONG SECOND AVENUE FOR PEDESTRIAN TRAFFIC.

THEREFORE, THE PARKING VARIANCE FROM 253 TO 186 STALLS REDUCES THE PARKING IN FRONT OF THE MARKET AND DRUG FROM 213 (253-40) TO 146 (186-40) STALLS TO SUPORT 51,393 SQUARE FEET OF FLOOR AREA OR 1 STALL PER 352 SQUARE FEET OF FLOOR AREA, WHILE THE ZONING ORDINANCE REQUIRES ONE STALL PER 200 SQUARE FEET OF SALES AREA OR 253 STALLS. WHILE THE CENTER DOES PRIVIDE 40 PARKING STALLS AT THE REAR OF THE RESTAURANT FOR EMPLOYEES, MOST SHOPPING CENTERS WITH TIGHT PARKING REQUIED THEIR EMPLOYEES TO PARK OFF SITE.

THE OCTOBER 7, 2008 NELSON/NYGAARD REPORT REFERS TO A TRANSPORTATION COORDINATOR, THE LUCKY ASSISTANT MANAGER, WITH A LIST OF HIS DUTIES. THIS POSITION SHOULD HAVE BEEN ESTABLISHED AS PART OF THE TDMP PRIOR TO THE ISSUANCE OF A BUILDING PERMIT.

THIS REPORT ALSO SUGGESTS THE LOWERING OR ELIMINATION OF METER FEES ON THE WEEKENDS ON THIRD AVENUE AND 18TH STREET WHICH HAS NOT BEEN DONE BY THE CITY.

THE FEBRUARY 11, 2009 TDMP RECOMMENDS THAT THE TRAFFIC COORDINATOR MONITOR EMPLOYEE PARKING BUT DOES NOT ADDRESS THE USE OF THE PARKING LOT FOR OVER THE TWO HOUR LIMIT AND OR THE USE OF THE LOT BY NONCUSTOMERS. THE PARKING TIME LIMIT AND NONCUSTOMER PARKING REGULATIONI SHOULD BE ENFORCED BY A THIRD PARTY AS SUGGESTED BY THE CITY ATTORNEY IN A MEETING WITH THE CITY ZONING STAFF AS REFERENCED IN THE DECEMBER 4, 2008 MWH LETTER TO THE CITY. AS A PRATICAL MATTER, MERCHANTS IN A CENTER ARE AFRAID OF CITING ILLEGAL PARKING IN FEAR OF ALLENIATING POTENTIAL CUSTOMERS.

I RECOMMEND THAT THE CITY ADDRESS THE ABOVE MENTIONED CONCERNS IN THE UPDATED TRANSPORTATION STUDY BEING CONDUCTED FOR LUCKY AT THE PRESENT TIME FOR REVIEW BY THE CITY BY SEPTEMBER 30, 2009.

THE NUMBER OF TOTAL PARKING STALLS WOULD NOT BE INCREASED, BUT YOU MIGHT WANT TO INCREASE THE NUMBER OF STALLS DESIGNATED FOR "MERRITT CUSTOMERS" IN FRONT OF THE RESTAURANT.

THE CITY SHOULD RECOGNIZE THE POTENTIAL FOR INCREASED BUSINESS IN THE RESTAURANTAS EVIDENCED BY YOUR ABILILITY TO ACHIEVE AN ANNUAL VOLUME OF CLOSE TO $5,000,000 PRIOR TO THE INTERFERANCE IN YOUR BUSINESS DURING AND AFTER THE NEW CONSTRUCTION.

I RECOMMEND THAT YOU ONLY PROCEED WITH THE PROPOSED REMODEL OF THE RESTAURANT AND BAKERY AND THE RESULTINGINCREASE IN THE VOLUME OF TRAFFIC AND BUSINESS IF YOU ARE SATISFIED THAT THERE

RETAIL PROPERTY SERVICES

12 MONTE AVENUE
PIEDMONT, CA 94611

TELEPHONE: 510.332.4071
FAX: 510.654.0252
EMAIL:
DENISMATHEWSON@COMCAST.NET

WILL BE SUFFICIENT PARKING.

I LOOK FORWARD TO REVIEWING THESE OBSERVATIONS AND RECOMMENDATIONS WITH YOU.

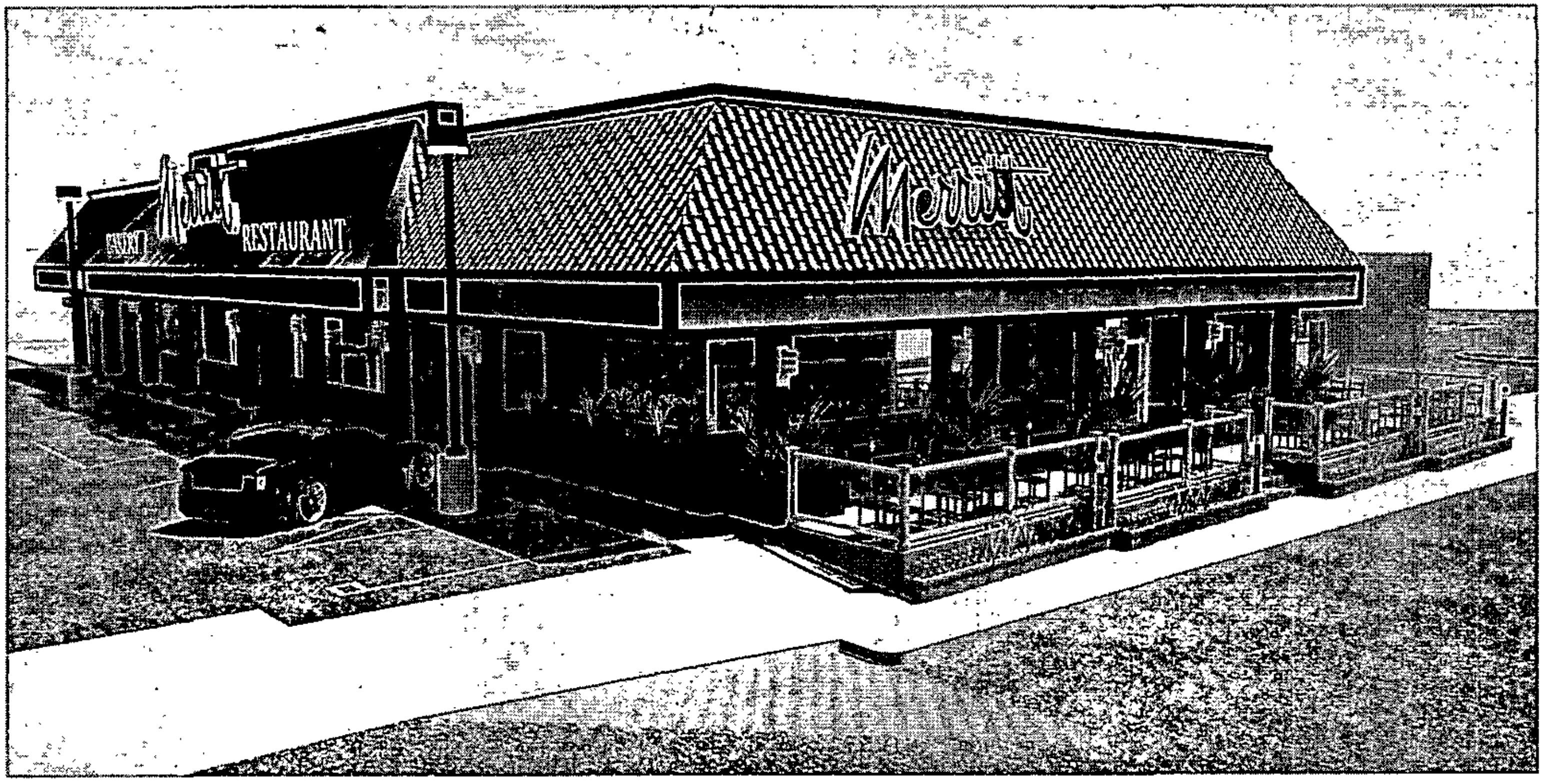
SINCERELY,

C. DENIS MATHEWSON

Merritt Bakery & Restaurant

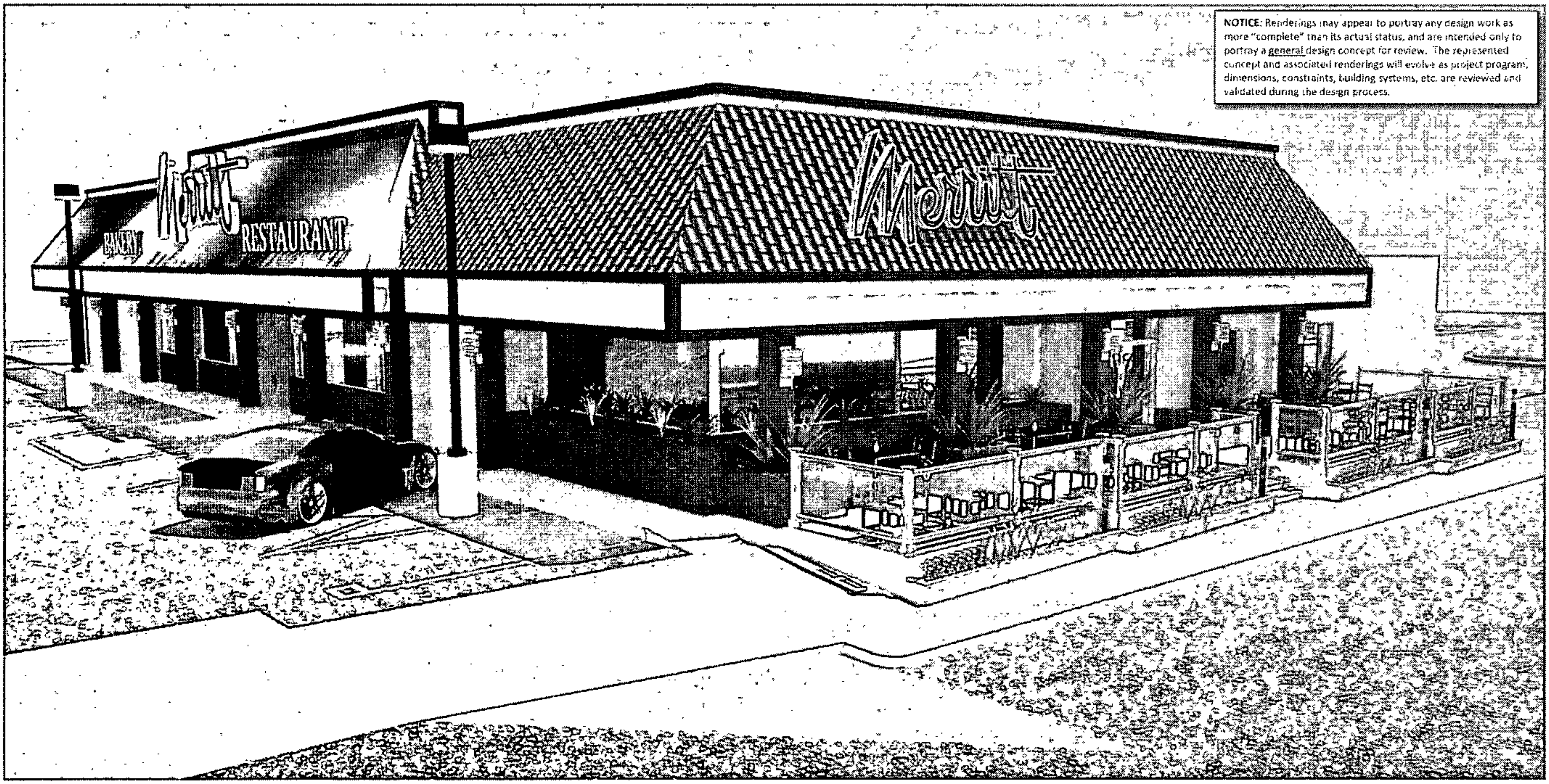
Merritt Preliminary Rendering

AE3 Partners January 13, 2010



ATTACHMENT 4

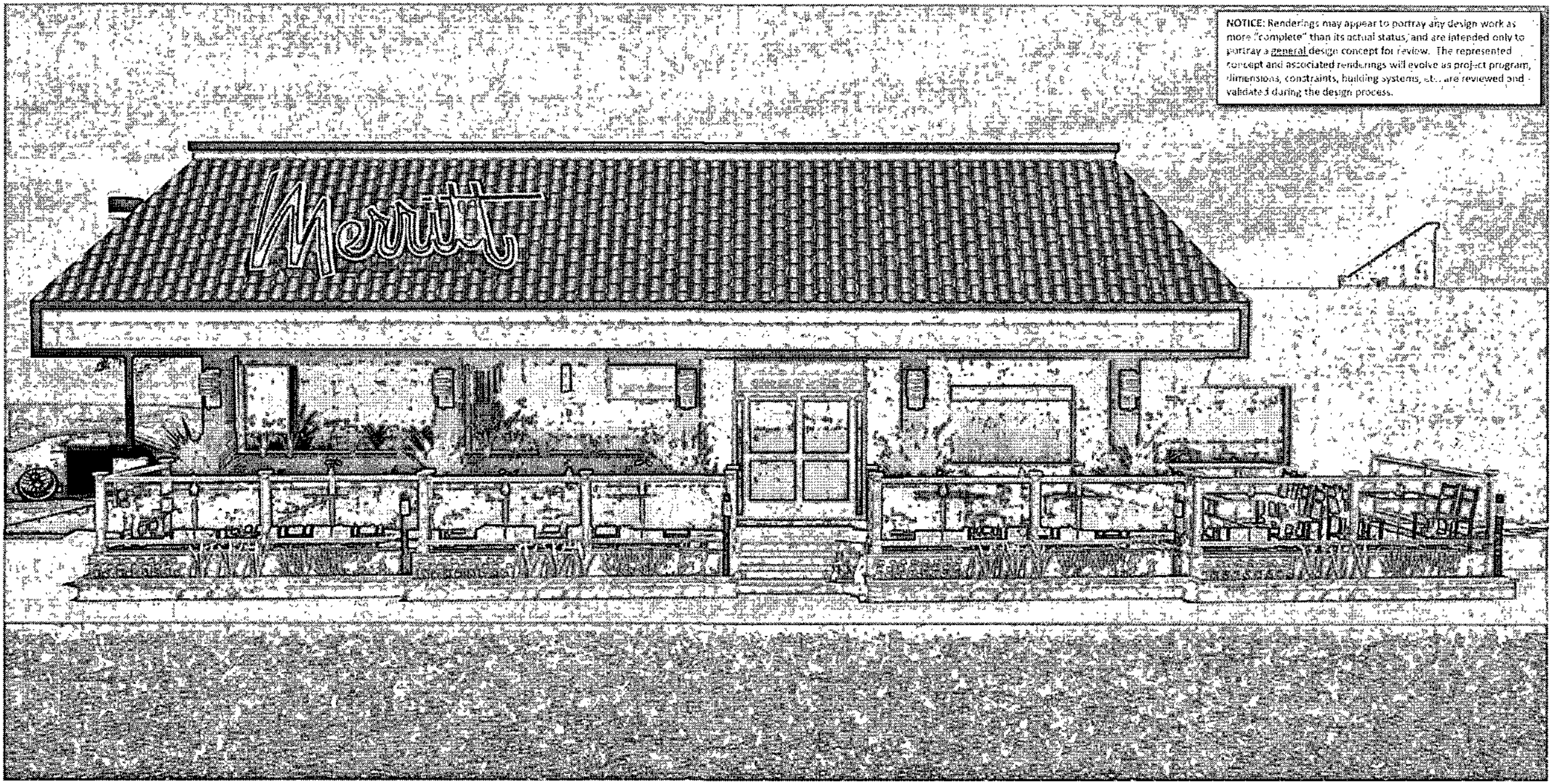
Preliminary Massing Model / Conceptual Design — View 1 – Street Level



NOTICE: Renderings may appear to portray any design work as more "complete" than its actual status, and are intended only to portray a general design concept for review. The represented concept and associated renderings will evolve as project program, dimensions, constraints, building systems, etc. are reviewed and validated during the design process.

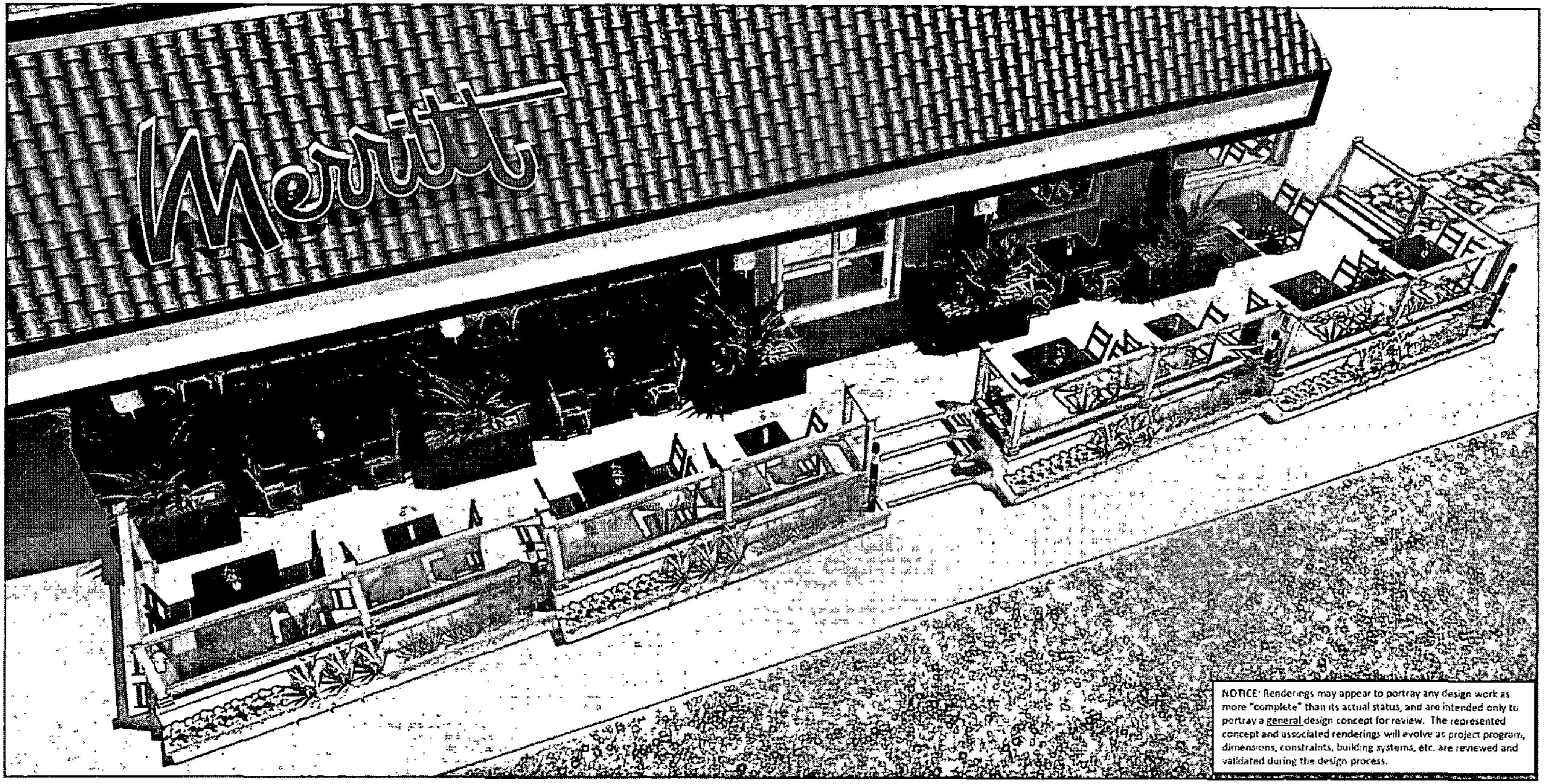
Preliminary Massing Model / Conceptual Design

View 2 - Above



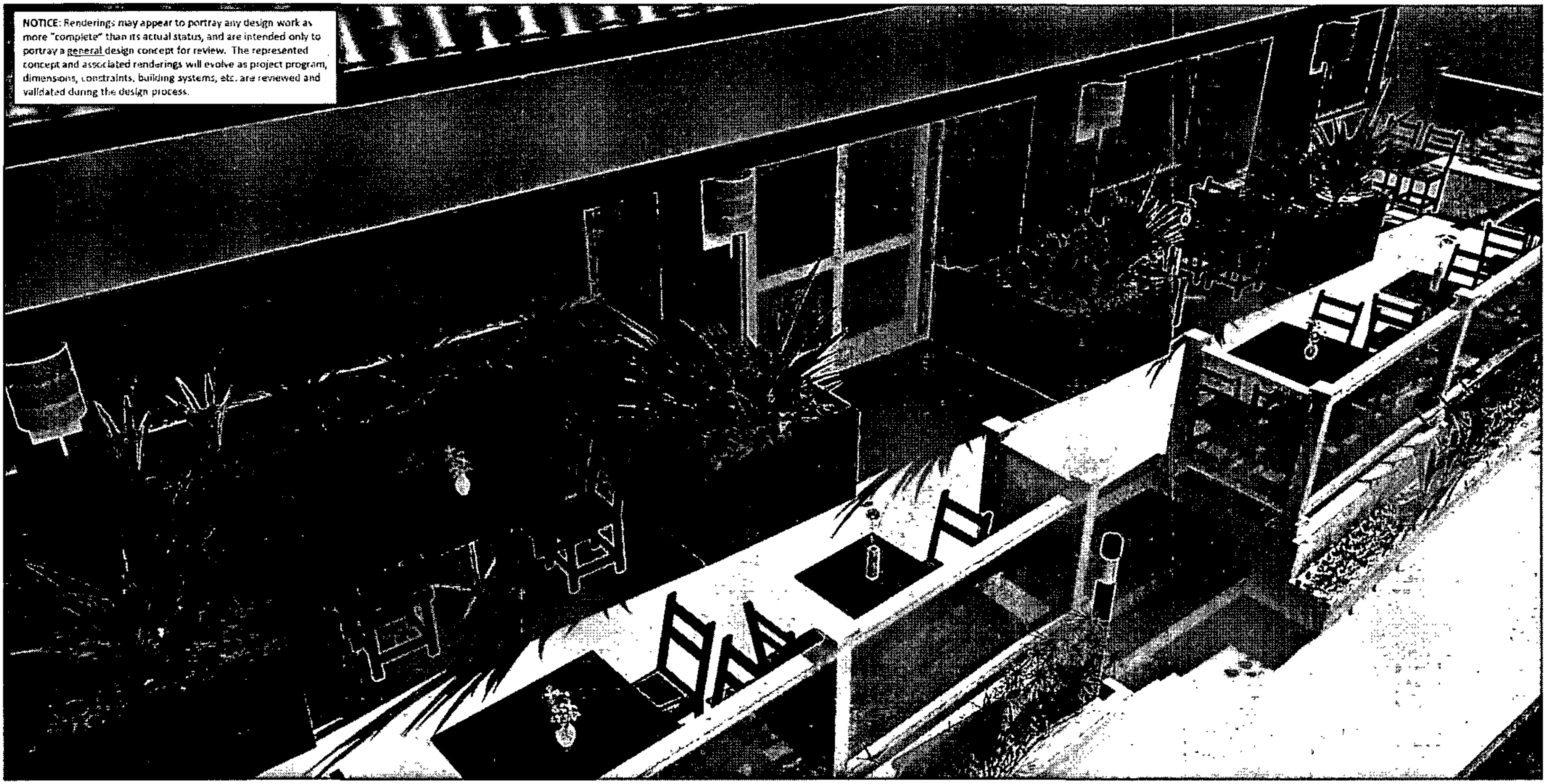
Preliminary Massing Model / Conceptual Design

View 3 – Close Up



Preliminary Massing Model / Conceptual Design

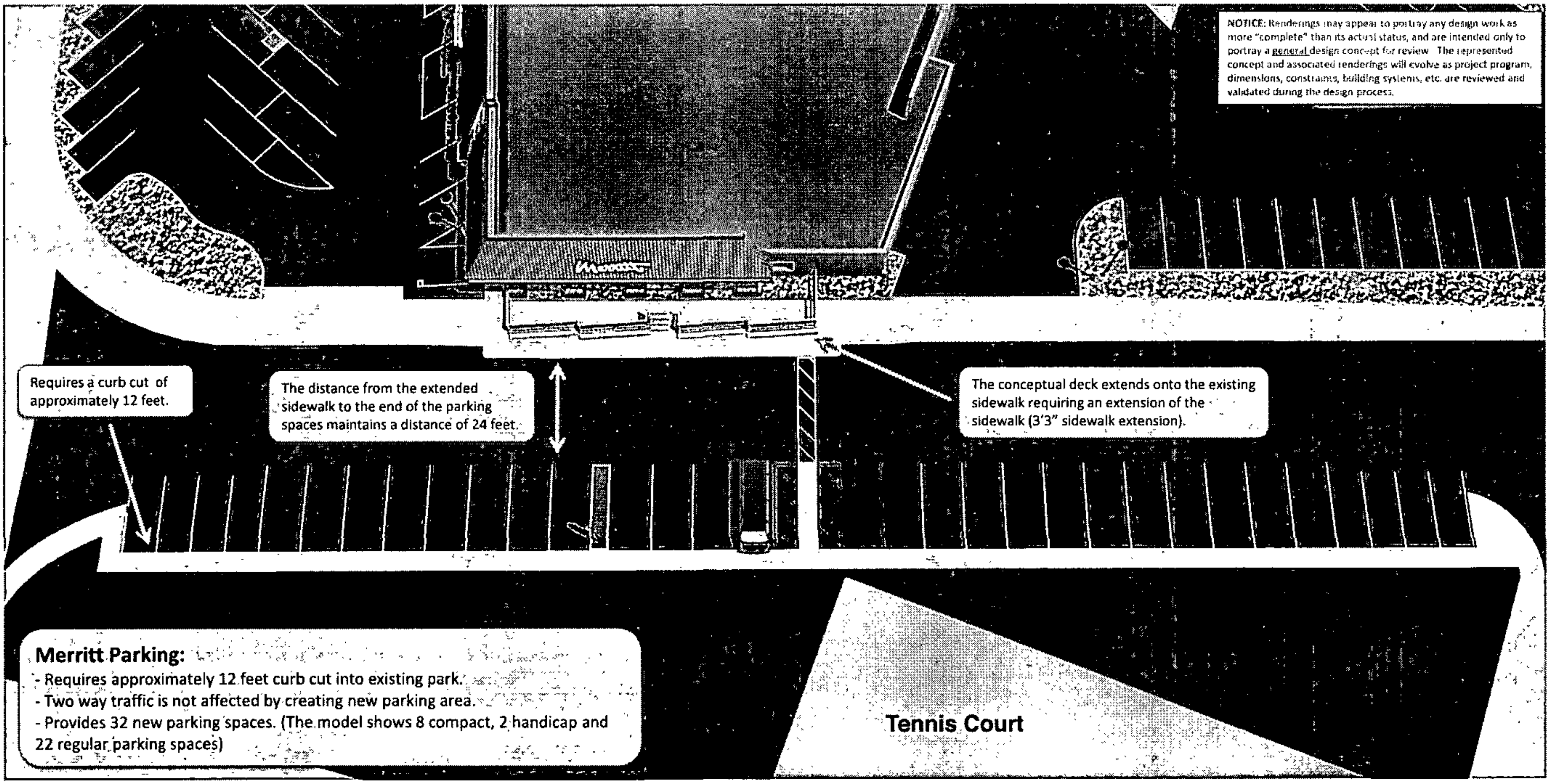
View 3 – Close Up



NOTICE: Renderings may appear to portray any design work as more "complete" than its actual status, and are intended only to portray a general design concept for review. The represented concept and associated renderings will evolve as project program, dimensions, constraints, building systems, etc. are reviewed and validated during the design process.

Preliminary Massing Model / Conceptual Design

Parking



ATTACHMENT 8

Lease

Merritt Restaurant and Bakery
203 East 18th Street, Oakland, CA

This Lease shall be made effective as of June 1, 2009 (the "Effective Date") is entered into between Garrett P. Scales and Lilia Ticen, Successor Co-Trustees of the Trust Created Under the Last Wills of H. Ward Dawson and Eleanor Dawson Abbott ("Landlord") and McKenny Griffis, Inc., a California corporation, and Patricia Tyler Griffis, individually (collectively, "Tenant") regarding premises located at 203 East 18th Street, Oakland, CA (the "leased premises" or the "premises").

Tenant currently occupies the leased premises under a lease dated March 1, 2003 (the "Existing Lease"). Pursuant to that certain Settlement Agreement dated June 26, 2009 ("Settlement Agreement"), entered into by and between Landlord and Tenant, the parties have agreed to enter into this Lease. The parties intend, and agree, that from and after the Effective Date, the Existing Lease shall be of no further force or effect and this Lease shall be the only lease between the parties regarding the leased premises, and that all rights, duties, and obligations of the parties arising under the Existing Lease shall be released, discharged, and terminated, except for (i) Tenant's indemnity obligations for matters accruing or arising prior to the Effective Date, including without limitation, those matters covered by insurance, and (ii) Tenant's obligation to pay rent and all other charges due and owing under the Existing Lease to Landlord until the Effective Date.

Leased Premises

1. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord those certain premises described as the Merritt Restaurant and Bakery at 203 East 18th Street, Oakland, California, together with the non-exclusive right in common with others to use the parking area and driveways associated with the leased premises. The leased premises are part of a shopping center (the "Shopping Center"). Tenant agrees to be bound by any rules, regulations, easements covenants and restrictions that apply or may apply to the Shopping Center, specifically including the applicable Declaration of Restrictions recorded on the Shopping Center (the "Declaration") and the Common Area Maintenance Agreement ("CAMA"), and to execute such documents as necessary or appropriate to subordinate this Lease to the terms thereof. The ground floor of the leased premises is approximately 13,000 square feet, and in addition there is a mezzanine.

The premises above described are herein called the "leased premises."

Term

2. <u>The Initial Term</u>. The initial term of this Lease shall be for the period commencing on the Effective Date, and ending on May 31, 2029 (the "Initial Term"), unless terminated earlier in accordance with the terms of this Lease.

(a) <u>The Extended Term</u>. Provided that (i) Albertson's (or its successor or assignee) has exercised its option to extend the term of its lease at the Shopping Center from July 1, 2009 to June 30, 2034 and then again from July 1, 2034 to June 30, 2039, (ii) during the Initial Term or first Extended Term (as defined below), there has not previously been a default under this Lease, (iii) as of the date of exercise or on the date any Extended Term is to commence, Tenant is not then in default under this Lease, and (iv) either as of the date of exercise or on the date any Extended Term is to commence, no event has occurred which with the giving of notice or the passage of time, or both, would constitute a default hereunder, Tenant is hereby granted the option to extend the term of this Lease for two (2) consecutive periods of five (5) years each (each, an "Extended Term").

If Tenant decides to extend the lease for an Extended Term, Tenant shall give written notice to Landlord of its election to extend not less than two hundred seventy (270) days before the expiration of the previous term. Tenant's failure to give timely notice to Landlord of Tenant's election to extend shall be deemed a waiver of Tenant's right to extend. The terms and conditions applicable to each Extended Term shall be the same terms and conditions contained in this Lease except the minimum monthly rent ("Minimum Monthly Rent") for each Extended Term shall be determined in accordance with the terms of paragraph 3(a)(ii) below. Tenant shall not be entitled to any further option to extend beyond the second extension option.

Rental

3. (a) Minimum Monthly Rent. Tenant shall pay the following Minimum Monthly Rent without offset or deduction, on the first day of each month of the Initial Term and any Extended Term:

(i) The Initial Term.

Period	Minimum Monthly Rent
6/1/09-8/31/09	$7,000
9/1/09-8/31/10	$14,500
9/1/10-8/31/11	$15,500
9/1/11-8/31/14	$16,500
9/1/14-8/31/19	$19,000
9/1/19-8/31/24	$22,000
9/1/24-8/31/29	$25,000

(ii) The Extended Term.

Period	Minimum Monthly Rent
Lease Years 1-5	90% of Fair Market Value
Lease Years 5-10	90% of then Fair Market Value

"Lease year" as used above means a twelve (12) month period commencing on each anniversary date of the Commencement of the Extended Term.

(b) Fair Market Value. Landlord and Tenant, using their reasonable good faith efforts, shall attempt to agree upon the "Fair Market Value" Minimum Monthly Rent. If Landlord and Tenant fail to reach agreement within twenty-five (25) days following Tenant's exercise of any option to renew, then upon either party giving written notice to the other

("Arbitration Notice"), the process to determine the Fair Market Value Minimum Monthly Rent as hereinafter set forth shall commence.

The parties shall meet five (5) days after the date of the Arbitration Notice, unless otherwise agreed, or if such date is a weekend or holiday, the next business day at 5 p.m. at the premises. At such meeting, each shall exchange with the other its written good faith determination of the Fair Market Value Minimum Monthly Rent (each, a "Party Determination"). Failure of Landlord or Tenant to submit its Party Determination at such meeting shall conclusively be deemed to be its approval of the Party Determination timely submitted by the other party. If the difference between the higher of the Landlord and Tenant's Party Determination is equal to or less than one hundred seven percent (107%) of the lower submitted Party Determination, the midpoint between them shall be the Fair Market Value Minimum Monthly Rent. If the difference is more than one hundred seven percent (107%), the parties shall meet within the next ten (10) days to attempt to agree upon the Fair Market Value Minimum Monthly Rent, and if the parties are unable to agree within such a period, each Party Determination initially submitted above shall be submitted to arbitration in accordance with the provisions herein. The Fair Market Value Minimum Monthly Rent shall be as agreed upon by Landlord and Tenant or as determined by the procedures set forth below.

Within thirty (30) days after the Arbitration Notice, Landlord and Tenant shall each appoint by written notice to the other party, one arbitrator who shall by profession be a qualified MAI appraiser or licensed real estate agent unaffiliated with either party who shall have been active in the commercial real estate market in Alameda County for a minimum of five (5) years. The determination of the arbitration shall be limited solely to the issue of whether Landlord's or Tenant's submitted Party Determination is the closest to the actual fair market value rent as determined by the arbitration. The two (2) arbitrators so appointed shall within ten (10) days of the date of the appointment of the last appointed arbitrator agree upon and appoint a third arbitrator who shall be qualified under the same criteria set forth hereinabove for qualification of the initial two (2) arbitrators. The third arbitrator shall within twenty (20) days after his or her appointment with input from the other arbitrators reach a decision as to whether to adopt Landlord's or Tenant's submitted Party Determination and shall notify Landlord and Tenant in writing thereof. The decision of the third arbitrator shall be binding upon Landlord and Tenant. If either Landlord or Tenant fails to appoint by written notice to the other an arbitrator within the thirty (30) days after the Arbitration Notice, the arbitrator appointed by one of them shall reach a decision, notify Landlord and Tenant thereof, and such arbitrator's decision shall be binding upon Landlord and Tenant. If the two (2) arbitrators fail to agree upon and appoint a third arbitrator within the time period provided above, then the parties shall mutually select the third arbitrator. If Landlord and Tenant are unable to agree upon the third arbitrator within ten (10) days, then either party may, upon at least five (5) days prior written notice to the other party, request the Presiding Judge of the Superior Court of California, Alameda County, to appoint the third arbitrator. Following the appointment of the third arbitrator, within twenty (20) days thereafter the third arbitrator with input from the other arbitrators shall reach a decision as to whether Landlord's or Tenant's submitted Party Determination shall be used and shall notify Landlord and Tenant in writing thereof. The cost of the arbitrators and the arbitration proceeding shall be paid by Landlord and Tenant equally, except that each party shall pay for the cost of its own witnesses, agents and attorneys.

(c) Taxes. Tenant shall pay to Landlord, without offset or deduction or otherwise of any amount or sum, for each year of the term as additional rent an amount equal to all taxes and special assessments on the leased premises and the improvements thereon. If the leased premises are not separately assessed, Tenant shall pay that portion of such taxes and special assessments as the floor area of the leased premises bears to the total floor area of the buildings which are assessed in the parcel in which the leased premises are located. Such additional rent shall be paid as soon as the amount thereof shall have been determined and upon written demand therefore by Landlord to Tenant. If the first or last year of the term does not include a full taxable year, such additional rent shall be prorated for such year or years.

Tenant shall pay any additional taxes which are levied due to remodeling and/or improvements (interior and/or exterior) to the leased premises.

Use

4. Tenant shall use and occupy the leased premises during the term for the purpose of a restaurant and bakery, including the sale of food for off premises consumption, which may be accomplished by catering, mail order or delivery or otherwise, in accordance with, and in the manner of, the business conducted by Tenant on the leased premises as of June 1, 2009, and for no other purposes whatever without the written consent of Landlord. Tenant shall continuously so use the leased premises during the term. Tenant acknowledges that Landlord is not granting Tenant any exclusives for any type of food or other items Tenant may sell. No use shall be made or permitted to be made of the leased premises, or acts done, which are in violation of the terms of the Declaration or which will increase the existing rate of insurance upon the building in which the leased premises may be located, or cause a cancellation of any insurance policy covering said building, or any part thereof; nor shall Tenant sell, or permit to be kept, used or sold, in or about the leased premises, any article which may be prohibited by the standard form of fire insurance policies. Tenant shall, at Tenant's sole cost and expense, comply with any and all requirements, pertaining to the leased premises, by any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance, covering said building and appurtenances. Tenant shall not conduct or permit to be conducted, any sale by auction upon or from the leased premises, whether the auction is voluntary, involuntary, pursuant to an assignment for benefit of creditors or pursuant to any bankruptcy or other insolvency proceeding without the express written consent of Landlord.

Tenant acknowledges at the Shopping Center contains Albertson's Market and that he has been advised that the Albertson's lease does not restrict that tenant as to products or merchandise that it may sell.

With appropriate governmental and regulatory compliance and consistent with the provisions of the Declaration of Restrictions and Easements recorded June 12, 2003 and Paragraphs 5.1, 5.2 and 5.7 thereof, Landlord will not object to Tenant's incidental sale of beer and wine for on premises consumption.

Nuisance

5. Tenant shall not commit, or suffer to be committed, any waste upon the leased premises, or any public or private nuisance, or other act or thing which may disturb the quiet enjoyment of any other tenant in the building in which the leased premises maybe located or in any shopping center of which the leased premises may be a part.

Possession

6. (a) Delivery. Tenant is currently in possession of the leased premises.

(b) Condition. Tenant has occupied the leased premises under the Existing Lease and is aware of the condition and use of the leased premises. Tenant accepts the leased premises "as is," "where is" and "with all faults," and without any representation or warranty of Landlord regarding the leased premises, all of which Landlord hereby disclaims. Tenant is accepting the premises with all physical and legal defects as they now exist or may exist in the future, including, without limitation, as to fitness for any particular use, merchantability, design, quality, condition, operation or income, patent and latent defects, soil subsidence and any effect it has or may have in the future on the condition of the foundation, interior and exterior walls, the current condition and configuration of the parking lot, including but not limited to, is current striping, plumbing, sewage, water, electrical, gas or HVAC systems, hazardous or toxic substances, drainage, flooding, or compliance with laws and regulations, including, without limitation, those relating to health, safety, Americans With Disabilities Act, and the environment. In addition to its current occupancy, Tenant acknowledges that it has had the opportunity to inspect the leased premises and records pertaining thereto to the extent it wishes and is entering into this Lease based upon such inspection and specifically, without limiting the scope of the total inspection and acceptance by Tenant, states that it has satisfied itself regarding zoning, building permits, current condition of maintenance and repair, compliance with the Americans With Disabilities Act and the suitability of the leased premises for Tenant's intended use and is not relying upon any representation or warranties of Landlord regarding the leased premises. Unless specifically set forth herein to the contrary, Tenant shall be solely responsible for any and all improvements, modifications or alterations to the leased premises whether made necessary by applicable law, Tenant's use of the leased premises or improvements undertaken by Tenant. Tenant acknowledges that Landlord is under no obligation to Tenant to acquire any additional common area for parking or to build any roof, garage or other parking structure at the Shopping Center, and that Landlord has the reasonable right and power to manage, configure, re-configure, regulate and stripe the existing parking areas at the Shopping Center in accordance with the terms of the Declaration and the CAMA. Landlord hereby acknowledges that Tenant may submit recommendations to Landlord with respect to the maintenance of the parking areas at the Shopping Center which will be considered by Landlord, but Landlord shall be under no obligation to accept any of Tenant's recommendations.

Alterations

7. Tenant shall not make, or suffer to be made, any alterations of the leased premises, or any part thereof, without the written consent of Landlord first had and obtained, which consent shall not be unreasonably withheld, conditioned or delayed. Any additions to or alterations of, the leased premises shall become at once a part of the realty and belong to Landlord. Tenant shall retain title to all movable furniture and trade fixtures placed in the property by Tenant. All heating, lighting, plumbing, electrical and air conditioning installations made by Tenant shall be and become the property of Landlord upon installation and shall not be deemed trade fixtures. If written consent of Landlord to any proposed alterations by Tenant shall have been obtained, Tenant agrees to advise Landlord in writing at least ten (10) days before the date upon which such alterations will commence in order to permit Landlord to post notice of non-responsibility. Tenant shall keep the leased premises free from any and all liens arising out of any work performed, materials furnished or obligations incurred by Tenant.

Notwithstanding the above, Tenant may, at Tenant's sole cost and expense and in full compliance with the terms of this paragraph 7 and other applicable terms of this Lease, and in full compliance with all applicable municipal laws, rules and regulations, remodel and/or renovate the interior of the leased premises as it deems necessary or desirable, but without any obligation to perform the same.

Abandonment

8. Tenant shall not to vacate or abandon the leased premises at any time during the term. Should Tenant vacate or abandon the leased premises or be dispossessed by process of law or otherwise, such abandonment, vacation or dispossession shall be a breach of this Lease and any property left on the leased premises shall be deemed abandoned by Tenant and Landlord may dispose of any such property as Landlord may elect in its sole discretion.

Maintenance and Repairs

9. Tenant shall, at Tenant's sole cost, keep and maintain the leased premises and appurtenances and every part thereof, including roof, foundation, interior and exterior walls, sewer lines serving the premises, glazing, doors, hinges, air conditioning and heating equipment, electrical and all plumbing lines or panel boxes, the store front and the interior of the leased premises, in good, clean and sanitary order, condition and repair, including any necessary capital expenditures, hereby waiving all right to make repairs at the expense of Landlord as provided in Section 1942 of the Civil Code of the State of California, and all rights provided for by Section 1941 of said Civil Code. Tenant accepts the leased premises as being in good, clean and sanitary order, condition and repair and agrees that on the last day of said term, or sooner termination of this Lease, to return to Landlord all of the leased premises in good and satisfactory condition, reasonable wear and tear and damage by fire, act of God or by the elements excepted, and to remove all of Tenant's signs, furniture and moveable trade fixtures installed by Tenant from the leased premises, repairing any and all damage caused thereby.

Tenant accepts full responsibility for the roof during the term of the Lease and is solely liable and responsible for any and all costs and expenses for the repair or replacement of the roof.

Tenant acknowledges that its use of the premises may generate substantial quantities of grease. Tenant shall install, use and maintain appropriate and effective grease traps throughout the term of this Lease. Tenant is solely and exclusively liable and responsible for all grease and the disposal of all grease from the premises and for any and all costs incurred for, or damage caused by, the existence or disposal of grease on or from the premises.

Laws and Regulations

10. (a) General. Tenant, at Tenant's own cost and expense, shall (i) comply promptly with all laws, rules, and orders of all Federal, State and Municipal Governments, or departments, including, without limitation, health department regulations, Americans With Disabilities Act, and similar state laws and regulations, including all those pertaining to seismic, energy, water and health and safety which may be applicable to the leased premises or property, (ii) remedy any existing violations, and (iii) likewise promptly comply with the requirements of the Board of Fire Underwriters concerning the leased premises. Tenant's obligation includes making, at its sole cost and expense, any capital improvements or renovations to the premises that may be required for full compliance.

(b) Hazardous Substances, Tenant's Indemnity. Landlord acknowledges that, in the ordinary course and operation of Tenant's business, Tenant may bring upon the leased premises, use and handle quantities of materials customary to similar businesses which may now or hereafter be deemed to be Hazardous Substances, and for the purposes of this

Lease; "grease" shall be deemed to be included within the definition of Hazardous Substances, but in doing so Tenant shall strictly comply with all environmental laws applicable to the leased premises. Tenant hereby agrees to defend, indemnify and hold harmless Landlord and Landlord's officers, directors, employees, agents, successors and assigns, and each of them, from and against any and all claims, lawsuits, liabilities, losses, damages, fines, penalties, and expenses (including, but not limited to reasonable attorneys' and consultants' fees arising by reason of any of the aforesaid or any action against the Tenant under this indemnity) arising directly or indirectly from Tenant's use or occupancy of the leased premises, or by reason of any breach by Tenant of its obligations under the preceding sentence during the term of this Lease. Tenant's obligation in the preceding sentence shall survive the expiration or earlier termination of this Lease.

Release

11. Tenant hereby releases and discharges Landlord and/or the Indemnified Parties (as defined below) from any Claims (as defined below) to the full extent provided in the Settlement Agreement, which Settlement Agreement is incorporated herein by this reference, including, without limitation, Claims arising out of or in any way related to (i) a breach of any lease pre-existing this Lease with Landlord for the premises (ii) the Declaration and/or the CAMA referenced in the Settlement Agreement, or (iii) the condition of the premises, including, but not limited to, any Claims for constructive eviction and/or the breach of the covenant of quiet enjoyment of the premises by Tenant. Tenant hereby acknowledges that it has been informed by its attorneys of the provisions of California Civil Code §1542, and that it expressly waives and relinquishes all rights which it has, or may have had under that section, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Indemnity Agreement

12. Tenant hereby agrees to indemnify Landlord, individually and in their capacities as Successor Co-Trustees of the H. Ward Dawson Trusts, as well as Landlord's beneficiaries, managers, agents, officers, directors, members and employees (the "Indemnified Parties") against, and hold Landlord and the Indemnified Parties harmless from any and all claims, demands, actions, loss or liability (collectively, "Claims") because or on account of injuries to or death of any person (including death or injuries to Tenant's employees) and damage to property of others, howsoever caused or sustained (whether caused in whole or in part by negligence of Landlord or the Indemnified Parties), and in any way arising out of or connected with the occupancy or use of the leased premises (including the ways immediately adjoining). The foregoing indemnity shall not apply to any Claims caused by Landlord's or the Indemnified Parties' gross negligence or willful misconduct.

Signs

13. Tenant shall not place or permit to be placed any sign, marquee, awning, decoration or other attachment on or to the roof, front or exterior walls of the leased premises without the written consent of Landlord first had and obtained which consent shall not be unreasonably withheld, conditioned or delayed. Landlord, without liability, may enter upon the leased premises and remove any such sign, marquee, awning, decoration or attachment which has been affixed without the prior written consent of Landlord, Tenant agreeing to pay the cost

of removal thereof. Tenant shall at all times maintain the show windows and doors in a neat and clean condition.

Utilities

14. Tenant shall pay for water, gas, heat, light, power, refuse collection and all other utilities and services supplied to or consumed in or on the leased premises. Tenant shall not allow refuse, garbage or trash to accumulate outside of the leased premises. Tenant agrees to place all refuse, garbage or trash in the dumpsters located within the secured fenced-in enclosure presently located behind the Shopping Center, which area shall be modified by Tenant, at Tenant's sole cost and expense, to (i) allow reasonable access by all waste management companies to pick up all refuse, garage or trash, and (ii) to prevent the unauthorized use of the dumpsters by persons or entities other than Tenant. Said modifications shall be completed by Tenant no later than thirty (30) days after the date of this Lease.

Entry by Landlord

15. Tenant shall permit Landlord and Landlord's agents to enter the leased premises at all reasonable times to inspect the same; to make such repairs to the leased premises as Landlord is obligated or may elect to make; to post notices of non-responsibility for alterations or additions or repairs. Landlord shall have such right of entry and the right to fulfill the purpose thereof without any rebate of rent to Tenant for any loss of occupancy or quiet enjoyment of the leased premises.

Destruction

16. (a). Insured. In the event of a partial destruction of the leased premises during the term, from any cause insured under a standard form of fire and extended coverage policy, Landlord shall forthwith repair the same, provided such repairs can be made within one-hundred eighty (180) days from date of such destruction, under the then applicable laws and regulations of Federal, State, County and Municipal authorities and in the light of the extent of such damage and the then condition of the labor market and availability of materials and supplies. Such partial destruction shall not annul or void this Lease, except that Tenant shall be entitled to a proportionate reduction of Minimum Monthly Rent up to the amount that Landlord receives under rent abatement insurance obtained by Tenant, while such repairs are being made. If such repairs cannot be made in one-hundred eighty (180) days, Landlord may, at Landlord's option, make same within a reasonable time, this Lease continuing in full force and effect and the Minimum Monthly Rent to be proportionately rebated as aforesaid in this paragraph. In the event that Landlord does not so elect to make such repairs which cannot be made in one-hundred eighty (180) days, which election and notice to Tenant is to be made within forty-five (45) days after date of destruction, this Lease may be terminated at the option of either party by giving written notice thereof to the other party within ten (10) days after Landlord has advised Tenant in writing of Landlord's, decision not to make the repairs. In respect to any partial destruction which Landlord is obligated to repair or elects to repair under the terms of this paragraph, the provisions of Section 1932, Subdivision 2, and of Section 1933, Subdivision 4, of the Civil Code of the State of California are waived by Tenant.

(b) Uninsured. If the leased premises are damaged as a result of any cause other than the perils covered by the insurance referred to in paragraph 30(b), then Landlord shall forthwith repair the same, if (i) the cost of such repair is less than five percent (5%) of the then full replacement cost of the leased premises, or (ii) in the event the extent of the destruction is five percent (5%) or more, if Tenant deposits with Landlord a sum equal to difference between the total cost to repair the destruction and five percent (5%) of the full replacement cost of the leased premises with instructions to use such funds for such repair. If the cost of repair of the leased premises is equal to five percent (5%) or more of the full replacement cost thereof and Tenant does not contribute such additional sum, then Landlord shall have the option: (i) to repair or restore such damage, and this Lease shall continue in full force and effect, but Minimum Monthly Rent shall be proportionately reduced as provided in paragraph 16(a); or (ii) give notice to Tenant at any time within sixty (60) days after such damage, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the date of such notice. If such notice is given, this Lease shall terminate and all interest of Tenant in the leased premises shall end on the date so specified in such notice and the Minimum Monthly Rent, reduced by a proportionate reduction, based upon the extent, if any, to which such damage interfered with the business carried on by Tenant in the leased premises, shall be paid up to date of such termination.

Assignment and Subletting

17. Tenant shall not assign this Lease or any interest therein, nor Lease or sublet the leased premises, or any part thereof, or any right or privilege appurtenant thereto, nor permit the occupancy or use of any part thereof by any other person, without the written consent of Landlord first had and obtained, and a consent to one assignment, subletting, occupancy or use, shall not be construed as a consent to any subsequent assignment, subletting, occupancy or use. Any such assignment, subletting, occupancy or use, without the prior written consent of Landlord, shall at the option of Landlord terminate this Lease and any such purported assignment, sublease, occupancy or use shall be null and void. None of Tenant's rights under this Lease shall be assignable by operation of law or otherwise without written consent of Landlord. The following shall constitute a prohibited assignment subject to paragraph 17: (a) a sale, transfer, pledge or hypothecation by Tenant of all or substantially all of its assets; (b) a sale of all or substantially all of its stock, if Tenant's stock is publicly traded; (c) a merger of Tenant with another corporation; (d) the sale, transfer, pledge or hypothecation of fifty percent or more of Tenant's stock if Tenant's stock is not publicly traded; or (e) the sale, transfer, pledge or hypothecation of fifty percent (50%) or more of the beneficial ownership interest in Tenant if Tenant is a partnership, limited liability company or other entity. If Tenant should request the consent of Landlord to an assignment of this Lease or of any of Tenant's rights thereunder and if such consent is given by Landlord, Tenant agrees to pay to Landlord or to Landlord's agent at the time such consent is given the sum of One Thousand Dollars ($1,000.00) to reimburse Landlord or Landlord's agent for services and expenses incurred in connection with the investigation, consideration and consummation of such assignment. Landlord's consent shall not be unreasonably withheld, conditioned or delayed. Landlord shall take into consideration the financial position, previous business experience, credit and personal references of the proposed assignee/subtenant as well as its compatibility with other tenants in the shopping center or surrounding area. Any assignment or subletting shall be in accordance with all of the terms and conditions herein, specifically including paragraph 4 regarding the use and shall not violate the terms of the Declaration. No such consent to or recognition of any such assignment or subletting shall constitute a release of Tenant from further performance by Tenant of any of the terms and conditions to be performed by Tenant pursuant to this Lease. Tenant shall remain liable and responsible for all Minimum Monthly Rent and other obligations of Tenant under this Lease. Consent by Landlord to a particular assignment, sublease or other transaction shall not be deemed a consent to any other or subsequent transaction. If Tenant subleases the leased premises during the Initial Term, then, at Landlord's option, Landlord shall be entitled to receive, as additional rent, a sum equal to fifty percent (50%) of any monies or

other considerations received by Tenant in excess of the Minimum Monthly Rent due from Tenant to Landlord hereunder after Tenant has received an amount from subtenant in excess of the Minimum Monthly Rent due from Tenant under this Lease equal to (i) brokerage commissions or fees paid by Tenant in connection with the sublease, and (ii) reasonable attorney fees paid by Tenant in connection with the sublease. Such payment shall be made to Landlord promptly following receipt of such sums by Tenant. Landlord shall not receive any portion of the proceeds received by Tenant in the event of a bona fide sale of Tenant's business and related assignment of this Lease.

(a) Arbitration.

(i) Arbitrable Disputes. In the event that Landlord, pursuant to this paragraph 17, refuses to consent to a proposed assignment or sublet of the premises and Tenant believes that such refusal constitutes a breach of Landlord's obligations under this Lease or Landlord refuses to pay all or a part of sum(s) Tenant alleges Landlord is obligated to pay Tenant pursuant to this Lease, as its sole and exclusive remedy, Tenant shall have the right to arbitrate Landlord's alleged default in accordance with the procedure set forth in this paragraph 17(a). Within thirty (30) days after notice of such refusal is received or deemed received by Tenant, Tenant may by written demand delivered to Landlord elect to submit to binding arbitration the issue of (i) whether Landlord refused such consent in accordance with the provisions of this Lease or (ii) whether Landlord rightfully refused to pay the sums Tenant alleges to be due to Tenant, as applicable. In the event Tenant fails to timely elect to submit to binding arbitration, Tenant shall forfeit such arbitration right. A written demand by Tenant to arbitrate shall include Tenant's designation of its candidate to serve as the arbitrator, which arbitrator shall by profession be a qualified MAI appraiser or licensed real estate agent unaffiliated with either party who shall have been active in the commercial real estate market in Alameda County for a minimum of five (5) years.

(ii) Response. Within fifteen (15) business days after the service of demand for arbitration, Landlord shall give to Tenant notice (the "Response") of the name and address of the person designated by Landlord to act as arbitrator on Landlord's behalf, which arbitrator must also meet the qualifications set forth above. If Landlord fails to notify Tenant of the appointment of Landlord's arbitrator within or by the time above specified, then the arbitrator appointed by Tenant shall be the arbitrator to determine the issue.

(iii) Arbitration and Award. The arbitration shall be conducted in San Francisco, California, in accordance with the rules of the Judicial and Administrative Mediation Services (hereinafter "JAMS"). If two (2) arbitrators are chosen pursuant to the above provisions, the arbitrators so chosen shall meet (without a hearing) within five (5) business days after the second arbitrator is appointed, and if within five (5) business days after such first meeting the two arbitrators shall be unable to agree promptly upon a determination of the matter in issue, they shall appoint a third arbitrator, who shall be competent and impartial person with the required qualifications specified above except that such third arbitrator must be neutral. Said third arbitrator or, if Landlord shall have failed to notify Tenant of the appointment of Landlord's arbitrator, Tenant's arbitrator, as the case may be, shall decide the issue within fifteen (15) business days after his/her appointment. Within such fifteen (15) business day period the arbitrator shall hold a hearing in accordance with the JAMS. At such hearing each party may submit evidence, be heard and cross-examine witnesses. Each party shall have at least fifteen (15) business days advance notice of the hearing. The hearing shall be conducted so that Landlord and Tenant shall each have reasonably adequate time to present oral evidence or argument, but either party may present whatever written evidence it deems appropriate prior to the hearing (with copies of any such written evidence being sent to the other party prior to the hearing). The only decision to be rendered by the arbitrator(s) is whether or not Landlord's refusal of consent constituted a breach of the Lease or whether or not Landlord's refusal to pay all or a part of sum(s) Tenant alleges Landlord is obligated to pay Tenant pursuant to this Lease constituted a breach of this Lease, as applicable. The arbitrator(s) shall render his/her/their decision in writing with counterpart copies to each party. The arbitrators shall have no power to modify the provisions of this Lease. Any decision derived from the foregoing arbitration process shall be binding and conclusive upon the parties. If the arbitrator(s) decide(s) that Landlord's refusal of consent was unreasonable, then such refusal shall automatically be deemed null and void and Landlord's consent to the proposed assignment or sublet shall be deemed granted, so that Tenant may proceed to consummate the assignment or sublet or, if the arbitrator(s) decide(s) that Landlord's refusal to pay all or a part of sum(s) Tenant alleges Landlord owes to Tenant pursuant to this Lease constituted a breach of this Lease, then Landlord shall pay Tenant such sum(s) within thirty (30) days of the date that the decision of the arbitrator(s) is delivered to Landlord. The losing party shall pay the fees and costs of the arbitrators and of the expert witnesses (if any) of the prevailing party as well as those of its expert witnesses and the actual attorneys' fees of the prevailing party's legal counsel.

Insolvency or Bankruptcy

18. The appointment of a receiver (except a receiver contemplated by paragraph 22 hereof) to take possession of all or substantially all of the assets of Tenant or of the operations of Tenant in the leased premises, or a general assignment by Tenant for the benefit of creditors, or the filing of proceedings in insolvency or bankruptcy by or against Tenant shall at the option of Landlord constitute a repudiation of this Lease by Tenant, such option to be exercised by Landlord within thirty (30) days from receipt of actual notice of any of the aforesaid events, and should such option be exercised, Tenant shall forthwith pay to Landlord the amount, if any, by which the remainder of the Minimum Monthly Rent reserved hereunder exceeds the then reasonable value of the remainder of the term of this Lease.

Default

19. Default.

(a) Tenant's Default. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

(i) The abandonment or vacating of the leased premises by Tenant (failure to occupy and operate the intended business in accordance with paragraph 4 above in the leased premises shall be deemed an abandonment).

(ii) The failure by Tenant to make any payment of Minimum Monthly Rent or any other payment required to be made by Tenant hereunder as and when due, where such failure shall continue for a period of five (5) days of the date due.

(iii) Tenant's failure to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than as described in subparagraphs (i) or (ii) above, where such failure shall continue for a period of thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(iv) The making by Tenant of any general assignment or general arrangement for the benefit of creditors, or the appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets located at the premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days, or the attachment, execution, or other judicial seizure of substantially all of Tenant's assets located at the premises or of Tenant's interest in this Lease, where such seizure is not discharged in thirty (30) days.

(v) Without the prior written consent of Landlord, which shall not be unreasonably withheld, selling, leasing, assigning, encumbering, hypothecating, transferring, or otherwise disposing of all or substantially all of the Tenant's assets.

Landlord shall not be required to give any notices required above if Tenant's failure to perform constitutes a non-curable breach of this Lease.

(b) Remedies for Tenant's Default. In the event of Tenant's default, Landlord may:

(i) Terminate Tenant's right to possession of the premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the premises to the Landlord. In such event, Landlord shall be entitled to recover from Tenant:

(1) the worth at the time of the award of any unpaid Minimum Monthly Rent which has been earned at the time of such termination; plus

(2) the worth at the time of the award of the amount by which the unpaid Minimum Monthly Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss which Tenant proves could have been reasonably avoided; plus

(3) the worth at the time of the award of the amount by which the unpaid Minimum Monthly Rent for the balance of the term after the time of award exceeds the amount of such rental loss which Tenant proves could be reasonably avoided; plus

(4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom (including, without limitation, the cost of, recovering possession of the premises, expenses of reletting including necessary renovation and alteration of the premises, reasonable attorneys' fees, and real estate commissions actually paid and that portion of the leasing commission paid by Landlord and applicable to the unexpired portion of this Lease); plus

(5) such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

As used in subparagraphs (1) and (2) above, the "worth at the time of the award" shall be computed by allowing interest at the lesser of ten percent (10.00%) per annum, or the maximum rate permitted by law per annum. As used in subparagraph (3) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1.00%).

(ii) Continue this Lease in full force and effect, and the Lease will continue in effect, as long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect Minimum Monthly Rent when due. During the period Tenant is in default, Landlord may enter the leased premises and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord reasonably incurs in reletting the leased premises, including, without limitation, brokers' commissions, expenses of remodeling the leased premises required by the reletting, and like costs. Reletting can be for a period shorter or longer than the remaining term of this Lease. Tenant shall pay to Landlord the Minimum Monthly Rent due under this Lease on the dates the Minimum Monthly Rent is due, less the rent, Landlord receives from any reletting. In no event shall Tenant be entitled to any excess rent received by Landlord. No act by Landlord allowed by this paragraph shall terminate this Lease unless Landlord notifies Tenant in writing that Landlord elects to terminate this Lease. After Tenant's default and for as long as Landlord does not terminate Tenant's right to possession of the leased premises, Tenant shall have the right to assign or sublet its interest in this Lease in accordance with the terms of paragraph 17, but Tenant shall not be released from liability.

(iii) Cause a receiver to be appointed to collect Minimum Monthly Rent. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Landlord to terminate this Lease.

(iv) Cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, reasonably pays any sum or does an act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date shall bear interest at the lesser of ten percent (10.00%) per annum, or the maximum rate an individual is permitted by law to charge from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.

The foregoing remedies are not exclusive; they are cumulative, in addition to any remedies now or later allowed by law, to any equitable remedies Landlord may have, and to any remedies Landlord may have under bankruptcy laws or laws affecting creditors' rights generally. The waiver by Landlord of any breach of any term, covenant or condition of this Lease shall not be deemed a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition. Acceptance of Minimum Monthly Rent by Landlord subsequent to any breach hereof shall not be deemed a waiver of any preceding breach other than a failure to pay the particular Minimum Monthly Rent so accepted, regardless of Landlord's knowledge of any breach at the time of such acceptance of Minimum Monthly Rent. Landlord shall not be deemed to have waived any term, covenant or condition unless Landlord gives Tenant written notice of such waiver.

(v) The filing of any voluntary petition in bankruptcy by Tenant, or the filing of any involuntary petition by Tenant's creditors, which involuntary petition remains undischarged for a period of thirty (30) days. In the event that under applicable law the trustee in bankruptcy or Tenant has the right to affirm this Lease and perform the obligations of Tenant hereunder, such trustee or Tenant shall, in such time period as may be permitted by the bankruptcy court having jurisdiction, cure all defaults of Tenant hereunder outstanding as of the date of the affirmance of this Lease, and provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligation under this Lease.

Voluntary Surrender

20. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, but shall, at the option of Landlord, terminate all or any existing subleases or subtenancies, or operate as an assignment to him of any or all such subleases or subtenancies.

Attorneys' Fees

21. If Landlord shall be made a party to any litigation commenced by or against Tenant, Tenant shall pay all costs, expenses and attorneys' fees incurred by Landlord in connection with such litigation except in the event that such litigation shall determine that Landlord has committed a breach of this Lease and shall adjudicate that Landlord is liable therefore. In the event of any action at law or in equity between Landlord and Tenant to enforce any of the provisions and/or rights hereunder, the unsuccessful party to such litigation covenants and agrees to pay to the successful party all costs and expenses, including reasonable attorneys' fees incurred therein by such successful party, and if such successful party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included in and as part of such judgment.

Receiver on Behalf of Landlord

22. If a receiver be appointed at the instance of Landlord in any action arising under this Lease, or otherwise, to take possession of the leased premises and/or to collect the rents and profits derived therefrom, the receiver may, if it be necessary or convenient in order to collect such rents and profits, conduct the business of Tenant then being carried on in the leased premises, and may take possession of any personal property belonging to Tenant and used in the conduct of such business, and may use the same in conducting such business on the leased premises, without compensation to Tenant for such use. Neither the application for the appointment of a receiver nor the appointment of a receiver shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention is given to Tenant.

Notices

23. All notices, requests and other communications hereunder shall be in writing and shall be deemed to be duly given if delivered, sent by nationally recognized overnight courier, or mailed first-class, postage prepaid, to Landlord as follows:

H. Ward Dawson Trusts
Garrett P. Scales
P.O. Box 1729
Ross, CA 94957

with CC to:

Michele K. Trausch

Hanson Bridgett, LLP
425 Market Street, 26th floor
San Francisco CA 94105

And to Tenant:

Merritt Restaurant and Bakery
203 East 18th Street
Oakland, CA
Attn: Charles Griffis

Either party may change its address for notice by giving written notice of such change to the other party in accordance with the provisions of this paragraph.

Security

24. As security for the faithful performance of all the terms, covenants and conditions of this Lease by Tenant, Tenant shall pay to Landlord the sum of Seven Thousand Dollars ($7,000.00) which sum shall be held by Landlord as security for the faithful performance by Tenant of all of its duties and obligations hereunder. In the event Tenant fully complies with all of the terms and conditions hereof, specifically including the provisions of paragraph 9, then Landlord shall return such sum, or the portions thereof not applied by Landlord against any breach or default by Tenant, to Tenant within fifteen (15) days after the termination of this Lease. Landlord shall have the right to transfer and/or deliver the security, as such, to the purchaser of the reversion, in the event that the reversion be sold, and thereupon Landlord shall be discharged from any further liability in reference thereto. In the event of default by Tenant so that Landlord applies all or any portion of the security deposit against sums due by Tenant, then Tenant shall promptly deliver such amount to Landlord as necessary to restore the security deposit to its original amount.

Waiver

25. The waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition therein contained. The subsequent acceptance of Minimum Monthly Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Minimum Monthly Rent.

Holding Over

26. Any holding over after the expiration of the term, with the written consent of Landlord, shall be construed to be a tenancy from month to month, and shall be on the terms and conditions herein specified, so far as applicable, provided that the Minimum Monthly Rent shall increase to one-hundred twenty-five percent (125%) of the Minimum Monthly Rent last due under this Lease. Nothing in this paragraph is to imply or permit any holding over without the express written consent of Landlord and Landlord does not waive or relinquish any rights it may

have under applicable law in the event Tenant fails or refuses to vacate the premises in accordance with the terms of this Lease at the expiration of the Term.

Extra Expenditures

27. In the event that Landlord shall make any expenditure for which Tenant is responsible, or which Tenant should make, then the amount thereof, together with interest at the maximum legal rate and costs, shall be due and payable within thirty (30) days after Landlord gives Tenant written demand for payment of such sum.

Subordination

28. This Lease is and shall always be subordinate to any mortgage or Deed of Trust which is now or shall at any time be placed upon the leased premises or any part thereof or the building of which the leased premises are a portion and Tenant agrees to execute and deliver any instrument, without cost, which may be deemed necessary to further effect the subordination of this Lease to any such mortgage or Deed of Trust and to the Declaration. All future lenders shall be required to execute a standard form non-disturbance agreement as a condition to such subordination. Landlord agrees to waive, and to sign a reasonable written waiver of, any rights to claim ownership of Tenants moveable property and trade fixtures in order that Tenant may finance its acquisition thereof.

Condemnation

29. In the event any condemnation proceedings shall be commenced affecting the leased premises, Tenant shall have no right to claim any valuation for his Leasehold interest or otherwise by reason of his occupancy of or improvements to the leased premises, and any condemnation award adjudicated or by way of settlement shall belong in its entirety to Landlord. Notwithstanding the foregoing, Tenant may seek an award for the unamortized value of its Tenant improvements and moving expenses so long as no part of any such award reduces or diminishes the award available to Landlord. In the event the condemnation proceedings result in the loss or conveyance of a material portion of the leased premises so that Tenant cannot reasonably carry on its intended business or if more than twenty-five percent (25%) of the leased premises or more than thirty-three percent (33%) of the shopping center in which the leased premises are located then, at the option of either party, this Lease may be terminated by one party giving written notice to the other party within twenty (20) days after any such conveyance.

Insurance

30. (a). Liability Insurance. During the term, Tenant, at Tenant's expense, shall maintain in continuous effect Commercial General Liability Insurance issued by an insurance carrier or insurance carriers licensed to execute such policies by the State in which the leased premises are located, naming Landlord as an additional assured and protecting Landlord equally with Tenant with a comprehensive single limit of liability not less than Two Million Dollars ($2,000,000) per occurrence, for claims arising out of any accident occurring on or about the leased premises or arising out of Tenant's use thereof. Tenant will provide Landlord with certificates of insurance issued by the insurance carrier, which certificates will show compliance with the requirements of this paragraph and will provide that such insurance shall not be canceled except after ten (10) days' written notice in writing to Landlord.

(b) Fire and Extended Coverage. Landlord shall obtain all risk insurance, including earthquake in Landlord's discretion, on the leased premises. Tenant shall reimburse Landlord for the cost of such insurance or for the leased premises pro rata share of such cost if the insurance policy covers more than the leased premises. The pro rata share will be determined as set forth in paragraph 31(e). Tenant shall obtain and maintain fire and extended coverage on the tenant improvements, inventory and personal property in the leased premises.

(c) Workers' Compensation. Tenant shall maintain and keep in force all employees' compensation insurance required under the Workers' Compensation and Safety Act of the State in which the leased premises are located.

(d) Releases and Waiver of Subrogation. Notwithstanding any other provision of this Lease, each party hereby releases and waives any and all rights to recover from or proceed against the other party for loss or damage to any property of the releasing party or any person claiming through the releasing party arising from any cause required to be insured against by the releasing party under this paragraph 30, but only to the extent that insurance proceeds are actually made available to such releasing party and only so long as the foregoing release and waiver does not adversely affect any insurance carried by such releasing party. The parties shall cause their insurance policies to contain a waiver of subrogation consistent with the foregoing, provided that it can be obtained and at no extra cost.

Common Areas

31. (a) Defined. All areas within the shopping center which are utilized for parking lots, access roads, walkways, service roads, landscaping or lighting facilities shall be known as "common areas." Landlord shall have the right to make changes in the location of the buildings and common areas from time to time in Landlord's discretion without the consent or occurrence of Tenant and Tenant agrees to accept and be bound by any such changes provided that Landlord at all times maintains adequate common areas and access thereto, for use by Tenant and other tenants.

(b) Tenants Use. Except as otherwise provided in this Lease, the common areas shall at all times during the term of this Lease be available for use by Tenant, its customers, invitees and, unless, otherwise provided pursuant to subparagraph (c) below, its employees, non-exclusively and jointly with all tenants, owners and occupants of the Shopping Center subject to the terms of the Declaration.

(c) Employee Parking. If Landlord designates a portion of the common areas as employee parking area, no automobiles owned by Tenant or by its employees or agents shall be parked at any place within the common areas except in the area specifically reserved for employee parking. Tenant shall cause all of its employees and agents to comply with the terms of this subparagraph.

(d) Control and Maintenance. Landlord, and or Albertson's pursuant to a Common Area Maintenance Agreement between Landlord and Albertson's a copy of which has been received by Tenant, shall at all times have the exclusive control and management of the common area Landlord shall keep, or cause to be kept, the common area in a neat, clean and orderly condition. Landlord shall have the right from time to time to employ personnel, establish, modify and enforce reasonable rules and regulations governing the use thereof; construct, maintain and operate lighting facilities, and other structures or improvements for the benefit of the common area or the center of which it is a part, close all or any portion of the common area to such extent as may, in the opinion of Landlord's counsel, be legally sufficient to prevent a dedication thereof close temporarily all or any portion of the parking area or facilities and of other acts that Landlord shall determine to be advisable for the shopping center and its tenants, invitees, employees and customers.

Tenants' Initials: GB LL

(e) Cost of Maintaining. Tenant will pay to Landlord a pro rata share of the cost of maintaining such common areas and a pro rata share of the real property, taxes and assessments upon such common areas plus an administrative fee in the amount of five percent (5%)of its pro rata share of the cost of maintaining the common areas. Tenant's pro rata share is twenty-seven and one-half percent (27.5%) or such lesser sum as may be calculated by the ratio that the square foot area of floor space in the leased premises bears to the square foot area of floor space in all of the buildings in the Shopping Center, the occupants of which are permitted to use such common areas. The costs of maintenance shall include but shall not be limited to upkeep, repairs, replacements to or other improvements on the common areas, utility service, landscaping, police protection, snow removal, public liability and property damage insurance premiums, personal property taxes and any and all other expenses related to the existence and use of the common areas. Tenant shall pay to Landlord, as additional rent, Tenant's share of such common areas costs. Tenant shall pay its estimated share of common area costs, as estimated in the reasonable judgment of Landlord, monthly at the time of payment of Minimum Monthly Rent. Actual common area costs shall be computed by Landlord annually and adjustments then made as necessary.

(f) Landlord's Duties Fulfilled. Landlord is not obligated by the Declaration or CAMA to protect or secure for Tenant any benefits to Tenant that Tenant may claim very or add to the Landlord's obligations as landlord to Tenant under this Lease. Tenant agrees that Landlord has at all times fulfilled all duties and obligations to Tenant with respect to Landlord's dealings with Albertson's, including, without limitation, all consents given to Albertson's, and the enforcement of any alleged contractual obligations or duties that exist between Landlord and Albertson's.

Successors

32. All the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, provided that nothing in this paragraph shall be deemed to permit any assignment, subletting or occupancy contrary to the provisions of paragraph 17.

Offset Statement

33. Within ten (10) days after request therefore by either party, the other party shall execute, acknowledge and deliver to the first party or to any proposed purchaser or lender an offset statement in writing certifying: (i) the date of commencement of this Lease, (ii) that this Lease is unmodified and in full force and effect (or if there have been modifications that the Lease with such modifications is in full force and effect), (iii) the dates to which the Minimum Monthly Rent and other charges have been paid, (iv) that there are no defenses or offsets to the Lease (or if there are offsets, the offsets claimed by Tenant), and (v) such other matters as may reasonably be requested by the first party.

to such extent as may, in the opinion of Landlord's counsel, be legally sufficient to prevent a dedication thereof close temporarily all or any portion of the parking area or facilities and of other acts that Landlord shall determine to be advisable for the shopping center and its tenants, invitees, employees and customers.

Tenants' Initials: RB6 _____

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Failure to deliver the certificate within said ten (10) day period shall be conclusive upon Tenant that: (i) this Lease is in full force and effect and has not been modified; (ii) there are no uncured defaults in Tenant's performance hereunder, and (iii) not more than one (1) month's Minimum Monthly Rent has been paid in advance and that there is no security deposit except as represented by Tenant. If Tenant fails to deliver the certificate within said ten (10) day period, Tenant irrevocably constitutes and appoints Landlord as its special attorney-in-fact to execute and deliver such certificate to any third party.

Tenant acknowledges and agrees that it will execute, acknowledge and deliver to Landlord or any other party specified by Landlord, any and all documentation necessary to divide the Shopping Center into multiple parcels. Any failure by Tenant to execute and deliver said documentation shall constitute a default under this Lease.

Late Charges

34. If any installment of Minimum Monthly Rent or any other payment due from Tenant is not received by Landlord within ten (10) days of the date such payment is due, Tenant shall pay to Landlord an additional sum of One Hundred Dollars ($100.00) or four percent (4%) of the sum due, whichever is greater, as a late charge.

Tenant acknowledges that failure to make payments when due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Landlord and Tenant agree that the late charge described above represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment to Landlord by Tenant.

Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the rights and remedies available to Landlord.

Interest

35. Any and all sums due from Tenant to Landlord, as provided herein, shall bear interest at the rate of ten (10%) percent per annum (based upon a 360-day year) beginning ten (10) days after such due date and accruing until such payment is made in full. Any and all such received by Landlord from Tenant in payment of obligations that are accruing interest shall be applied first against accrued interest and the balance against principal.

Landlord's Default

36. Default by Landlord.

(a) Notice. In no event shall Landlord be deemed to be in default if Landlord fails to perform any covenant, term, or condition of this Lease upon Landlord's part to be performed, unless and until thirty (30) days have expired after delivery to Landlord and to the holder of any mortgage or deed of trust covering the premises whose name and address shall have theretofore been furnished to Tenant, of a written notice specifying in detail Landlord's failure to perform and demanding the correction of such deficiency; provided, however, that if such deficiency cannot be cured or corrected within such thirty (30) day period, Landlord shall not be in default if Landlord or anyone on behalf of Landlord commences such cure or correction within such thirty (30) day period and thereafter diligently and continuously prosecutes the same to completion. If Landlord is deemed to be in default under the provisions of this paragraph, Tenant shall be entitled to bring an action for declaratory judgment or specific performance, or for damages (subject to the provisions of this Lease limiting Landlord's liability) shown by Tenant to have been directly caused by such default; provided, however, that subject to paragraph 36(d) below, an action for declaratory judgment or specific performance will be Tenant's sole right and remedy in any dispute as to whether Landlord has breached any express or implied obligation under this Lease to not unreasonably withhold Landlord's consent or approval.

(b) Consequential Damages. Notwithstanding anything to the contrary set forth in this Lease, Tenant agrees that, in the event it becomes entitled to receive damages from Landlord, Tenant shall not, in any event, be allowed to recover from Landlord consequential damages or damages in excess of the out-of-pocket expenditures incurred by Tenant as a result of a default by Landlord.

(c) Non-Liability. Neither Landlord nor any of the Indemnified Parties nor any successor of any of them, shall have any personal liability for any such failure under this Lease or otherwise. The provisions of this paragraph 36(c) shall apply only to Landlord and the parties above-described. They shall not be for the benefit of any insurance company or other third party. Tenant hereby expressly waives its rights under any and all laws, statutes, orders and regulations of federal, state, county and municipal authorities and with all directions, pursuant to law, of all public officers (collectively, "Laws"), to terminate this Lease (whether prior to or after the commencement of the Initial Term) or to withhold any payment owed by Tenant under this Lease, on account of any damage, condemnation, destruction, or state of disrepair of the premises, or any part thereof, it being the parties' intent that the provisions of this Lease shall govern the parties' rights and obligations with respect to such matters. In the event of any conflict between any provision of this paragraph and any other provision(s) of this Lease, the provisions of this paragraph shall control.

Mediation; Arbitration

37. Mediation; Arbitration.

(a) Mediation. Except as otherwise provided in paragraphs 3(b) and 17(a) above and subject to the provisions of paragraph 37(c) below, Landlord and Tenant agree to mediate any dispute or claim arising between them out of this Lease or any resulting transaction, before resorting to arbitration. Any such mediation shall be conducted in accordance with JAMS, in San Francisco, California. Mediation fees, if any, shall be divided equally between the parties. In the event any dispute or claim has not been mediated or resolved by mediation within sixty (60) days after either parties' receipt of a written request for mediation, either party may elect to forego mediation and submit said claim or dispute to be resolved directly by binding arbitration in accordance with the terms and conditions of paragraph 37(b) below.

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(b) Arbitration. Landlord and Tenant agree that any dispute or claim in law or equity arising out this Lease or any resulting transaction, which is not settled through mediation or under other arbitration provisions contained in this Lease, shall be decided by neutral, binding arbitration in accordance with this Section 37(b), subject to the provisions of paragraph 37(c) below. Notwithstanding the following provisions regarding the selection of three (3) arbitrators, prosecutes the same to completion.. If Landlord is deemed to be in default under the provisions of this paragraph, Tenant shall be entitled to bring an action for declaratory judgment or specific performance, or for damages (subject to the provisions of this Lease limiting Landlord's liability) shown by Tenant to have been directly caused by such default; provided, however, that subject to paragraph 36(d) below, an action for declaratory judgment or specific performance will be Tenant's sole right and remedy in any dispute as to whether Landlord has breached any express or implied obligation under this Lease to not unreasonably withhold Landlord's consent or approval.

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(c) Non-Liability. Neither Landlord nor any of the Indemnified Parties nor any successor of any of them, shall have any personal liability for any such failure under this Lease or otherwise. The provisions of this paragraph 36(c) shall apply only to Landlord and the parties above-described. They shall not be for the benefit of any insurance company or other third party. Tenant hereby expressly waives its rights under any and all laws, statutes, orders and regulations of federal, state, county and municipal authorities and with all directions, pursuant to law, of all public officers (collectively, "Laws"), to terminate this Lease (whether prior to or after the commencement of the Initial Term) or to withhold any payment owed by Tenant under this Lease, on account of any damage, condemnation, destruction, or state of disrepair of the premises, or any part thereof, it being the parties' intent that the provisions of this Lease shall govern the parties' rights and obligations with respect to such matters. In the event of any conflict between any provision of this paragraph and any other provision(s) of this Lease, the provisions of this paragraph shall control.

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(b) Arbitration. Landlord and Tenant agree that any dispute or claim in law or equity arising out this Lease or any resulting transaction, which is not settled through mediation or under other arbitration provisions contained in this Lease, shall be decided by neutral, binding arbitration in accordance with this Section 37(b), subject to the provisions of paragraph 37(c) below. Notwithstanding the following provisions regarding the selection of three (3) arbitrators, the parties may by mutual consent agree upon a single arbitrator. A written demand by either party to arbitrate shall include a designation of its candidate to serve as the arbitrator, which arbitrator shall by profession be a qualified MAI appraiser or licensed real estate agent unaffiliated with either party who shall have been active in the commercial real estate market in Alameda County for a minimum of five (5) years.. Within fifteen (15) business days after the service of demand for arbitration, the other party shall give notice (the "Response") of the name and address of the person designated by it to act as arbitrator on its behalf, which arbitrator must also meet the qualifications set forth above. If either party fails to notify the other of the appointment of its arbitrator within or by the time above specified, then the arbitrator appointed by the other party shall be the arbitrator to determine the issue. The arbitration shall be conducted in San Francisco, California, in accordance with JAMS. If two (2) arbitrators are chosen pursuant to the above provisions, the arbitrators so chosen shall meet (without a hearing) within five (5) business days after the second arbitrator is appointed, and if within five (5) business days after such first meeting the two arbitrators shall be unable to agree promptly upon a determination of the matter in issue, they shall appoint a third arbitrator, who shall be competent and impartial person with the required qualifications specified above except that such third arbitrator must be neutral. Said third arbitrator or, if either party shall have failed to notify the other of the appointment of its arbitrator, the arbitrator appointed by a party, as the case may be, shall decide the issue within fifteen (15) business days after his/her appointment. Within such fifteen (15) business day period the arbitrator shall hold a hearing in accordance with JAMS. The arbitrator(s) shall render his/her/their decision in writing with counterpart copies to each party. The arbitrators shall have no power to modify the provisions of this Lease. Any decision derived from the foregoing arbitration process shall be binding and conclusive upon the parties. The losing party shall pay the fees and costs of the arbitrators and of the expert witnesses (if any) of the prevailing party as well as those of its expert witnesses and the actual attorneys' fees of the prevailing party's legal counsel. The arbitrators shall allow for limited expedited discovery and shall attempt in all ways to streamline the process.

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(c) Exclusions from Mediation and Arbitration. The following matters are excluded from mediation and arbitration: (i) any notices prerequisite to and any unlawful detainer action, (ii) any claim arising from failure to pay rent pursuant to paragraph 3(a); (iii) the filing, enforcement, or claim for indemnity or reimbursement in connection with a mechanic's lien, (iv) any matter that is within the jurisdiction of a probate, small claims, or bankruptcy court, and (v) any claim for equitable relief. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the mediation and arbitration provisions.

Transfer of Landlord's Interest

38. Tenant acknowledges that Landlord has the right to transfer all or any portion of its interest in the premises and Shopping Center and in this Lease, and Tenant agrees that in the event of any such transfer and a transfer of the security deposit, Landlord shall automatically be released from all liability under this Lease and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder after the date of transfer. Tenant further acknowledges that Landlord may assign its interest in this Lease to a mortgage lender as additional security and agrees that such an assignment shall not release Landlord from its obligations hereunder and that Tenant shall continue to look to Landlord for the performance of its obligations hereunder.

the parties may by mutual consent agree upon a single arbitrator. A written demand by either party to arbitrate shall include a designation of its candidate to serve as the arbitrator, which arbitrator shall by profession be a qualified MAI appraiser or licensed real estate agent unaffiliated with either party who shall have been active in the commercial real estate market in Alameda County for a minimum of five (5) years. Within fifteen (15) business days after the service of demand for arbitration, the other party shall give notice (the "Response") of the name and address of the person designated by it to act as arbitrator on its behalf, which arbitrator must also meet the qualifications set forth above. If either party fails to notify the other of the appointment of its arbitrator within or by the time above specified, then the arbitrator appointed by the other party shall be the arbitrator to determine the issue. The arbitration shall be conducted in San Francisco, California, in accordance with JAMS. If two (2) arbitrators are chosen pursuant to the above provisions, the arbitrators so chosen shall meet (without a hearing) within five (5) business days after the second arbitrator is appointed, and if within five (5) business days after such first meeting the two arbitrators shall be unable to agree promptly upon a determination of the matter in issue, they shall appoint a third arbitrator, who shall be competent and impartial person with the required qualifications specified above except that such third arbitrator must be neutral. Said third arbitrator or, if either party shall have failed to notify the other of the appointment of its arbitrator, the arbitrator appointed by a party, as the case may be, shall decide the issue within fifteen (15) business days after his/her appointment. Within such fifteen (15) business day period the arbitrator shall hold a hearing in accordance with JAMS. The arbitrator(s) shall render his/her/their decision in writing with counterpart copies to each party. The arbitrators shall have no power to modify the provisions of this Lease. Any decision derived from the foregoing arbitration process shall be binding and conclusive upon the parties. The losing party shall pay the fees and costs of the arbitrators and of the expert witnesses (if any) of the prevailing party as well as those of its expert witnesses and the actual attorneys' fees of the prevailing party's legal counsel. The arbitrators shall allow for limited expedited discovery and shall attempt in all ways to streamline the process.

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Miscellaneous

39. (a) The marginal captions in this Lease are for convenience only and shall not in any way limit or be deemed to construe or interpret the terms and provisions hereof.

(b) Time is of the essence of this Lease and of all provisions hereof, except in respect to the delivery of possession of the leased premises at the commencement of the term hereof.

(c) The words "Landlord" and "Tenant", as used herein, shall include the plural as well as the singular. Words used in the masculine gender include the feminine and neuter. If there be more than one Landlord or Tenant the obligations hereunder imposed upon Landlord or Tenant shall be joint and several.

(d) This Lease may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement.

(e) This Lease shall be construed and enforced in accordance with the laws of the State of California.

(f) Tenant acknowledges that Landlord as landlord under this Lease does not stand in any fiduciary or special relationship to Tenant and thus does not owe any extraordinary or extra-contractual duties to Tenant.

IN WITNESS WHEREOF, the parties hereto have executed this Lease or, as the case may be, have caused their officers thereunto duly authorized to execute this Lease and affix their corporate seals, in duplicate, the day and year first above written.

TENANT:

MCKENNEY GRIFFIS, INC.

By: Patricia T. Griffis

Patricia Tyler Griffis

Patricia Tyler Griffis, individually

LANDLORD:

Garrett P. Scales

Garrett P. Scales, Successor Co-Trustee of the Trust Created Under the Last Wills of H. Ward Dawson and Eleanor Dawson Abbott

Lilia Ticen

Lilia Ticen, Successor Co-Trustee of the Trust Created Under the Last Wills of H. Ward Dawson and Eleanor Dawson Abbott

GENERAL NOTES

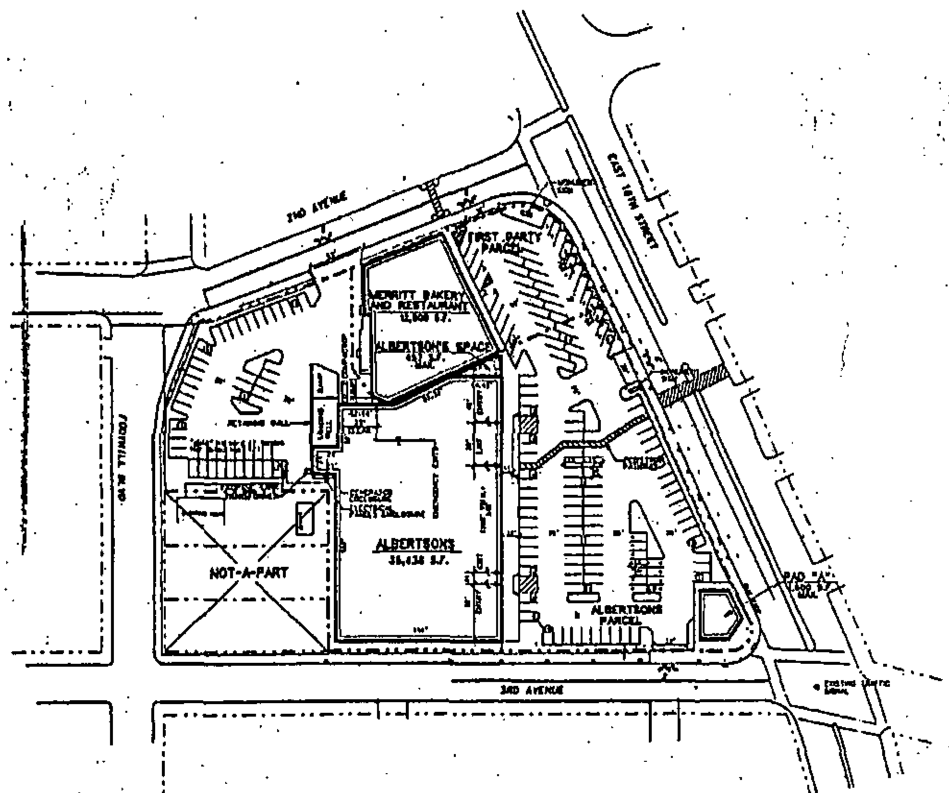
NO TRUCK WELLS, NATURAL DOCK ONLY

PARKING REQUIREMENTS:
PER CITY REQUIREMENTS

BUILDING SETBACK REQUIREMENTS:
PER CITY REQUIREMENTS

LANDSCAPE REQUIREMENTS:
PER CITY REQUIREMENTS

ZONING REQUIREMENTS:
EXISTING- COMMERCIAL
REQUIRED- COMMERCIAL



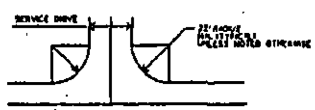
LEGEND

PARCEL AND SHOPPING CENTER BOUNDARY	
EXPANSION LIMIT LINE	
BUILDING AREA	
BUILDING ENVELOPE LINE	

SCALE 1" = 100'

EXHIBIT "A" SITE PLAN

TOTAL GROSS BUILDING AREA	54,393 S.F.
TOTAL CARPARKS REQUIRED	257 (1/200) 206 (1/250)
TOTAL CARPARKS PROVIDED	182 (-75 @ 1/200) (-24 @ 1/250)
TOTAL SITE AREA	147,134.05 S.F. (3.38 AC.+/-)



DOCUMENT INCLUDED IN
DEVELOPMENT AGREEMENT

Albertsons
DESIGN & CONSTRUCTION
250 PARKCENTER BLVD
BOISE, IDAHO 83726

PROJECT
S.W.C.
SECOND
&
E. 18TH STREET
OAKLAND, CALIFORNIA

STORE NO.
7214

DATE 9-25-03

SHEET TITLE
EXHIBIT "A"
SITE PLAN

ATTACHMENT 9

McKinney Griff, Inc.
dba Merritt Bakery & Restaurant

Reply to City questions on business plan, Accounting Plan and proposed use of City loan proceeds

The purpose of this Memo is threefold:

1. Comment on the Fare Business Plan
2. Comment on the December 2009 Accounting Suitability Analysis
3. Summarize the planned use of the $150,000 City loan and the $150,000 from the Landlord

Business Plan (Subject, Proposed change, action by Merritt, results of action)

A: Pricing and Menu Changes

Our new menu featured four breakfast items, two lunch items, three dinner items and three bakery items all at new reduced prices. They have all been well received and have resulted in increased sales and repeat business. We have avoided senior discounts, as there is a question about the age for eligibility and danger of offending the younger customer. We are still evaluating the feasibility and benefit of free coffee for users of public transportation. In general our new menu, which was introduced on April 1 to coincide with daylight saving's time, has been very well received. With City assistance to go off COD with the venders, we will be in a better position to lower prices and offer promotions.

B: Operational Improvements and Food Cost Savings.

The plan recommended some personnel additions to help monitor kitchen health issues, food costs and internal communication and staff supervision. We have hired a kitchen manager and bakery manager. The bakery manager is starting to call on new customers and will be attending meetings of wedding planners. The two managers also coordinate the labor costs and are responsible for communication within their departments with the general manager who oversees both operations. We are receptive to the suggestion of reduced serving sizes and will do this in some of our light food items. However, we want to retain our reputation of large portions, as many customers utilize the Merritt for their one large meal in the day and even take home some food.

C: Labor:

We have reduced our staff from a high of 110 employees to 50 employees in the last two years. It is our goal and practice to continue to offer service and operational efficiency to the customer with minimum labor costs. We think it is it very important to maintain a high level of efficiency while maximizing the function of each employee. i.e.: Combining order taking, serving and clean up by one server during slow periods to reduce labor costs.

D: Hours of Operation: We have tried different hours of operation including 24 hours in an attempt to maximize sales and profits. At present we are open 7AM to 12 Midnight.

E: The business plan recommended a long term plan to remodel the restaurant and add an entrance and patio to face 2nd Avenue and the lake. Because of the uncertainty of any additional parking on 2nd Avenue and the absence of funds, we presently plan to only make minor internal alterations. We plan to utilize the existing rear exit as a full customer entrance with direct access to the rear parking. We will only do this after we are satisfied that The City and Lucky have complied with the recommendations in the 2009 Transportation Demand Management Study which calls for monitoring and enforcement of two hour parking limits and truck deliveries. While not recommended in the TDMS, it would help if more paring in front of the restaurant was Merritt Parking Only.

F: Advertising and Promotion: The plan recommended a reduction in advertising until completion of the operational and remodeling changes. We disagree with this recommendation and will use approximately $10,000 per month for TV advertising for the restaurant. This advertising has been successful in the past. At present we are spending $2,000 per month on Bakery TV advertising and $1,000 per month on inexpensive newspaper advertising. We are constantly monitoring our competition and sources of business. We want to attract the younger customer. We are also designing a "Be My Guest Card" which will offer dining incentives to new customers. However, we think it is important to maintain our reputation as an old fashioned bakery and the place to go for as full American meal. Note: Money from the City will allow us to have restaurant TV advertising at a cost of $10,000 a month.

Summary: We agree that the adoption of the cost control, menu changes and personnel changes will save money and result in a more efficient operation. However, we cannot make many of the changes suggested in the Business Plan without City assistance, as we have exhausted all conventional sources of financing.

Comments on the December 2009 Accounting Suitability Analysis: Note: See Analysis for corresponding numbers. We have already made the recommended changes in 4,6,7,8,10,11,12,13 and 15,

We are in the process of making the changes in 1,5,9,14 and 18.

We will need some of the City loan money to implement No.s 16 and 17.

Additionally, we will need City assistance to hire a finance director, develop a debt payment plan and establish business transparency. We are in the process of recording the 2009 transactions in the Quick Books System.

The following are the plans for use of the $150,000 from the City

1: Convert our COD vender accounts to monthly payments. This is very important in that it reduces the outstanding balance reduction which accompanies the COD payments. It also gives us up to 30 days to convert the vender products to sales prior to payment to the vender. This will enable us to even reduce some prices.

2: We will be able to spend an additional $10,000 a month on restaurant TV advertising which has been successful in the past. At present we can only afford to advertise the bakery on TV for $2,000 a month and inexpensive Newspaper ads for $1,000 a month. We will also be able to stay on top of ongoing building an equipment repair costs. i.e.: Some freezer repair costs will reduce our utility costs.

3: We will be able to access the $150,000 from the landlord before December 2010 upon receipt of the City money. We can then go to our lenders and demonstrate our financial stability which will enable us, with assistance from the City, to restructure the term, rate and even the amount of some of our outstanding debt. We have no leverage or creditability with the lenders without City assistance because of the absence of any additional conventional financing.

ATTACHMENT 10

ONE CALIFORNIA BANK

May 7, 2010

Mr. Roberto F. Costa
Business Development Specialist
Business Development Services
City of Oakland
250 Frank H. Ogawa Plaza
Suite 3315
Oakland, CA 94612

Re: Merritt Bakery and Restaurant Loan ("Merritt")

Dear Mr. Costa:

We understand that the City of Oakland Mayor's Office has rescheduled an Agenda for the upcoming Oakland City Council Meeting on May 11, 2010, to recommend the City of Oakland's Redevelopment Agency and The Oakland City Council to approve a new $150,000 loan to Merritt Bakery and Restaurant ("Merritt").
Please be advised of the following:

a. Our original $270,000 loan to Merritt which has a current outstanding balance of $230,851.96, is now 304 days past due as of today. Therefore, this loan is currently in default.
b. Since this said Loan is guaranteed by the City of Oakland (5%) and NorCal (90%), we have already copied you and NorCal our written Demand Letters which also served as Notices of Loan Default.
c. Our Business Loan Agreement with Merritt dated Nov. 7, 2007 contains (on Page 4 under Negative Covenants) : Borrower covenants and agrees with Lender that while this Agreement is in effect, Borrower shall not, without the prior written consent of Lender incur or assume indebtedness for borrowed money; including capital leases ; except for trade debt incurred in the normal course of business and indebtedness to Lender contemplated by this Agreement .
[The City has been given a copy of this Loan Agreement]

In light of the above, if the City still wants to proceed with a new $150,000 to Merritt, we hereby inform you that we would be expecting that before we would agree to a written consent for Merritt to receive this loan from the City, we require the following:

1. Your new loan proceeds should first be applied to cure Merritt's past due loan principal plus interest to OneCalifornia Bank in the minimum amount of $44,318.80. The payoff amount as of today is $230,851.96.
2. We recommend loan proceeds should be deposited to a special reserve account such that you can monitor the use of loan proceeds.
3. *You would appoint a City Liason Officer to be charged with the monitor of* the use of loan proceeds for this proposed loan.

We look forward to hearing from you on this matter, on or before the May 11 City Council Meeting.

Sincerely,

Russ Haycock
Executive Vice President & Chief Credit Officer

CC : Marisol G. Lopez, Chief of Staff, Mayor Ronald V. Dellums
Arthur Washington, NorCal