

COMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

| | |
|--------------------------------|---|
| Albert Buoncristiano | : |
| | : |
| v. | : |
| | : |
| Philadelphia, Gas Works | : |

PETITION FOR RESCISSION UNDER PA CODE 5.572(d)

On June 9, 2003, Albert Buoncristiano (“Buoncristiano”) filed his complaint against the Philadelphia Gas Works (PGW) for gas he did not use. PGW blamed Buoncristiano for the wrong meter in the building when PGW put it in and that the gas was not being used for 3 ½ years for which Buoncristiano received estimates. An Initial Decision **F-01061153** was issued by Allison K. Turner Administrative Law Judge on August 5, 2004 wherein she dismissed the complaint as complainant did not appear at the hearing. However ALJ Turner found that PGW was so much at fault that it was unfair to use procedural measures against the complainant even though he did not appear at the hearing.

PGW filed exceptions and in an Order entered at **F-01061153** on November 5, 2004, the Pennsylvania Public Utilities Commission (“Commission”) considered the decision of ALJ Turner and the Commission found that the complaint was properly dismissed for failure to prosecute as the complainant failed to participate in the scheduled hearing and failed to put on any evidence to meet his burden. Furthermore the Commission found that there was no reason to depart from its policy articulated in *Jefferson v. UGI* docketed at Z00269892 (Order entered December 26, 1995), when a complainant fails to participate in a hearing and dismissed Buoncristiano’s complaint with prejudice.

The Commission did recognize the opportunity for the complainant and PGW to negotiate a payment plan mutually agreeable to the parties and noted the latitude that utilities can use in resolving payment disputes.

Buoncrisiano subsequently filed a complaint regarding the outstanding bill in 2015 challenging the amount of the bill at **C-2015-2466853**. An Initial Hearing was scheduled by Administrative Law Judge Angela T. Jones for May 12, 2015 at 10:00 a.m. and convened as scheduled but no testimony was taken. Buoncrisiano was in attendance with counsel.

Mr. Buoncrisiano, who was unrepresented in his first complaint, did not understand the ramifications of keeping in contact with the Commission and subsequently did not become aware of the Initial Decision of Judge Turner and the Commission's Opinion and Order until recently, when he sought financing from Port Richmond Savings to upgrade 3180 Grant Avenue in order to sell the premises. When Mr. Buoncrisiano found out about the judgment entered against him by PGW he filed complaint **C-2015-2466853** with the Commission, again without counsel, in 2015.

In the Initial Decision before Allison K. Turner, Administrative Law Judge, Pennsylvania Public Utility Commission, Judge Turner dismissed Mr. Buoncrisiano's complaint because Buoncrisiano did not appear for an initial telephone hearing or at the hearing despite Judge Turner's attempts to contact Buoncrisiano.

Buoncrisiano did not receive notice of the hearing and was no longer a customer of PGW at the time of the hearing. Although Buoncrisiano owned a restaurant at the address of record,

3180 Grand Avenue, 19114 he leased out the restaurant and at the time of the hearing no longer resided at that address. He did not receive his mail there. A copy of the lease for real estate is attached hereto as **Exhibit A**. Mr. Buoncristiano sold the restaurant in 2011 to 3180 MJT Corp. A copy of the Certification of Completion of the sale dated July 14, 2011 is attached hereto as **Exhibit B**.

Mr. Buoncristiano now petitions the Commission for rescission of its previous Opinion and Order and asks the Commission to allow him to present testimony and provide an explanation for his failure to appear at the initial hearing as well as the outstanding PGW bill.

It should be noted that Judge Turner in her extensive decision, found that PGW issued bills based upon meter readings from the wrong meter since 1997. Judge Turner also noted at paragraph 11 of her Initial Decision that from December 1998 through and until September, 2001 the system billed Buoncristiano on the wrong meter a customer at 3188 Grant Avenue was not being billed at all. At paragraph 12 of her Initial Decision, Judge Turner found Buoncristiano's bills were based on readings from the meter at 3188 Grant Avenue which is a gas station. Mr. Buoncristiano's building contained a restaurant on the first floor. The Commission adopted Judge Turner's findings of fact.

Based on the findings of Judge Turner, Buoncristiano suffered a grave injustice.

Judge Turner found that the situation that caused the prolonged billing was "completely the fault of PGW and in no way the fault of Buoncristiano" (page 8 of the Initial Decision) and that Buoncristiano was not a payment troubled customer. PGW did not read his meter for about 3 ½ years which was the basis for his complaint filed in 2003. However Judge Turner found

against Buoncristiano due to his failure to appear at the initial telephone telephonic hearing and that he was no longer the customer record of the service address. Judge Turner found that the Commission may do an injustice by dismissing the complaint with prejudice and making his liability for the actual immediate

In the Commission's decision at a public meeting held November 4, 2004 the Commission upheld the Judge Turner's 20 findings of facts but dismissed Mr. Buoncristiano's complaint with prejudice.

Mr. Buoncristiano now requests the Commission to rescind its prior order and give him the opportunity to address the issues that resulted in the lien being assessed him by PGW in the amount of \$33,072.14. Mr. Buoncristiano believes under the Commission's decisions and legal precedent he has articulated reasons for relief under 52 PA Code 5.572. Mr. Buoncristiano did not avoid having his day in court. He was unaware of the court proceedings and unfortunately did not follow up with further communication with the commission.

Accordingly Mr. Buoncristiano requests the Commission to grant him leave to have the opportunity to present testimony and his case regarding his original complaint. Buoncristiano did not receive notice of the initial hearing and only recently was able to ascertain the amount of the outstanding bill. Buoncristiano, through counsel, has requested PGW to consider a settlement of the amount allegedly owed but PGW has refused to discuss settlement or a payment plan. Commission policies encourage settlements but PGW refuses to attempt to do so.

Buoncristiano further requests that the Commission allow him the opportunity to address

the issues as addressed in his original complaint as stated in the Initial Decision of Administrative Law Judge Alison K Turner.

Petitioner/complainant Buoncristiano understands that much time has passed from the time of the Initial Decision and Commission Opinion and Order and means no disrespect to the Commission in filing this Petition. However, the circumstances of the bill and PGW's actions or inaction create a grave injustice to Mr. Buoncristiano that the Commission should not allow to exist. Despite Buoncristiano's delay, he submits it is patently unfair to him as a former customer of PGW to be burdened with a huge bill that was inaccurate and due in large part to PGW's actions or inactions.

Mr. Buoncristiano submits that should have his day in court, have the opportunity to explain the circumstances of the bill and the reason he did not follow through with his complaint and have the opportunity to have legitimate discussions to discuss his bill with PGW.

For all the above reasons, Buoncristiano requests the Commission to grant this Petition, schedule a hearing to consider the substance of his formal complaint and allow him the opportunity to contest the PGW charges or have the opportunity to settle the charges and/or engage in a payment plan.

Respectfully Submitted,

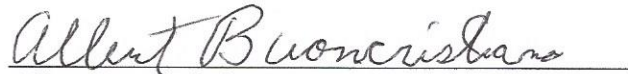
/s/ Paul T. Sosnowski
Paul T. Sosnowski, Esquire
Attorney for Albert Buoncristiano

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Date: July 15, 2015

VERIFICATION

I, Albert Buoncristiano hereby verify that the statements made herein in his Petition for Rescission under PA Code 5.572(d) are true and correct to the best of my knowledge, information and belief; and that I understand that false statements herein are made subject to the penalties of 18 PA. C.S. Section 4904, relating to unsworn falsification to authorities.


Albert Buoncristiano

Dated: July 15, 2015

Exhibit A

NON-RESIDENTIAL LEASE FOR REAL ESTATE
PART ONE OF A TWO PART AGREEMENT

L-1969C

This form recommended and approved for, but not restricted to use by, members of the Pennsylvania Association of REALTORS® when used with an approved addendum attached hereto.

Broker For Lessor

[Empty box for Broker For Lessor signature]

PRINCIPALS
(1-78)

This Agreement, dated November 1, 1999
is between _____

Albert's Restaurant, Inc. hereinafter called Lessor, and
Nicole McFadden and Linda Marrone hereinafter called Lessee,

PROPERTY
(11-74)

1. (a) WITNESSETH: Lessor agrees to let unto the Lessee premises being known as
3180 Grant Avenue, 1st Floor in the
City of Philadelphia, County of Philadelphia, State of Penna.,
with improvements consisting of Restaurant/Bar

upon the following terms and conditions to wit:

- (b) Total rental for entire term payable to Lessor \$12,000.00
- (c) Payments in advance Monthly _____ in the amount of: \$ 1,000.00
- (d) Cash or check to be paid before possession by Lessee which is to be applied on account as follows:

| | | |
|---|---------------|------------------------|
| Advance rent _____ to _____ | Paid \$ _____ | Due \$ _____ |
| On account of final payment of rent _____ | Paid \$ _____ | Due \$ _____ |
| Security deposit (see par. 1 (f)) _____ | Paid \$ _____ | Due \$ <u>1,500.00</u> |
| Credit report _____ | Paid \$ _____ | Due \$ _____ |
| | Paid \$ _____ | Due \$ _____ |
| Totals - Paid to date | | Paid \$ _____ |
| Balance due before possession | | Due \$ <u>1,500.00</u> |
- (e) Adjusted payment of rent until regular due date, if any \$ _____
- (f) Security deposit \$ 1,500.00
- (g) Late charge if rent not paid within grace period \$ _____
- (h) Due date for each payment 1st of Month
- (i) Term of this lease 5 Years
- (j) Commencement date of lease November 1, 1999
- (k) Expiration date of lease October 31, 2004
- (l) Required written notice to terminate this lease 60 Days
- (m) Renewal term if not terminated by either party 5 Years
- (n) Lessee will occupy premises ONLY as Restaurant/Bar
- (o) Maximum number of occupants under this lease _____
- (p) Payments to be made promptly when due in lawful money of the United States of America to: Lessor Broker for Lessor
- (q) Utilities & services to be supplied as follows:

Lessor will supply: cold water, hot water, gas, heat, electric, lawn care,
 snow removal, janitor service, yearly oil burner cleaning, cesspool cleaning, _____
 lawn & shrubbery care. _____

Lessee will supply: cold water, hot water, gas, heat, electric, lawn care,
 snow removal, water in excess of yearly minimum charge, yearly oil burner cleaning,
 cesspool cleaning, lawn & shrubbery care. All Licenses
- (r) Notwithstanding anything herein to the contrary, Lessee will pay cost of any or all repairs of any kind whatsoever, occurring after commencement of this lease where the individual cost of each repair is less than \$ _____
- (s) No pets or animals of any kind whatsoever will be permitted on or within the herein described premises excepting _____

SPECIAL
CLAUSES

- 2. (a) Lessor and Lessee have received the Consumer Notice as adopted by the State Real Estate Commission at 49 Pa. Code §35.366.
- (b) It is hereby UNDERSTOOD and AGREED that rent amount will increased by 3% (\$30.00) effective 11/1/2004.

**NON-RESIDENTIAL LEASE
PART TWO OF A TWO-PART AGREEMENT
TERMS AND CONDITIONS**

L-2C

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| | |
|---|--|
| Special Clauses | |
| Taxes (5-72) | <p>4. (a) Lessee agrees to pay as rent in addition to the minimum rental herein received, all taxes, sewer rent, garbage and/or trash collection charge assessed or imposed upon the demised premises and/or the building of which the demised premises is a part during the term of this lease, in excess of and over and above those assessed or imposed at the time of making this lease. The amount due hereunder on account of such taxes shall be apportioned for the part of the first tax year, as assessed, and each subsequent tax year, as assessed thereafter during the term of this lease including extensions or renewal hereof. The same shall be paid by the Lessee to the Lessor as additional rent on or before sixty days from the Broker for Lessor's notice to the Lessee having been delivered as notice of any such tax increase.</p> <p>(b) Unless specified herein to the contrary, the percentage of any such tax increases to be paid by the Lessee hereunder shall be apportioned in accordance with that percentage which the Lessee's rent represents to the total income that the building would yield if fully leased.</p> <p>(c) Lessee further agrees to pay to Lessor as additional rent all increase or increases in fire insurance premiums upon the demised premises and/or the building of which the demised premises is a part, due to an increase in the rate of fire insurance in excess of the rate on the demised premises at the time of making this lease, if said increase is caused by any act or neglect of the Lessee or the nature of the Lessee's business.</p> <p>(d) Lessee further agrees to pay as additional rent, if there is a metered water connection to said premises, all sewer rental or charges for use of sewers, sewer system, and sewage treatment works servicing the demised premises in excess of the yearly minimum of such sewer charges, immediately when the same become due.</p> <p>(e) Lessee shall be responsible for the condition of the pavement, curb, cellar doors, awnings and other erections in the pavement during the term of this lease; shall keep the pavement free from snow and ice, and shall be, and hereby agrees that Lessee is solely liable for any accidents, due or alleged to be due to their defective condition, or to any accumulations of snow or ice.</p> |
| Fire Insurance Premiums Sewer Rent | <p>5. The "security deposit" specified in Par. #1. (f) shall be held by Broker for Lessor as security for the performance of all the terms, covenants and conditions of this lease and for the cost of any trash removal, housecleaning and the cost of repairs and/or the correction of damage (which is, in the opinion of the Lessor and/or Broker for Lessor, in excess of normal wear and tear); otherwise, the "security deposit" or any balance thereof shall be returned after the Lessee has vacated and left the premises in an acceptable condition (following a personal inspection by Lessor and/or Broker for Lessor) and surrendered all keys to Broker for Lessor. If the Lessor determines that any loss, damage or injury chargeable to the Lessee hereunder, exceeds the security deposit, the Lessor at his option, may retain the said sum as liquidated damages or may apply the sum against any actual loss, damage or injury and the balance thereof will be the responsibility of the Lessee. Lessor's determination of the amount, if any, to be returned to the Lessee shall be final. It is further understood and agreed that the said security deposit is not to be considered as the last payment under the lease, however the rights of the Lessor shall not be hindered to retain the security deposit, or a portion thereof as payment on account of uncollected rents, if any.</p> <p>The aforementioned "security deposit" shall be paid to the Broker for Lessor who will deposit same in a separate custodial type account. Broker for Lessor shall keep records of all funds so deposited as required in accordance with the Act of February 19, 1980, P.L. 15, No. 9, Section 604 (63 P.S. 455.604). Said account will be clearly identified as required indicating the date and from whom he received money, the date deposited, the date of withdrawals and other pertinent information concerning this transaction. It is understood and agreed that should the property herein mentioned be sold, exchanged, transferred or conveyed to a new owner, that at the time of settlement, any money held as a security deposit shall be transferred to the new owner or his agent, to be continued to be held as a security deposit.</p> |
| Condition of Pavement | <p>6. (a) If the Lessee so desires, Lessor, if possible, may make available to Lessee, without charge, a space in the building for the storage of goods and effects of Lessee. In consideration of the fact that no extra charge is made for the furnishing of such space by the Lessor, it is understood that Lessor shall not be liable for loss or damage to any stored goods through fire or theft or any cause whatever, and Lessee expressly releases Lessor as bailee or otherwise from all claims for any such loss or damage. It is further understood that the use of storage space by the Lessee shall be limited to the time of the Lessee's occupancy, and that goods left over thirty days after the expiration of Lessee's occupancy may be sold for storage charges at public or private sale without further notice to Lessee.</p> <p>(b) The Lessor may furnish additional service not herein provided for but any such service shall be gratuitous unless otherwise agreed and shall not be an obligation of the Lessor or part of the consideration for the rent.</p> |
| Security Deposit (12-85) | <p>7. All rent shall be payable without prior notice or demand at the office of Lessor or Broker for Lessor as specified in paragraph #1. (p).</p> <p>8. Lessee covenants and agrees that he will without demand:</p> <p>(a) Pay the rent and all other charges herein reserved as rent on the days and times and at the place that the same are made payable, without fail and if Lessor shall at any time or times accept said rent or rent charges after the same shall have become due and payable, such acceptance shall not excuse delay upon subsequent occasions, or constitute or be construed as a waiver of any of Lessor's rights. Lessee agrees that any charge or payment herein reserved, included, or agreed to be treated or collected as rent and/or any charges, expenses, or costs herein agreed to be paid by the Lessee may be proceeded for and recovered by the Lessor by legal process in the same manner as rent due and in arrears.</p> <p>(b) All rental payments are due and payable on the due date as specified in paragraph #1.(h) of this agreement or within five days thereafter (grace period) without penalty. However, after 5:00 P.M. on the fifth day after due date as aforementioned, any rental payment not paid in full will be subject to late charge. Payments not made on or before 5:00 P.M. on the tenth day after due date, together with late charge, may be referred to Magistrate or Justice of the Peace for the collection and/or ejection.</p> <p>(c) Keep the demised premises clean and free from all ashes, dirt and other refuse matter; replace all broken glass windows, doors, etc.; keep all waste and drain pipes open; repair all damages to plumbing and to the demised premises; in general, keep the same in as good order and repair as they are at the beginning of the term of this lease, reasonable wear and tear and damage by accidental fire or other casualty not occurring through negligence of Lessee or those employed by or acting for Lessee alone excepted. The Lessee agrees to surrender the demised premises in the same condition in which Lessee has herein agreed to keep the same during the continuance of this lease.</p> <p>(d) Comply with any requirements of any of the constituted public authorities, and with the terms of any State or Federal statute or local ordinance or regulation applicable to Lessee or his use of the demised premises, and save Lessor harmless from penalties, fines, costs or damages resulting from failure to do so.</p> <p>(e) Use every reasonable precaution against fire.</p> <p>(f) Peaceably deliver up and surrender possession of the demised premises to the Lessor at the expiration or sooner termination of this lease, promptly delivering to Lessor at his office, all keys for the demised premises, with all trash and personal belongings removed and building(s) broom-swept clean.</p> <p>(g) Give to Lessor prompt written notice of any accident, fire or damage occurring on or to the demised premises.</p> <p>(h) Promptly pay for all gas and electricity, water, heat, lawn care and services consumed in the herein demised premises during the continuance of this lease if so specified in paragraph #1.(q); and should Lessee fail to make these payments when due, Lessor shall have the right to settle therefor, such sums to be considered additional rent and collectable from Lessee, as such, by distress or other process and to have all the priorities given by law to claim for rent.</p> <p>(i) Indemnify and save Lessor harmless from any and all loss occasioned by Lessee's breach of any of the covenants, terms and conditions of this lease, or caused by his family, guests, visitors, agents and employees.</p> |
| Affirmative Covenants of Lessor | |
| Place of Payment | |
| Affirmative Covenants of Lessee (11-74) | |
| Payment of Rent Late Charges (11-74) | |
| Cleaning, Repairing, etc. | |
| Requirements of Public Authorities | |
| Fire Surrender of Possession (11-74) | |
| Notice of Fire, etc. Pay for Gas and Electricity | |
| Indemnification | |

Negative Covenants of Lessee
Use of Premises
Assignment and Subletting

Signs

Alterations
Improvements

Machinery
Weights
Fire Insurance

Removal
of Goods
Vacate Premises

Upon Removal

Lessor's Rights
Inspection of
Premises

Rules and
Regulations

Sale, Rent,
Signs and
Prospects
(11-74)

Discontinue
Service, etc.

Damage for
Interrupted Use
Representation
of Condition
Miscellaneous
Agreements and
Conditions

Effect of Repairs
or Rentals
Waiver of
Custom

Failure of Lessee
to Repair

Remedies of
Lessor
(11-74)

9. Lessee covenants and agrees that he will do none of the following things without the consent in writing of Lessor:

(a) Occupy the demised premises in any other manner or for any other purpose than as above set forth in paragraph #1. (n).

(b) Assign, mortgage or pledge this lease or under-let or sub-lease the demised premises, or any part thereof, or permit any other person, firm or corporation to occupy the demised premises, or any part thereof; nor shall any assignee or sub-lessee assign, mortgage or pledge this lease or such sub-lease, without an additional written consent by the Lessor, and without such consent no such assignment, mortgage or pledge shall be valid. If the Lessee becomes embarrassed or insolvent, or makes an assignment for the benefit of creditors, or if a petition in bankruptcy is filed or against the Lessee or a bill in equity or other proceeding for the appointment of a receiver for the Lessee is filed, or if the real or personal property of the Lessee shall be sold or levied upon by any Sheriff, Marshal or Constable, the same shall be a violation of this covenant.

(c) Place or allow to be placed any stand, booth, sign or show case upon the doorsteps, vestibules or outside walls or pavements of said premises, or paint, place, erect or cause to be painted, placed or erected any sign, projection or device on or in any part of the premises. Lessee shall remove any sign, projection or device painted, placed or erected, if permission has been granted and restore the walls, etc., to their former conditions, at or prior to the expiration of this lease. In case of the breach of this covenant (in addition to all other remedies given to Lessor in case of breach of any conditions or covenants of this lease) Lessor shall have the privilege of removing said stand, booth, sign, show case, projection or device, and restoring said walls, etc., to their former condition, and Lessee, at Lessor's option, shall be liable to Lessor for any and all expenses so incurred by Lessor.

(d) Make any alterations, improvements, or additions to the demised premises. All alterations, improvements, additions or fixture's. whether installed before or after the execution of this lease, shall remain upon the premises at the expiration or sooner determination of this lease and become the property of Lessor, unless Lessor shall, prior to the determination of this lease, have given written notice to Lessee to remove the same, in which event Lessee will remove such alterations, improvements and additions and restore the premises to the same good order and condition in which they now are. Should Lessee fail to do so, Lessor may do so, collecting, at Lessor's option, the cost and expense thereof from Lessee as additional rent.

(e) Use or operate any machinery that, in Lessor's opinion, is harmful to the building or disturbing to other tenants occupying other parts thereof.

(f) Place any weights in any portion of the demised premises beyond the safe carrying capacity of the structure.

(g) Do or suffer to be done, any act, matter or thing objectionable to the fire insurance companies, whereby the fire insurance or any other insurance now in force or hereafter to be placed on the demised premises, or any part thereof, or on the building of which the demised premises may be a part, shall become void or suspended, or whereby the same shall be rated as a more hazardous risk than at the date of execution of this lease, or employ any person or persons objectionable to the fire insurance companies or carry or have been benzine or explosive matter of any kind in and about the demised premises. In case of a breach of this covenant (in addition to all other remedies given to Lessor in case of the breach of any of the conditions of covenants of this lease) Lessee agrees to pay to Lessor as additional rent any and all increase or increases of premiums on insurance carried by Lessor on the demised premises, or any part thereof, or on the building of which the demised premises may be a part, caused in any way by the occupancy of Lessee.

(h) Remove, attempt to remove or manifest an intention to remove Lessee's goods or property from or out of the demised premises otherwise than in the ordinary and usual course of business, without having first paid and satisfied Lessor for all rent which may become due during the entire term of this lease.

(i) Vacate or desert said premises during the term of this lease, or permit the same to be empty and unoccupied.

10. The Lessee agrees that if, with the permission in writing of Lessor, Lessee shall vacate or decide at any time during the term of this lease, or any renewal thereof, to vacate the herein demised premises, prior to the expiration of this lease, or any renewal hereof, Lessee will not cause or allow any broker to work with Lessee in any sub-letting or reletting of the demised premises other than a broker approved by the Lessor, and that should Lessee do so, or attempt to do so, that Lessor may remove any signs that may be placed on or about the demised premises by such other broker without any liability to Lessee or to said broker, the Lessee assuming all responsibility for such action.

11. Lessee covenants and agrees that Lessor shall have the right to do the following things and matters in and about the demised premises:

(a) At all reasonable times by himself or his duly authorized agents to go upon and inspect the demised premises and every part thereof, and/or at his option to make repairs, alterations and additions to the demised premises or the building of which the demised premises is a part.

(b) At any time or times and from time to time make such rules and regulations as in his judgement may from time to time be necessary for the safety, care and cleanliness of the premises, and for the preservation or good order therein. Such rules and regulations shall, when notice thereof is given to Lessee, form a part of this lease.

(c) To display a "For Sale" sign at any time, and also, after notice from either party of intention to determine this lease, or at any time within six months prior to the expiration of this lease, a "For Rent" sign, or both "For Rent" and "For Sale" signs; and all of said signs shall be placed upon such part of the premises as Lessor may elect and may contain such matter as Lessor shall require. Prospective purchasers or tenants authorized by Lessor may inspect the premises Monday thru Saturday between the hours of 11:00 A.M. and 8:00 P.M.

12. (a) In the event that the demised premises is totally destroyed or so damaged by fire or other casualty not occurring through fault or negligence of the Lessee or those employed by or acting for him, that the same cannot be repaired or restored within a reasonable time, this lease shall absolutely cease and determine, and the rent shall abate for the balance of the term.

(b) If the damage caused as above be only partial and such that the premises can be restored to their former condition within a reasonable time, the Lessor may, at his option, restore the same with reasonable promptness, reserving the right to enter upon the demised premises for that purpose. The Lessor also reserves the right to enter upon the demised premises whenever necessary to repair damage caused by fire or other casualty to the building of which the demised premises is a part, even though the effect of such entry be to render the demised premises or a part thereof untenable. In either event the rent shall be apportioned and suspended during the time the Lessor is in possession, taking into account the proportion of the demised premises rendered untenable and the duration of the Lessor's possession. If a dispute arises as to the amount of rent due under this clause, Lessee agrees to pay the full amount claimed by Lessor. Lessee shall, however, have the right to proceed by law to recover the excess payment, if any.

(c) Lessor shall not be liable for any damage, compensation or claim by reason of inconvenience or annoyance from the necessity of repairing any portion of the building, the interruption in the use of the premises, or the termination of this lease by reason of the destruction of the premises.

13. The Lessor has let the demised premises in their present condition and without any representation on the part of the Lessor, his officers, employees, servants and/or agents. It is understood and agreed that the Lessor is under no duty to make alterations at the time of letting or at any time thereafter.

14. (a) No contract entered into or that may be subsequently entered into by Lessor with Lessee, relative to any alterations, additions, improvements or repairs, nor the failure of Lessor to make such alterations, additions, improvements or repairs as required by any such contract, nor the making by Lessor or his agents or contracts of such alterations, additions, improvements or repairs shall in any way affect the payment of the rent or said other charges at the time specified in this lease.

(b) It is hereby covenanted and agreed, any law, usage or custom to the contrary notwithstanding, that Lessor shall have the right at all times to enforce the covenants and provisions of this lease in strict accordance with the terms hereof, notwithstanding any conduct or custom on the part of the Lessor in refraining from so doing at any time or times; and further, that the failure of Lessor at any time or times to enforce its rights under said covenants and provisions strictly in accordance with the same not be construed as having created a custom in any way or manner contrary to the specific terms, provisions and covenants of this lease or as having in any way or manner modified the same.

(c) In the event of the failure of Lessee promptly to perform the covenants of Par. #8. (c) hereof, Lessor may go upon the demised premises and perform such covenants, the cost thereof, at the sole option of Lessor, to be charged to Lessee as additional and delinquent rent.

15. If the Lessee

(a) Does not pay in full when due any and all installments of rent and/or any other charge or payment herein reserved, included, or agreed to be treated or collected as rent and/or any other charge, expense, or cost herein agreed to be paid by the Lessee; or

(b) Violates or fails to perform or otherwise breaks any covenant or agreement herein contained; or

(c) Vacates the demised premises or removes or attempts to remove or manifests an intention to remove any goods or property therefrom otherwise than in the ordinary and usual course of business without having first paid and satisfied the Lessor in full for all rent and other charges then due or that may thereafter become due until the expiration of the then current term, above mentioned; or

(d) Becomes embarrassed or insolvent, or makes an assignment for the benefit of creditors, or if a petition in bankruptcy is filed by or against the Lessee or a bill in equity or other proceeding for the appointment of a receiver for the Lessee is filed, or if proceedings for reorganization or for composition with creditors under any State or Federal law be instituted by or against Lessee, or if the real or personal property of the Lessee shall be sold or levied upon

by any due process of law, then and in any or either of said events, there shall be deemed to be a breach of this lease, and thereupon ipso facto and without entry or other action by Lessor;

(d1) The rent for the entire unexpired balance of the term of this lease, as well as all other charges, payments, costs and expenses herein agreed to be paid by the Lessee, or at the option of Lessor any part thereof, and also all costs and officers' commissions including watchmen's wages and further including the five percent chargeable by Act of Assembly to the Lessor, shall, in addition to any and all instruments of rent already due and payable and in arrears and/or any other charge or payment herein reserved, included or agreed to be treated or collected as rent, and/or any other charge, expense or cost herein agreed to be paid by the Lessee which may be due and payable and in arrears, be taken to be due and payable and in arrears as if by the terms and provisions of this lease, the whole balance of unpaid rent and other charges, payments, taxes, costs and expenses were on that date payable in advance; and if this lease or any part thereof is assigned, or if the premises or any part thereof is sub-let, Lessee hereby irrevocably constitutes and appoints Lessor Lessee's agent to collect the rents due by such assignee or sub-lessee and apply the same to the rent due hereunder without in any way affecting Lessee's obligation to pay unpaid balance of rent due hereunder; or in the event of any of the foregoing at any time at the option of Lessor;

(d2) This lease and the term hereby created shall determine and become absolutely void without any right on the part of the Lessee to save the forfeiture by payment of any sum due or by other performance of any condition; term or covenant broken; whereupon, Lessor shall be entitled to recover damages for such breach in an amount equal to the amount of rent reserved for the balance of the term of this lease, less the fair rental value of the said demised premises, for the residue of said term.

16. In the event of any default as aforesaid, the Lessor, or anyone acting on Lessor's behalf, at Lessor's option:

(a) May lease said premises or any part or parts thereof to such person or persons as may in Lessor's discretion seem best and the Lessee shall be liable for any loss of rent for the balance of the then current term.

(b) Any re-entry or re-letting by Lessee under the terms hereof shall be without prejudice to Lessor's claim for damages and shall under no circumstances release Lessee from liability for such damages arising out of the breach of any of the covenants, terms and conditions of this lease.

17. It is understood and agreed that the Lessor hereof does not warrant or undertake that the Lessee shall be able to obtain a permit under any Zoning Ordinance or Regulation for such use as Lessee intends to make of the said premises, and nothing in this lease contained shall obligate the Lessor to assist Lessee in obtaining said permit; the Lessee further agrees that in the event a permit cannot be obtained by Lessee under any Zoning Ordinance, or Regulation, this lease shall not terminate without Lessor's consent, and the Lessee shall use the premises only in a manner permitted under such Zoning Ordinance or Regulation.

18. If rent and/or charges hereby reserved as rent shall remain unpaid on any day when the same should be paid Lessee hereby empowers any Prothonotary or attorney of any Court of Record to appear for Lessee in any and all actions which may be brought for rent and/or the charges, payments, costs and expenses reserved as rent, or agreed to be paid by the Lessee and/or to sign for Lessee an agreement for entering in any competent Court an amicable action or actions for the recovery of rent or other charges or expenses, and in said suits or in said amicable action or actions to confess judgment against Lessee for all or any part of the rent specified in this lease and then unpaid including, at Lessor's option, the rent for the entire unexpired balance of the term of this lease, and/or other charges, payments, costs and expenses reserved as rent or agreed to be paid by the Lessee, and for interest and costs together with an attorney's commission of 15%. Such authority shall not be exhausted by one exercise thereof, but judgment may be confessed as aforesaid from time to time as often as any of said rent and/or other charges reserved as rent shall fall due or be in arrears, and such powers may be exercised as well after the expiration of the original term and/or during any extension or renewal of this lease.

19. When this lease shall be determined by condition broken, either during the original term of this lease or any renewal or extension thereof and also when and as soon as the term hereby created or any extension thereof shall have expired, it shall be lawful for any attorney as attorney for Lessee to file an agreement for entering in any competent Court an amicable action and judgment in ejectment against Lessee and all persons claiming under Lessee for the recovery of possession of the herein demised premises, for which this lease shall be his sufficient warrant, whereupon, if Lessor so desires, a writ of habere facias possessionem may issue forthwith, without any prior writ or proceedings whatsoever, and provided that if for any reason after such action shall have been commenced the same shall be determined and the possession of the premises hereby demised remain in or be restored to Lessee. Lessor shall have the right upon any subsequent default or defaults, or upon the termination of this lease as hereinbefore set forth, to bring one or more amicable action or actions as hereinbefore set forth to recover possession of the said premises.

20. In any amicable action of ejectment and/or for rent in arrears, Lessor shall first cause to be filed in such action an affidavit made by him or someone acting for him setting forth the facts necessary to authorize the entry of judgment, of which facts such affidavit shall be conclusive evidence, and if a true copy of this lease (and of the truth of the copy such affidavit shall be sufficient evidence) be filed in such action, it shall not be necessary to file the original as a warrant of attorney, any rule of Court, custom or practice to the contrary notwithstanding.

21. All of the remedies hereinbefore given to Lessor and all rights and remedies given to it by law and equity shall be cumulative and concurrent. No determination of this lease or the taking or recovering of the premises shall deprive Lessor of any of its remedies or action against the Lessee for rent due at the time or which, under the terms hereof, would in the future become due as if there has been no determination, or for sums due at the time or which, under the terms hereof, would in the future become due as if there had been no determination, nor shall the bringing of any action for rent or breach of covenant, or the resort to any other remedy herein provided for the recovery of rent be construed as a waiver of the right to obtain possession of the premises.

22. This Agreement of Lease and all of its terms, covenants, and provisions are and each of them is subject and subordinate to any lease or other arrangement or right to possession, under which the Lessor is in control of the demised premises, to the rights of the owner or owners of the demised premises and of the land or buildings of which the demised premises are a part to all rights of the Lessor's landlord and to any and all mortgages and other encumbrances now or hereafter placed upon the demised premises or upon the land and/or buildings containing the same; and Lessee expressly agrees that if Lessor's tenancy, control, or right to possession shall terminate either by expiration, forfeiture or otherwise, then this lease shall thereupon immediately terminate and the Lessee shall, thereupon, give immediate possession and Lessee hereby waives any and all claims for damages or otherwise by reason of such termination as aforesaid.

23. In the event that the premises demised or any part thereof is taken or condemned for a public or quasi-public use, this lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor, and rent shall abate in proportion to the square feet of leased space taken or condemned or shall cease if the entire premises be so taken. In either event the Lessee waives all claims against the Lessor by reason of the complete or partial taking of the demised premises, and it is agreed that the Lessee shall not be entitled to any notice whatsoever of the partial or complete termination of this lease by reason of the aforesaid.

24. It is hereby mutually agreed that either party hereto may determine this lease at the end of the said term by giving to the other party prior written notice thereof in accordance with paragraph #1. (1), but in default of such notice, this lease shall continue upon the same terms and conditions in force immediately prior to the expiration or the term hereof as are herein contained for a further period as specified in paragraph #1. (m), and so on from renewal to renewal unless or until termination by either party hereto, giving the other the aforementioned written notice for renewal previous to expiration of the then current term; PROVIDED, however, that should this lease be continued for a further period under the terms hereinabove mentioned, any allowance given Lessee on the rent during the original term should not exceed beyond such original term, and further provided, however, that if Lessor shall have given such written notice prior to the expiration of any term hereby created, of its intention to change the terms and conditions of this lease, and Lessee shall not within thirty days from such notice notify Lessor of Lessee's intention to vacate the demised premises at the end of the then current term, Lessee shall be considered as Lessee under the terms and conditions mentioned in such notice for a further term as above provided, or for such further term as may be stated in such notice. In the event that Lessee shall give notice, as stipulated in this lease, of intention to vacate the demised premises at the end of the present term, or any renewal or extension thereof, and shall fail or refuse so to vacate the same on the date designated by such notice, then it is expressly agreed that Lessor shall have the option either (a) to disregard the notice so given as having no effect, in which case all the terms and conditions of this lease shall continue thereafter with full force precisely as if such notice had not been given, or (b) Lessor may, at any time within thirty days after the present term or any renewal or extension thereof, as aforesaid, give the said Lessee ten days written notice of his intention to terminate the said lease; whereupon the Lessee expressly agrees to vacate said premises at the expiration of the said period of ten days specified in said notice. All powers granted to Lessor by this lease may be exercised and all obligations imposed upon Lessee by this lease shall be performed by Lessee as well during any extension of the original term of this lease as during the original term itself.

25. If Lessor is unable to give Lessee possession of the demised premises, as herein provided, by reason of the holding over of a previous occupant, or by reason of any cause beyond the control of the Lessor, the Lessor shall not be liable in damages to the Lessee therefore, and during the period that the Lessee is unable to give possession, all rights and remedies of both parties shall be suspended.

Further Remedies of Lessor

Zoning

Confession of Judgement

Ejectment

Affidavit of Default

Remedies Cumulative

Subordination

Condemnation

Termination of Lease

Inability to give Possession

Additional Rent

26. Lessee agrees to pay as additional rent any and all sums which may become due by reason of the failure of Lessee to comply with any of the covenants of this lease and any and all damages, costs and expenses which the Lessor may suffer or incur by reason of any default of the Lessee or failure on his part to comply with the covenants of this lease, and also any and all damages to the demised premises caused by any act or neglect of the Lessee, his guests, agents, employees or other occupants of the demised premises.

Notices

27. All notices required to be given by Lessor to Lessee shall be sufficiently given by leaving the same upon the demised premises, but notices given by Lessee to Lessor must be given by certified mail, and as against Lessor the only admissible evidence that notice has been given by Lessee shall be a certified return receipt signed by Lessor or his agent.

Right to Enforce Definition of Lessor and Lessee

28. The Lessor shall have the right, at all times, to enforce any or all the convenience and provisions of this lease, notwithstanding the failure of the Lessor at any previous time, or times, to enforce his rights under any of the covenants and provisions of this lease.

29. The word "Lessor" as used herein, shall include the Owner and the Landlord, whether Person, Firm or Corporation, as well as the Heirs, Executors, Administrators, Successors and Assigns each of whom shall have the same rights, remedies, powers, privileges and obligations as though he, she, it or they had originally signed this lease as Lessor, including the right to proceed in his, her, its, or their own name to enter judgment by confession, or otherwise. The word "Lessee" as used herein, shall include Tenant, whether Person, Firm or Corporation, as well as the Heirs, Executors, Administrators, Successors and Assigns, each of whom shall have the same rights, remedies, powers, privileges, and shall have no other liabilities, rights, privileges or powers than he, she, it or they would have been under or possessed had he, she, it or they originally signed this lease as Lessee.

Broker

30. It is expressly understood and agreed between the parties hereto that the herein named Broker, his salesmen and employees or any officer or partner of Broker and any cooperating broker and his salesmen and employees and any officer or partner of the cooperating broker are acting as Broker only and will in no case whatsoever be held liable either jointly or severally to either party for the performance of any term of covenant of this agreement or for damages for the nonperformance thereof.

Heirs and Assignees

31. All rights and liabilities herein given to, or imposed upon, or waivers of the respective parties hereto shall extend to and bind the several and respective heirs, executors, administrators, successors and assigns of said parties; and if there shall be more than one Lessee, they shall all be bound jointly and severally by the terms, covenants and agreements herein, and the word "Lessee" shall be deemed taken to mean each and every person or party mentioned as a Lessee herein, be the same one or more; and if there shall be more one Lessee, any notice required or permitted by the terms of this lease may be given by or to any one thereof, and shall have the same force and effect as if given by or to all thereof. No rights, however, shall inure to the benefit of any assignee of Lessee unless the assignment of such assignee has been approved by Lessor in writing as aforesaid.

Lease Contains Entire Agreement

32. The Lessor and Lessee hereby agree that this lease sets forth all the promises, agreements, conditions and understandings between the Lessor, or Broker for Lessor, and the Lessee relative to the demised premises, and that there are no promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth, and any subsequent alteration, amendment, change or addition to this lease shall not be binding upon the Lessor or Lessee unless reduced to writing and signed by them.

Severability (11-74)

33. If any section, subsection, sentence, clause phrase or requirement of this lease is contrary to law or laws subsequently enacted, or should be found contrary to laws during the term or any renewal or extension thereof, the validity of the remaining portions shall not be affected thereby. The parties hereby agree that they would have agreed to each section, subsection, clause, sentence, phrase or requirement herein irrespective of the fact that one or more section, subsection sentence, clause, phrase or requirement was contrary to law or during the term or any renewal or extension thereof or are found to be contrary to the law.

Descriptive Heading

34. The descriptive headings used herein are for convenience only and they are not intended to indicate all of the matter in the sections which follow them. Accordingly, they shall have no effect whatsoever in determining the rights or obligations of the parties.

NOTICE TO PARTIES: WHEN SIGNED, THIS AGREEMENT IS A BINDING CONTRACT. Parties to this transaction are advised to consult an attorney before signing if they desire legal advice.

Approval (7-86)

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have hereunder set their hands and seals the day and year first above written.

WITNESS _____ LESSEE Nicole McFadden DATE 11-1-99
WITNESS _____ LESSEE Linda Marrone DATE 11-1-99
WITNESS _____ LESSEE _____ DATE _____

The Lessor hereby approves this contract on this 15th day of November 19 99 and in consideration of the services rendered in procuring the herein named Lessee and/or collection of rents as agreed and specified in part one of this lease, the Lessor agrees to pay the herein named Broker for Lessor a fee in the amount of _____ for obtaining Lessee together with a fee of _____ for the collection of rents during the term, renewal or extension of this lease or additional lease with the herein named Lessee. Should the Lessee purchase the demised premises from the Lessor during the term of this lease, or during a renewal, extension or any additional lease between said parties for the demised premises, or within a reasonable period of time after the expiration of any such lease, the Lessor agrees to pay the Broker for Lessor, at the time of settlement, a sales fee of/from the specified sale price.

WITNESS _____ LESSEE Albert Brown DATE 11-1-99
WITNESS _____ LESSEE _____ DATE _____
WITNESS _____ LESSEE _____ DATE _____

BROKER FOR LESSOR Albert's Cafe
ACCEPTED BY _____ 3180 Grant Avenue DATE 11-1-99
Philadelphia, PA

Exhibit B

CERTIFICATION OF COMPLETION

3180 MJT CORP
3180 GRANT AVE
PHILADELPHIA PA 19114-2541

LID 64657
License No. R-3657
Application Category 3A
Term Ending 2011

This certificate is required in accordance with the provisions of Section 3.8 of Title 40, Pennsylvania Code.

The Undersigned Noelle McNasby, President of Licensee,
and Albert Buoncrisiano, President of Former Licensee,

certifies that the financial information and arrangements as reported to the Board on PLCB-1842, Individual Financial Disclosure Affidavit, have been entirely consummated without change on the date and at the time indicated below, except as follows:

No exceptions

The undersigned also certifies that as of the date and time this Certification was signed, the licensee indicated above has legal possession of OR legally occupies the premises set forth herein.

The foregoing statements are provided under penalty of perjury, 18 Pa. C.S. §4904, and 47 P.S. §4-403(h), §4-436(j), §5-504(b), and/or §7-704.

7/14/11 1:11
DATE TIME

7-14-11 1:11
DATE TIME

Noelle McNasby member
SIGNATURE OF LICENSEE OR LEGALLY AUTHORIZED REPRESENTATIVE

Albert Buoncrisiano
SIGNATURE OF FORMER LICENSEE OR LEGALLY AUTHORIZED REPRESENTATIVE
(REQUIRED FOR PERSON-TO-PERSON & DOUBLE TRANSFERS ONLY)

NOTE: This certificate must be completed and submitted to the Board within 15 days of transaction completion (settlement), affirming that the financial arrangements were completed as reported or modified and that the licensee indicated herein has legal possession of or legally occupies the subject premises. It must be executed by the same person(s) who signed the application. In the case of a limited liability company, corporation or a club, the member(s)/officer(s) authorized by resolution to sign the application must execute this certificate.

A COPY OF THIS COMPLETED FORM MUST BE ATTACHED TO THE "CERTIFICATE OF APPROVAL" ISSUED BY THE PLCB'S BUREAU OF LICENSING TO INITIATE TEMPORARY OPERATING AUTHORITY. THE ORIGINAL DOCUMENT MUST BE SUBMITTED TO THE PLCB WITHIN 15 DAYS OF THE TRANSACTION COMPLETION DATE (SETTLEMENT).