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Filing date: **06/11/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91194188
Party	Defendant Sprinkles Cupcakes, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SOFT SERVE, INC. d/b/a SPRINKLES,	)	
	)	
Opposer/Petitioner,	)	<b>Opposition No. 91194188</b>
	)	Opposition No. 91195669
v.	)	Opposition No. 91195985
	)	Opposition No. 91195986
SPRINKLES CUPCAKES, INC.,	)	Opposition No. 91196035
	)	Opposition No. 91196061
Applicant/Respondent.	)	Opposition No. 91196087
	)	Cancellation No. 92053109

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**DECLARATION OF JOHN L. SLAFSKY**

1. I am a member of Wilson Sonsini Goodrich & Rosati, P.C., counsel for Applicant/Respondent Sprinkles Cupcakes, Inc. ("Sprinkles") in this matter. I have personal knowledge of the facts in this declaration, and, if called as a witness, I could competently testify to them.
2. Attached hereto as Exhibit 1 is a true and accurate copy of the Board's August 26, 2011 order suspending this proceeding pending the Board's ruling on Soft Serve's summary judgment motion.
3. Attached hereto as Exhibit 2 is a true and accurate copy of the Board's March 13, 2012 order in this proceeding granting, in part, Sprinkles' motion pursuant to Rule 56(d).
4. Attached hereto as Exhibit 3 is a true and accurate copy of a photo of a sign displayed outside of Soft Serve, Inc.'s d/b/a SPRINKLES ("Soft Serve's") store in Potomac, Maryland (the "Potomac Store").
5. Attached hereto as Exhibit 4 is a true and accurate copy of pages 267-275 from the transcript of the May 10, 2012 deposition of Thomas John Orban in this proceeding ("Orban Deposition").

6. Attached hereto as Exhibit 5 is a true and accurate copy of page 91 from the transcript of the Orban Deposition.

7. Attached hereto as Exhibit 6 are true and accurate copies of a signed and unsigned June 27, 2002 amendment to Soft Serve's retail space lease for the Potomac Store, entitled "Third Amendment To Potomac Place Shopping Center Retail Space Lease."

8. Attached hereto as Exhibit 7 is a true and accurate copy of July 1, 2002 correspondence and related documents from Zuckerman Gravely Management, Inc. to Thomas Orban at I Can't Believe It's Yogurt ("ICBY").

9. Attached hereto as Exhibit 8 is a true and accurate copy of Soft Serve's December 1988 lease agreement for the Potomac Store entitled "Potomac Shopping Center Retail Space Lease."

10. Attached hereto as Exhibit 9 is a true and accurate copy of October 18, 2002 correspondence from Thomas Orban to his landlord, Sheldon Zuckerman.

11. Attached hereto as Exhibit 10 is a true and accurate copy of a November 21, 2002 trade name application to the Maryland Department of Assessment and Taxation for the trade name SPRINKLES, as well as related trade name approval sheets.

12. Attached hereto as Exhibit 11 is a true and accurate copy of a December 18, 2002 application to the Department of Health and Human Services of Montgomery County, Maryland for a food services permit.

13. Attached hereto as Exhibit 12 is a true and accurate copy of a computer-generated template for an outdoor SPRINKLES sign commissioned by Soft Serve for the Potomac Store; the template is dated December 31, 2002.

14. Attached hereto as Exhibit 13 is a true and accurate copy of an October 22, 2003 invoice from Sterico, Inc. to Soft Serve for payment for a SPRINKLES sign.

15. Attached hereto as Exhibit 14 is a true and accurate copy of July 21, 2003 correspondence from American Express to Soft Serve.

16. Attached hereto as Exhibit 15 is a true and accurate copy of Discover Business Service's monthly detail report of services provided to Soft Serve in October 2003.

17. Attached hereto as Exhibit 16 are true and accurate copies of excerpts from various phone directories published for the area around Potomac, Maryland from the year 1999 through the year 2004.

18. Attached hereto as Exhibit 17 is a true and accurate copy of pages 170-172 from the transcript of the Orban Deposition.

19. Attached hereto Exhibit as 18 is a true and accurate copy of an April 15, 2009 article from the *Potomac Almanac* entitled "Sprinkles Stays."

20. Attached hereto as Exhibit 19 is a true and accurate copy of the Petition to Cancel Sprinkles' U.S. Trademark Registration No. 3,306,772, filed with the Board by Soft Serve on September 29, 2010.

21. Attached hereto as Exhibit 20 is a true and accurate copy of Opposer's Supplemental Answers and Objections to Applicant's First Set of Interrogatories, served on Sprinkles on November 5, 2010.

22. Attached hereto as Exhibit 21 are true and accurate copies of correspondence between Soft Serve's counsel and Aaron Yoches in April-June of 2011; an unsigned, draft declaration for Yoches' review and signature; and an amended declaration signed by Aaron Yoches on June 3, 2011.

23. Attached hereto as Exhibit 22 is a true and accurate copy of pages 183-186 from the transcript of the Orban Deposition.

24. Attached hereto as Exhibit 23 is a true and accurate copy of pages 206-208 from the transcript of the Orban Deposition.

25. Attached hereto as Exhibit 24 are true and accurate copies of 47 checks allegedly offered as payment by Soft Serve to third parties between April 2002 and January 2004; four checks have the word "SPRINKLES" hand-written in the upper left-hand corner.

26. Attached hereto as Exhibit 25 is a true and accurate copy of pages 111-125 from the transcript of the Orban Deposition.

27. Attached hereto as Exhibit 26 is a true and accurate copy of pages 140-161 from the transcript of the Orban Deposition.

28. Attached hereto as Exhibit 27 is a true and accurate copy of pages 233-253 from the transcript of the Orban Deposition.

29. Attached hereto as Exhibit 28 is a true and accurate copy of Opposer's Supplemental Disclosures dated November 4, 2010.

30. Attached hereto as Exhibit 29 is a true and accurate copy of the May 11, 2011 Declaration of Saira Haider.

31. Attached hereto as Exhibit 30 is a true and accurate copy of an April 25, 2012 cover letter that accompanied Soft Serve's production of documents with Bates Nos. OP 5374-5686.

32. Attached hereto as Exhibit 31 is a true and accurate copy of Applicant's (Sprinkles') First Set of Requests for Production to Opposer, served on Soft Serve on June 11, 2010.

33. Attached hereto as Exhibit 32 is a true and accurate copy of Sprinkles' November 2, 2010 Answer in Cancellation No. 92053109.

34. Attached hereto as Exhibit 33 is a true and accurate copy of a TARR record for SPRINKLES Reg. No. 3,306,772, printed from the United States Patent and Trademark Office website on June 5, 2012.

35. Attached hereto as Exhibit 34 is a true and accurate copy of a November 3, 2008 amendment to Soft Serve's retail space lease for the Potomac Store, entitled "Fourth Amendment To Potomac Place Shopping Center Retail Lease."

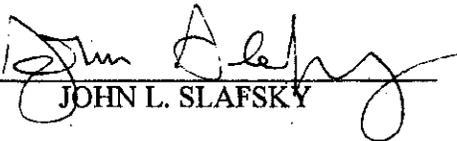
36. Attached hereto as Exhibit 35 is a true and accurate copy of pages 223-228 from the transcript of the Orban Deposition.

37. Attached hereto as Exhibit 36 are true and accurate copies of screenshots taken of Soft Serve's SPRINKLES-branded Twitter feed as it appeared on June 6, 2012.

38. Attached hereto as Exhibit 37 are true and accurate copies of screenshots taken of Soft Serve's SPRINKLES-branded Facebook timeline as it appeared on June 6, 2012.

39. Attached hereto as Exhibit 38 is a true and accurate copy of pages 281-288 from the transcript of the Orban Deposition.

I declare under penalty of perjury that the foregoing is true and accurate. Executed at Palo Alto, California on June 8, 2012.

By:   
JOHN L. SLAFSKY

# **Exhibit 1**

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Baxley

Mailed: August 26, 2011

Opposition No. 91194188  
Opposition No. 91195669  
Opposition No. 91195985  
Opposition No. 91195986  
Opposition No. 91196035  
Opposition No. 91196061  
Opposition No. 91196087  
Cancellation No. 92053109

Soft Serve, Inc. d/b/a  
Sprinkles

v.

Sprinkles Cupcakes, Inc.

**Andrew P. Baxley, Interlocutory Attorney:**

Proceedings herein are suspended pending disposition of plaintiff's motion for summary judgment in Cancellation No. 92053109.<sup>1</sup> See Trademark Rules 2.117(c) and 2.127(d).

Any paper filed during the pendency of this motion which is not relevant thereto will be given no consideration.

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<sup>1</sup> The notice of discovery deposition upon written questions of Saira Haider that defendant filed on August 22, 2011 is noted. Unless defendant files and is granted a motion for leave to take such deposition as part of Fed. R. Civ. P. 56(d) discovery prior to responding the motion for summary judgment, activities in connection with that deposition should cease until the motion for summary judgment is decided.

The parties to these consolidated proceedings are also involved in Cancellation Nos. 92054376 and 92054401, which have been consolidated in a separate order and will be consolidated with these proceedings once the motion for summary judgment is decided.

# **Exhibit 2**



UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Baxley

Mailed: March 13, 2012

Opposition No. 91194188  
Opposition No. 91195669  
Opposition No. 91195985  
Opposition No. 91195986  
Opposition No. 91196035  
Opposition No. 91196087  
Cancellation No. 92053109

Soft Serve, Inc. d/b/a  
Sprinkles

v.

Sprinkles Cupcakes, Inc.

**Andrew P. Baxley, Interlocutory Attorney:**

In Cancellation No. 92053109, plaintiff seeks to cancel defendant's Registration No. 3306772 for the mark SPRINKLES in standard character form for "bakery goods" in International Class 30 and "retail shops featuring baked goods" in International Class 35<sup>1</sup> on the ground of priority/likelihood of confusion with its previously used trade name and mark SPRINKLES for "baked goods and retail stores selling same."<sup>2</sup> Defendant, in its answer, denied the

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<sup>1</sup> Such registration was issued on October 9, 2007, based on a use-based application that defendant filed on March 3, 2006. In that registration, defendant alleges February 1, 2004 as the date of first use and date of first use in commerce in International Class 30 and April 13, 2005 as the date of first use and date of first use in commerce in International Class 35.

<sup>2</sup> Although not stated in the petition to cancel, the priority/likelihood of confusion claim is pursuant to Trademark Act Section 2(d), 15 U.S.C. Section 1052(d).

Opposition Nos. 91194188; 91195669, 91195985, 91195986, 91196035, and 91196087; Cancellation No. 92053109

salient allegations of the petition to cancel and asserted affirmative defenses.

On August 11, 2011, plaintiff filed a motion for summary judgment in Cancellation No. 92053109.<sup>3</sup> See Trademark Rule 2.119(c). On September 15, 2011, defendant timely filed a motion for leave to take discovery under Fed. R. Civ. P. 56(d) prior to filing a brief in response to the motion for summary judgment. See Trademark Rules 2.119(c) and 2.127(e)(1). The motion for leave to take Rule 56(d) discovery has been fully briefed.

Through the motion for Rule 56(d) discovery, defendant seeks leave of the Board to: (1) take discovery depositions that it noticed prior to the filing of the motion for summary judgment;<sup>4</sup> (2) receive the documents responsive to

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In the petition to cancel, plaintiff also alleges that that, in view of the similarity of the parties' marks and "the related nature of the uses therefor, [defendant]'s mark may disparage and falsely suggest a connection with" plaintiff. Claims of disparagement and false suggestion of a connection are raised under Trademark Act Section 2(a), 15 U.S.C. Section 1052(a). However, the false suggestion and disparagement grounds that plaintiff is alleging are merely alternative means of alleging the parties' marks are confusingly similar. See *Miller Brewing Co. v. Anheuser-Busch Inc.*, 27 USPQ2d 1711 (TTAB 1993). Accordingly, the Board will treat the allegations of disparagement and false suggestion as part of plaintiff's Section 2(d) claim and not as separate Section 2(a) claims.

<sup>3</sup> The motion for summary judgment was filed five weeks after the Board issued its July 6, 2011 order granting in part plaintiff's motion to compel discovery and with eight weeks remaining in the discovery period in Opposition Nos. 91195669, 91195985, 91195986, 91196035, 91196061, and 91196087 and Cancellation No. 92053109.

<sup>4</sup> Those noticed deponents are identified as plaintiff (under Rule 30(b)(6)), plaintiff's principal Tom Orban, and plaintiff's former employees Aaron Yoches and Sara Haider.

Opposition Nos. 91194188, 91195669, 91195985, 91195986, 91196035, and 91196087; Cancellation No. 92053109

defendant's second set of document requests in accordance with the responses to document requests that defendant served on August 26, 2011; (3) take discovery depositions of declarants in support of the motion for summary judgment; and (4) take discovery regarding plaintiff's adoption and use of the pleaded SPRINKLES trade name and mark. In particular, defendant seeks to take discovery regarding (1) plaintiff's assertion of priority; (2) plaintiff's alleged likelihood of confusion between the marks at issue; and (3) defendant's pleaded affirmative defenses of laches, waiver, acquiescence, and estoppel.

As an initial matter, defendant's affirmative defenses of laches, waiver, acquiescence, and estoppel are insufficient because they set forth no factual basis therefor. Mere conclusory allegations of equitable defenses, such as defendant's, are insufficient because they do not give fair notice as to the basis for asserting those defenses. See *Lincoln Logs Ltd. v. Lincoln Precut Log Homes, Inc.*, 971 F.2d 732, 23 USPQ2d 1701 (Fed. Cir. 1992); *Heisch v. Katy Bishop Productions Inc.*, 45 USPQ2d 1219 (N.D. Ill. 1997); *Midwest Plastic Fabricators Inc. v. Underwriters Laboratories Inc.*, 5 USPQ2d 1067 (TTAB 1987); Wright & Miller, *Federal Practice and Procedure: Civil 2d*, Section 1274 (1990 & Supp. 2001). Accordingly, the Board *sua sponte*

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Opposition Nos. 91194188, 91195669, 91195985, 91195986, 91196035, and 91196087; Cancellation No. 92053109

strikes defendant's affirmative defenses of laches, waiver, acquiescence and estoppel. See Fed. R. Civ. P. 12(f); TBMP Section 506.01 (3d ed. 2011).

Turning to the Rule 56(d) motion, a party that believes that it cannot effectively oppose a motion for summary judgment without first taking discovery may file a request with the Board for time to take the needed discovery. See Fed. R. Civ. P. 56(d); TBMP Section 528.06. The request must be supported by an affidavit showing that the nonmoving party cannot, for reasons stated therein, present by affidavit facts essential to justify its opposition to the motion. In such affidavit, the party must state therein the reasons why it is unable, without discovery, to present by affidavit facts sufficient to show the existence of a genuine issue of material fact for trial. See TBMP Section 528.06.

The Board has stricken defendant's affirmative defenses of laches, waiver, acquiescence and estoppel *supra*. Accordingly, defendant's motion for Rule 56(d) discovery is moot to the extent that defendant seeks discovery in connection with its affirmative defenses.

Defendant's Rule 56(d) motion improperly includes extensive arguments and evidence that responds on the merits to the motion for summary judgment. A party should not respond on the merits to a motion for summary judgment in a

Opposition Nos. 91194188, 91195669, 91195985, 91195986, 91196035, and 91196087; Cancellation No. 92053109

motion for Rule 56(d) discovery. See *Ron Cauldwell Jewelry, Inc. v. Clothestime Clothes, Inc.*, 63 USPQ2d 2009 (TTAB 2002); *Dyneer Corp. v. Automotive Products plc*, 37 USPQ2d 1251, 1253 (TTAB 1995).

In addition, contrary to defendant's assertion, defendant is not entitled to outstanding discovery requests that it requested prior to the filing of the motion for summary judgment and is not entitled to take discovery depositions that it noticed prior to such filing. Rather, the August 26, 2011 order in which the Board suspended proceedings pending the Board's decision on the motion for summary judgment tolled general discovery herein. Compare Trademark Rules 2.120(e)(2) and 2.127(d); TBMP Sections 523.01 and 528.03. See also *Leeds Technologies Ltd. v. Topaz Communications Ltd.*, 65 USPQ2d 1303 (TTAB 2002). Rule 56(d) discovery is limited to that which the nonmoving party must have in order to oppose the motion for summary judgment, even where the nonmoving party had, at the time when the summary judgment motion was filed, outstanding and unanswered requests for broader discovery. See TBMP Section 528.06. Based on the foregoing, the motion for Rule 56(d) discovery is denied with regard to discovery depositions that defendant noticed but did not take prior to the filing of plaintiff's motion for summary judgment and defendant's

Opposition Nos. 91194188, 91195669, 91195985, 91195986, 91196035, and 91196087; Cancellation No. 92053109

second set of document requests. Nonetheless, the timing of the filing of plaintiff's motion for summary judgment, i.e., with eight weeks remaining in the discovery period and after defendant had noticed several discovery depositions, indicates that plaintiff used the motion for summary judgment as a means of cutting off general discovery well in advance of the October 7, 2011 close of discovery as last reset in the Board's July 6, 2011 order.

After reviewing the parties' arguments and exhibits, the Board finds that defendant has established its need for discovery regarding plaintiff's adoption and alleged prior analogous use and actual use of its pleaded SPRINKLES trade name and mark, the nature of plaintiff's pleaded baked goods sold and retail shop services rendered under the pleaded trade name and mark, and incidents of actual confusion between plaintiff's pleaded trade name and mark and defendant's involved mark prior to responding to the motion for summary judgment.<sup>5</sup>

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<sup>5</sup> Defendant asserts in its answer that it has "superior rights" in the SPRINKLES mark and variations thereof based on its ownership of Registration Nos. 2938800 and 3004757. While a plaintiff may rely upon any confusingly similar mark which it has either registered or any confusingly similar mark or trade name which it has previously used, a defendant can rely upon only its rights in its subject mark, except in very limited situations. See *Baroid Drilling Fluids Inc. v. Sun Drilling Products*, 24 USPQ2d 1048 (TTAB 1992).

One such situation involves a defendant's claim that, because the defendant already owns a substantially similar registered mark for substantially similar goods and/or services, a second registration (or second registration sought) will cause no added

Opposition Nos. 91194188, 91195669, 91195985, 91195986, 91196035, and 91196087; Cancellation No. 92053109

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injury to the plaintiff. See *Morehouse Mfg. Corp. v. J. Strickland & Co.*, 407 F.2d 881, 160 USPQ 715 (CCPA 1969) ("a Morehouse defense"). Another such situation involves a defendant's attempt to defeat a plaintiff's priority of use claim by virtue of the defendant's earlier use of a mark which is the legal equivalent of defendant's involved mark for substantially identical goods or services through "tacking." See *Van Dyne-Crotty Inc. v. Wear-Guard Corp.*, 926 F.2d 1156, 17 USPQ2d 1866 (Fed. Cir. 1991), aff'g 18 USPQ2d 1804 (TTAB 1990); *Big Blue Products Inc. v. International Business Machines Corp.*, 19 USPQ2d 1072 (TTAB 1991). Defendant does not clearly indicate in its answer whether it intends to rely upon a Morehouse defense or tacking in defense of the petition to cancel.

Plaintiff, in its motion for summary judgment, relies on the filing dates of food service facility/eating and drinking establishment permit application in Montgomery County, Maryland and trade name application in the State of Maryland and the invoice date for store signage in support of its motion. Such dates appears intended to establish use analogous to trademark or service mark use in support of its assertion of priority herein. A party can establish analogous use only where that analogous use is of such a nature and extent as to create public identification of the target term with the party's product or service. See e.g., *National Cable Television Ass'n, Inc. v. American Cinema Editors, Inc.*, 937 F.2d 1572, 1578, 19 USPQ2d 1424, 1429 (Fed. Cir. 1991). Examples of analogous use are advertising brochures, catalogs, newspaper ads, and articles in newspapers and trade publications that predate actual use of a mark in commerce. See *T.A.B. Systems v. PacTel Teletrac*, 77 F.3d 1372, 37 USPQ2d 1879 (Fed. Cir. 1996). See also Trademark Act Section 45, 15 U.S.C. Section 1127.

In determining likelihood of confusion, two key factors are the degree of similarity of the parties' marks and the degree of similarity of their respective goods. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); *Fram Trak Industries Inc. v. WireTracks LLC*, 77 USPQ2d 2000 (TTAB 2006). The Board notes that, in Cancellation No. 92053109, plaintiff's common law trade name and word mark is SPRINKLES, while defendant's involved mark is SPRINKLES in standard character form. See *Citigroup Inc. v. Capital City Bank Group Inc.*, 98 USPQ2d 1253 (Fed. Cir. 2011) (a word mark in standard character form encompasses any form of that mark).

Regarding the goods and services at issue, defendant attempts, in support of its Rule 56(d) motion, to limit the scope of the goods and services recited in its involved registration based on the price of goods sold through its retail shops. However, the identification of goods and services in defendant's involved registration, i.e., "bakery goods" and "retail shops featuring baked goods," is not limited as to trade channels or purchasers. Therefore, the Board must presume that defendant's identified goods and services consist of all goods and services of the type and that those goods and services are marketed in all normal

Opposition Nos. 91194188, 91195669, 91195985, 91195986, 91196035, and 91196087; Cancellation No. 92053109

and likelihood of confusion herein.

In view thereof, defendant's motion for Rule 56(d) discovery is granted, but only to the extent that defendant is allowed until sixty days from the mailing date set forth in this order to take depositions of: (1) Thomas Orban regarding on the issues of plaintiff's adoption and alleged prior analogous use and actual use of its pleaded SPRINKLES trade name and mark, the nature of plaintiff's pleaded baked goods sold and retail shop services rendered under the pleaded trade name and mark, and incidents of actual confusion between plaintiff's pleaded trade name and mark and defendant's involved mark; and (2) Benson Panga, Glyeb Koumasinski, Juliet Hope, and Julianna Kariman regarding instances of actual confusion between plaintiff's pleaded trade name and mark and defendant's involved mark. Defendant may include document requests in its notice of deposition of Mr. Orban. See TBMP Section 406.01.

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trade channels for such goods and services and to all normal classes of purchasers for such goods and services. See *In re Elbaum*, 211 USPQ 639 (TTAB 1981). In view of the foregoing, likelihood of confusion will be determined based on the identified goods and services in defendant's involved registration and what the evidence of record shows plaintiff's pleaded "baked goods and retail stores selling same" to be. See *Barbara's Bakery Inc. v. Landesman*, 82 USPQ2d 1283 (TTAB 2007); *Fram Trak Industries Inc. v. WireTracks LLC*, *supra*. The Board notes that, in support of the motion for summary judgment, plaintiff has submitted evidence of sales of bakery goods under the SPRINKLES mark through its retail store. See, e.g., declaration of Thomas Orban.

Opposition Nos. 91194188, 91195669, 91195985, 91195986, 91196035, and 91196087; Cancellation No. 92053109

Defendant is allowed until ninety days from the mailing date set forth in this order to file a brief in response to the motion for summary judgment. Plaintiff's reply brief is due in accordance with Trademark Rules 2.119(c) and 2.127(e) (1).

Because the Board has reset remaining briefing in connection with the motion for summary judgment, the Board will not consider any arguments or evidence that the parties submitted in the briefing of the Rule 56(d) motion in deciding the motion for summary judgment. See Trademark Rule 2.127(e) (1). The motion for summary judgment will be decided based only on the briefing of that motion and exhibits submitted therewith.

Proceedings herein otherwise remain suspended.

# **Exhibit 3**



EXHIBIT  
27  
OKBAM

# **Exhibit 4**



# **Exhibit 5**



# **Exhibit 6**



# **Exhibit 7**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SOFT SERVE, INC. d/b/a SPRINKLES,	)	
	)	
Opposer/Petitioner,	)	<b>Opposition No. 91194188</b>
	)	Opposition No. 91195669
v.	)	Opposition No. 91195985
	)	Opposition No. 91195986
SPRINKLES CUPCAKES, INC.,	)	Opposition No. 91196035
	)	Opposition No. 91196061
Applicant/Respondent.	)	Opposition No. 91196087
	)	Cancellation No. 92053109
	)	

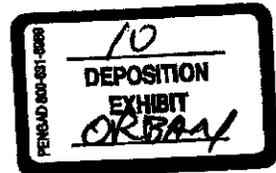
**EXHIBIT 7 TO THE DECLARATION OF JOHN L. SLAFSKY**

**CONFIDENTIAL — ATTORNEYS' EYES ONLY**  
**RESTRICTED DOCUMENTS PURSUANT TO 37 CFR § 2.126**

**FILED UNDER SEAL SUBJECT TO PROTECTIVE ORDER**

These materials have been designated confidential, pursuant to a Protective Order, and are not to be disclosed or revealed except to the Trademark Trial and Appeal Board and counsel for the parties, or by order of the Board.

# **Exhibit 8**



2587.50	March	2587.50	paid (Tax)
115.00		JULY	paid
<u>2702.50</u>	+ comm + Rent Tax	AUG	paid
	EST.	SEPT.	1107.50 <u>paid</u>

POTOMAC PLACE SHOPPING CENTER

RETAIL SPACE LEASE

Potomac Place Limited Partnership

Landlord

and

Soft Serve, Inc.

S/A I Can't Believe It's Yogurt

*new rent 86% of 1st year  
plus 3 mo*

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ARTICLE I

BASIC LEASE PROVISIONS

ENUMERATION OF EXHIBITS

SECTION 1.01 Basic Lease Provisions.

(A) DATE: December \_\_\_\_\_, 1988

(B) LANDLORD: Potomac Place Limited Partnership

(C) ADDRESS OF LANDLORD: c/o The Sigel/Zuckerman Company  
Two Wisconsin Circle, Suite 800  
Chovy Chase, MD 20815

(D) TENANT: Soft Serve, Inc., a Maryland Corporation

(E) ADDRESS OF TENANT: c/o Thomas J. O'ban  
3136 Florence Terrace  
Olney, MD 20832

PERMITTED USE (Section 3.02): Retail sale of "I Can't Believe It's Yogurt" ~~\_\_\_\_\_~~ ~~\_\_\_\_\_~~ and ~~\_\_\_\_\_~~ off and on premises consumption without seating (or, if applicable, the minimum seating required by zoning code).

TENANT'S TRADE NAME (Section 3.02): "I Can't Believe It's Yogurt."

SHOPPING CENTER (Section 2.01): Potomac Place Shopping Center ("Shopping Center"), situated in the Village of Potomac, Montgomery County, Maryland.

PREMISES (Section 2.01): That portion of the Shopping Center outlined in red on Exhibit A with an approximate area of ~~\_\_\_\_\_~~ Exhibit A is attached solely for the purposes of showing the location of the Premises.

LEASE YEAR: Twelve consecutive calendar months starting with the Rental Commencement Date. If, however, the Rental Commencement Date is other than the first day of a calendar month, the first Lease Year shall be the period of time from said Rental Commencement Date to the end of the month in which said Rental Commencement Date shall occur plus the following twelve (12) calendar months. Each Lease Year thereafter shall be a successive period of twelve (12) calendar months.

LEASE DATES:

COMMENCEMENT DATE: The date of full execution of this lease by Landlord and Tenant (the "Commencement Date").

LEASE TERM: The term of the Lease commences on the Commencement Date and terminates five (5) years after the Rental Commencement Date (the "Lease Term").

RENTAL COMMENCEMENT DATE: The earlier of forty-five (45) days after Landlord's delivery of possession of the Premises or the date Tenant opens for business, (the "Rental Commencement Date").

FIXED MINIMUM RENT (Section 3.01): 451.00 / 31,250

(a) Two Thousand Five Hundred Eighty-Seven and 50/100 Dollars ~~\_\_\_\_\_~~ each calendar month of each Lease Year (the first through the fifth Lease Year inclusive).

ANNUAL ESCALATION: One hundred (100%) percent of any increase in ~~\_\_\_\_\_~~ (with a minimum annual increase of three ~~\_\_\_\_\_~~) and a maximum of ~~\_\_\_\_\_~~.

Handwritten notes: 451.00 / 31,250  
451.00 / 31,250

DATE 1-1-74

6-1 Dec 31 1973

OPTION TERM: Provided that Tenant 1) is not in default hereunder and 2) ~~\_\_\_\_\_~~ Tenant shall have the right to extend this lease of one (1) five-year renewal term. ~~\_\_\_\_\_~~ Rent in years two through five of the option period shall be escalated by one hundred (100%) percent of any increase in the CPI, with a minimum increase of three (3%) percent and a maximum of five (5%) percent annually, such escalation to be effective as of the first day of each such option year.

The Option Term shall be subject to the same terms and conditions as the Initial Lease Term. Notwithstanding anything else to the contrary, in no event shall the rental rate be less than that paid by Tenant immediately prior to the effective date of the Option Term. In the absence of agreement between Landlord and Tenant regarding the prevailing market rent, the Option Term rental ~~\_\_\_\_\_~~ as described in Exhibit B.

PERCENTAGE RENT RATE (Section 3.02): Six percent (6%) of Gross Receipts in excess of Fixed Minimum Rent.

COMMON AREA MAINTENANCE PAYMENT (Section 4.01): Proportional Share 6/10/66,600: 1.04%.

REAL ESTATE TAX EXPENSE (Section 4.01): Proportional Share 6/10/66,600: 1.04%.

ADVERTISING AND PROMOTION (Section 5.01): \$2.00 per square foot per annum, or \$115.00 per month.

PREPAID RENT: \$2,507.50 paid upon execution of this lease to be applied to the first installment of Fixed Minimum Rent due hereunder.

~~\_\_\_\_\_~~ (Section 3.07): Two Thousand Five Hundred Eighty-Eight and 50/100 Dollars ~~\_\_\_\_\_~~ which will be ~~\_\_\_\_\_~~ as provided in Section 3.07.

COUNTERPARTS: Thomas J. Urban  
Landlord's Address: c/o Soft Serve, Inc.  
3136 St. Florence Terrace  
Olney, MD 20832

EXCLUSIVE GUARANTEE: Tenant shall be the only frozen yogurt store in the Shopping Center, in accordance with the terms and conditions outlined in Exhibit F attached hereto.

RADIUS RESTRICTION: 1 mile.

SECTION 1.02 Significance of a Basic Lease Provision.

Each reference in this "Lease" to any of the Basic Lease Provisions contained in Section 1.01 of this Article shall be deemed and construed to incorporate all of the terms thereof. The Basic Lease Provisions shall be construed in connection with and limited by any such reference.

SECTION 1.03 Enumeration of Exhibits.

The exhibits enumerated in this Section and attached to this lease are incorporated in this lease by this reference and are to be construed as a part of this lease.

- Exhibit A. Site Plan of Shopping Center.
- Exhibit B. Specifications (Landlord's Mark, Tenant's Mark and Sign Criteria).
- Exhibit C. Performance Schedule and Approval's Required for Tenant's Improvements.
- Exhibit D. Definition of the "Three Hooker Method".
- Exhibit E. Tenant's Business Plan.
- Exhibit F. Asbestos Report on the Premises.
- Exhibit G. Restrictive Covenants.
- Exhibit H. Delivery of Reservation

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ARTICLE II

LEASE OF PREMISES AND QUIET ENJOYMENT

SECTION 2.01 Description and General Obligations.

Landlord owns or controls the land shown on Exhibit A, together with the certain buildings and improvements thereon depicted, all of which constitute the Shopping Center. In consideration of the rents, covenants and

agreements received and contained in this Lease, Landlord hereby leases and conveys the Premises to Tenant and Tenant rents same, in order that Tenant shall continuously operate its retail business operations thereon in accordance with its Permitted Use, subject only to the terms and conditions herein contained and all liens, encumbrances, easements, restrictions, zoning laws, and governmental or other regulations affecting the Shopping Center. The approximate location of the Premises is outlined in red on the Site Plan attached hereto as Exhibit A. Landlord hereby certifies that the Premises are Zoned C-1 and as such a frozen yogurt store is a permitted use.

Tenant agrees to operate one hundred percent of the Premises during the entire term of this Lease unless prevented from doing so because of fire, accident, or acts of God, and to conduct its business at all times in a high class and reputable manner, maintaining at all times a full staff of employees and a full and complete stock of merchandise. Tenant shall install and maintain a display of merchandise in the display window (if any) of the Premises and shall keep the display window well lighted during all business hours, and during such other hours as may be designated by Landlord. Tenant shall have the right to extinguish all lights except for emergency lights and the exterior rear light at 11 p.m. Tenant shall promptly comply with all laws and ordinances and lawful orders and regulations affecting the Premises. Tenant agrees that it will conduct its business in the Premises ~~seven days per week from 11:00 a.m. to 9:00 p.m. daily~~ provided, however, that Tenant shall have the right to remain open until 10:00 p.m. Notwithstanding the foregoing, Tenant shall have the right to remain closed on New Year's Day, Easter Sunday, The Fourth of July, Thanksgiving and Christmas Day. In addition, Tenant may close on such other days as Tenant and Landlord may agree in writing. Tenant further agrees that it will conduct its business in a lawful manner. Tenant warrants and covenants that it will not use any space outside the Premises, or the sidewalks adjacent thereto, for purposes of display, sale or storage, without Landlord's written consent, which may be withheld at Landlord's sole discretion.

and from noon until 9pm Sundays

TO  
Tenant reserves the right to stay open for additional hours without supplementary charges. Landlord is not obligated to provide common area services during these extra hours of store operation.

The Premises shall include only the appurtenances specifically granted in this Lease with Landlord specifically excepting and reserving for itself the roof, the air space above the roof, the space below the floor, the exterior portions of the Premises (other than the storefront), and the right to install, maintain, use, repair and replace pipes, ductwork, conduits, utility lines, and wires in the Premises pursuant to the terms hereof. Landlord agrees that where possible all work in the Premises shall be performed in a manner which shall not unreasonably interfere with the normal business operations of Tenant. Emergency repairs may be undertaken at any time.

SECTION 2.02 Use of Additional Area.

The use and occupation by Tenant of the Premises shall include a license contemporaneous with Tenant's right to occupy the Premises to use in common with the others entitled thereto, the Common Areas, as may be designated from time to time by Landlord, subject however to the terms and conditions of this Lease and to reasonable rules and regulations for the use thereof as prescribed from time to time by Landlord. The purpose of the Site Plan is to show the approximate location of the Premises. Landlord reserves the right at any time to relocate the building, automobile parking areas and other Common Areas; to change the number of buildings, buildings' dimensions, the number of floors in any of the buildings, store dimensions, Common Areas, the identity and type of other stores and tenancies, and the right to construct other buildings or improvements in the Shopping Center from time to time and to construct double-deck or elevated parking facilities, provided only that the general location, visibility and size of the Premises, reasonable access to the Premises and the parking facilities shall not be materially impaired except during any construction of additional parking. The term "Common Areas" as used in this Lease shall mean all facilities furnished in the Shopping Center and designated by Landlord for the general use, in common, of occupants of the Shopping Center, including Tenant hereunder, its officers, agents, employees, and customers, which facilities may include, but are not limited to, the parking areas, streets, passenger vehicle roadways, sidewalks, walkways, service areas, roadways, loading platforms, drainage and plumbing systems, roof, canopies, ramps, landscaped areas and other similar facilities available for common use which may from time to time exist. Landlord shall have no obligation to permit any of the Common Areas to be operated beyond the hours designated by Landlord in Section 3.02 hereof. All Common Areas not within the Premises, which Tenant may be permitted to use and occupy, are to be used and occupied under a revocable license, and if the amount of the Common Areas be diminished, Landlord shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, except as otherwise provided elsewhere herein, nor shall such diminution of the Common Areas be deemed constructive or actual eviction. Landlord agrees that Tenant shall not be charged for employee or customer parking during the term hereof. However, Landlord shall have the right to implement a parking validation system or shuttle bus to off-site employee parking areas, the costs of which shall be included in operating expenses.

TO

SECTION 2.03 Construction/Possession.

Landlord and Tenant hereby agree that Tenant's taking possession of the Premises shall be deemed conclusive evidence of Tenant's acceptance of the Premises in satisfactory condition and in full compliance with all covenants and obligations of Landlord in connection therewith. Tenant agrees that it will accept possession of the Premises in an "as is" condition and that no representations or inducements respecting the condition of the Premises have been made to Tenant by Landlord or its authorized representatives. Attached hereto is Exhibit F which is an asbestos inspection report on the Shopping Center. Similarly, Tenant hereby acknowledges that except as set forth in Exhibit B hereof no promises to decorate, alter, repair, or improve the Premises, either before or after the execution hereof, have been made by Landlord or its authorized representatives. Tenant

further agrees that no representations have been made to Tenant that any other tenants have leased or will continue to lease space within the Shopping Center or that Tenant has any exclusive right to sell merchandise of any type and character (it being agreed and understood that Landlord shall have the right to lease other space in the Shopping Center to tenants selling merchandise similar to the merchandise to be sold by Tenant), except as outlined in Exhibit D attached hereto. Tenant shall perform all Tenant work in the Premises in accordance with Exhibits B and C attached hereto and shall thereafter install such stock, fixtures, and equipment and perform such other work as shall be necessary or appropriate in order to prepare the Premises for the opening and continuous operation of its business thereon. Tenant shall observe and perform all of its obligations under this Lease and shall pay charges for temporary water, heating, cooling and lighting from the date upon which the Premises are made available to Tenant for its work (or from the date when Tenant commences to perform its said work, if earlier) until the Rental Commencement Date.

SECTION 2.04 Quiet Enjoyment.

Landlord covenants that Tenant, upon paying all sums due from Tenant to Landlord, hereunder "Rent", and performing and observing all of Tenant's obligations under this Lease, shall peacefully and quietly have, hold and enjoy the Premises and the appurtenances throughout the Lease Term without interference by Landlord, subject, nevertheless, to the other terms and provisions of this Lease.

SECTION 2.05 Statement of Lease Term.

Upon the request of either Landlord or Tenant after the Commencement Date, Landlord and Tenant shall execute and deliver a written statement in recordable form specifying therein the Rental Commencement Date and termination date of the Lease Term.

SECTION 2.06 Failure of Tenant to Open.

In the event that Tenant fails to open the Premises for business fully fixtured, stocked and staffed within fifteen (15) days of the Rental Commencement Date, then Landlord shall have, in addition to any and all remedies herein provided, the right at its option to collect not only the Fixed Minimum Rent, but additional rent at the rate of Fifty Dollars (\$50.00) per day for each day after such date until 60 days thereafter and then at the rate of one hundred dollars (\$100.00) per day until Tenant so opens for business. Failure to open within 90 days of the Rental Commencement Date shall constitute a default hereunder.

SECTION 2.07 Excuse of Landlord's Performance.

Anything in this lease to the contrary notwithstanding, providing such cause is not due to the willful act or gross negligence of Landlord, Landlord shall not be deemed in default with respect to the performance of any of the terms, covenants and conditions of this Lease if same shall be due to any strike, lockout, civil commotion, war-like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain any material, service or financing, through act of God or other cause beyond the control of Landlord.

ARTICLE III

RENT

SECTION 3.01 Fixed Minimum Rent.

During the entire Lease Term, Tenant covenants and agrees to pay to Landlord, in lawful money of the United States, without any prior demand and without any deduction or set off whatsoever, the Fixed Minimum Rent as provided in Section 3.01. The payment of Fixed Minimum Rent by Tenant to Landlord shall be made in advance on the first day of each calendar month during the Lease Term hereof, except that the first monthly installment shall be paid prior to the Rental Commencement Date. Fixed Minimum Rent for any partial calendar month during the lease term shall be prorated on a per diem basis.

SECTION 3.02 Percentage Rent.

As a further inducement for Landlord's entering into this Lease with Tenant, Tenant agrees, in addition to its covenant to pay Fixed Minimum Rent, to pay to Landlord in the manner and upon the conditions and at the times hereinafter set forth, and as Percentage Rent hereunder for each Lease Year an amount equal to the product of Tenant's annual Gross Receipts (as hereinafter defined in Section 3.03) in excess of Five Hundred Seventeen Thousand Five Hundred and No/100 Dollars (\$517,500.00) (Percentage Break Point) multiplied by the Percentage Rent Rate (hereinafter sometimes referred to as the "Percentage Rent"). Except as hereinafter set forth in this Section 3.02, Percentage Rent shall be due and payable on or before the twentieth (20th) day of each calendar month during the term hereof and on or before the twentieth (20th) day of the first (1st) calendar month following the termination hereof. On or before the twentieth (20th) day of each calendar month during the term hereof, Tenant shall furnish Landlord with a written statement certified to be correct by Tenant showing the amount of Gross Receipts in the Premises from the beginning of the Lease Year to the end of

in the first  
lease year

the previous calendar month or portion thereof. Tenant shall not be obligated to commence paying percentage rent in any Lease Year until such time as six percent (6%) of the Gross Receipts shall have exceeded the Minimum Rent payable for such Lease Year, at which time Tenant shall commence paying Landlord the Percentage Rent hereunder. Tenant hereby acknowledges that Tenant's business reputation, intended use of the Premises, potential for payment of Percentage Rent and ability to generate patronage to the Premises and the Shopping Center were all relied upon by Landlord and serve as significant and material inducements contributing to Landlord's decision to execute this Lease with Tenant. Tenant hereby covenants and agrees: (i) to operate in the Premises only under the Trade Name set forth in Section 1.01 and under no other name or Trade Name whatsoever without Landlord's prior written consent, (ii) to continuously use, occupy and operate the whole of the Premises for the retail sale of its goods or services in accordance with its Permitted Use (Tenant hereby agreeing that the space utilized for storage (not including kitchen space, if any) shall not exceed 150 sq. ft. and that all non-sales activities together, including storage and kitchen space, if any, shall not exceed 400 sq. ft.) during minimum business hours of 11 a.m. to 9 p.m., seven days per week or such other hours as are from time to time mutually agreed upon in writing by the parties hereto, and for no other purpose whatsoever, and (iii) not to own, operate or be financially interested in, either directly or indirectly (by itself or with others), a business of like or similar purpose or Trade Name, within a radius of three (3) miles of the perimeter of the Shopping Center. Without limiting Landlord's other available remedies, in the event Tenant should violate this covenant (iii) above, Landlord may, at its option, (a) terminate this Lease upon thirty (30) days' written notice to Tenant, (b) enjoin the operation of the violative store, or (c) include all Gross Receipts generated by any violative store as Gross Receipts in calculating the Percentage Rent due under this Lease.

SECTION 3.03 Gross Receipts Defined.

The term "Gross Receipts" is hereby defined to mean receipts from all sales of Tenant and of all licensees, concessionaires and tenants of Tenant, from all business conducted upon or from the Premises by Tenant and all others, and whether such sales be evidenced by check, credit charge account, exchange or otherwise, and shall include, but not be limited to, the amount received from the sale of goods, wares and merchandise and for services performed on or at the Premises, together with the amount of all orders (including catering orders and mail orders) taken or received at the Premises or sales completed by delivery at the Premises, whether such orders be filled from the Premises or elsewhere, and whether such sales be made by means of mechanical or other vending devices in the Premises. If, pursuant to the terms of this Lease, any one or more departments or other divisions of Tenant's business shall be sublet by Tenant or conducted by any person, firm or corporation other than Tenant, then there shall be included in Gross Receipts for the purpose of fixing the Percentage Rent payable hereunder, all the sales receipts of such departments or divisions, whether such sales be made at the Premises or elsewhere, in the same manner and with the same effect as if the business or sales of such departments and divisions of Tenant's business had been conducted by Tenant itself. Gross Receipts shall not include sales of merchandise for which cash has been refunded, or allowances made on merchandise claimed to be defective or unsatisfactory. Gross Receipts shall not include the amount of any sales, use or gross receipts tax imposed by any federal, state, municipal or governmental authority directly on sales and collected from customers, provided that the amount thereof is added to the selling price or absorbed therein, and paid by Tenant to such governmental authority. No franchise or capital stock tax and no income or similar tax based upon income or profits as such shall be deducted from Gross Receipts in any event whatever. Each charge or sale upon installment or credit shall be treated as a sale for the full price in the month during which such charge or sale shall be made, irrespective of the time when Tenant shall receive payment (whether full or partial) thereof. A deduction shall be allowed for uncollected or uncollectible installment or credit accounts, provided that Tenant makes use of credit card and check verification and authorization systems and makes a good faith effort to collect on such bad debts through prosecution, litigation and collections procedures. Tenant agrees to obtain fidelity bond coverage for all employees in positions of trust, or who handle cash sums over one thousand dollars (\$1000).

SECTION 3.04 Tenant Records.

For the purpose of ascertaining the amount payable as Percentage Rent, Tenant agrees to prepare and keep at Tenant's home office (presently located at 3136 St. Florence Terrace, Olney, MD 20832), for a period of not less than three (3) years following each of the dates upon which Tenant delivers to Landlord each of the written statements required in Section 3.05, adequate records for the period reported upon by such statement which shall show inventories and receipt of merchandise at the Premises, and daily receipts from all sales and other transactions on or from the Premises. Tenant shall record at the time of sale, in the presence of the customer, all receipts from sales or other transactions whether for cash or credit in a cash register or in cash registers having a cumulative total which shall be sealed in a wrapper approved by Landlord, and having such other features as shall be approved by Landlord. Tenant further agrees to keep (either on the Premises or in a separate storage area at the Shopping Center designated by Landlord) for at least three (3) years following the end of any partial lease year and each Lease Year, the gross income, sales and occupation tax returns with respect to said partial Lease Year and Lease Years and all pertinent original sales records. Pertinent original sales records shall include: (a) cash register tapes, including tapes from temporary registers; (b) serially numbered sales slips; (c) receipts for all mail orders and catering orders at and to the Premises; (d) receipts for all telephone orders at and to the Premises; (e) settlement report sheets of transactions with sub-tenants, concessionaires and licensees; (f) the original records showing that merchandise returned by customers was purchased at the Premises by such customers; (g) memorandum receipts or other records

of merchandise taken out on approval; (h) such other sales records, if any, which would normally be examined by an independent accountant pursuant to accepted auditing standards in performing an audit of Tenant's sales; and (i) the records specified in (a) to (h) above of sub-tenants, assignees, concessionaires, or licensees. Landlord and Landlord's authorized representative shall have the right to audit and otherwise examine Tenant's records aforesaid during regular business hours, upon reasonable prior notice. If such audit shall disclose a deficiency in Percentage Rent, Tenant shall promptly pay such deficiency as well as the cost of the audit, and interest on the deficiency at the rate of twelve percent (12%) per annum from the date such deficiency was actually due. If such audit shows Gross Sales to be understated by five percent (5%) or more, Landlord shall have the right to terminate this Lease upon five (5) days' written notice to Tenant, in addition to any other remedies provided for Tenant's default hereunder.

SECTION 3.05 Reports by Tenant.

Tenant shall submit to Landlord on or before the twentieth (20th) day following each ~~month~~ <sup>the end of</sup> month ~~ended~~ during the Lease Term (including the twentieth (20th) day of the month following the end of the Lease Term) at the place then fixed for the payment of rent, together with the rendition of ~~Quarterly~~ Percentage Rent, written statement signed by Tenant, and certified by it to be true and correct, showing in reasonably accurate detail the amount of Gross Receipts for ~~the preceding~~ <sup>the preceding</sup> ~~month~~ <sup>months and fractional month,</sup> if any, ~~for the preceding month and fractional month.~~ Tenant shall submit to Landlord on or before the seventh (7th) day following the end of each Lease Year at the place then fixed for the payment of rent, a written statement signed by Tenant, and certified by it to be true and correct, showing in reasonably accurate detail satisfactory in scope to Landlord the amount of Gross Receipts during the preceding Lease Year, and duly certified by independent certified public accountants in regular practice whose certification shall be one which is satisfactory to Landlord in scope and substance. The statements referred to herein shall be in such form and style and contain such details and breakdown as Landlord may reasonably determine. In the event the annual statement provided for above shows that Tenant either underpaid or overpaid Percentage Rent during the preceding lease year, an appropriate adjustment shall be made between Landlord and Tenant within 30 days after the date of such statement.

SECTION 3.06 Termination by Landlord for Insufficient Percentage Rent.

Section Deleted.

SECTION 3.07 Security Deposit.

Tenant has concurrently with the execution of this Lease deposited with Landlord the sum set forth in Section 1.01 (hereinafter sometimes referred to as the "Security Deposit") as security for the full performance of every provision of this Lease by Tenant. The Security Deposit shall be held in an interest-bearing account. Landlord may apply all or any part of the Security Deposit to cure any default by Tenant hereunder, and Tenant shall promptly restore to the Security Deposit all amounts so applied upon invoice. If Tenant shall fully perform each provision of this Lease, any portion of the Security Deposit which has not been appropriated by Landlord in accordance with the provisions hereof shall be returned to Tenant with interest within thirty (30) days after the expiration of the Lease Term. Landlord may deliver the funds after the expiration of the Lease Term. Landlord may deliver the funds deposited hereunder by Tenant to the purchaser or transferee of Landlord's interest in the Premises in the event that such interest be sold or transferred, and, in the event said purchaser or transferee assumes the obligations of Landlord with respect to the deposit, Landlord shall be discharged from any further liability with respect to such deposit.

SECTION 3.08 Additional Charges.

In addition to Fixed Minimum and Percentage Rent, all other payments, including but not limited to operating costs and charges for taxes, to be made by Tenant, either to Landlord or the promotion and advertising firm, shall be deemed to be and shall become "Additional Rent" hereunder whether or not the same be designated as such, and shall be due and payable on demand together with any interest thereon; and Landlord shall have the same remedies for failure to pay same as for a non-payment of Minimum Rent or Percentage Rent. (Minimum Rent, Percentage Rent and Additional Rent are hereinafter sometimes collectively referred to as "Rent".) If Tenant shall fail to make any payment of Rent when due as required under the applicable provisions of this Lease, Tenant shall pay a late charge in accordance with Section 3.09 hereof.

SECTION 3.09 Past Due Rent and Additional Rent.

If Tenant shall fail to pay, when the same is due and payable, any Rent or any Additional Rent, or amounts or charges of the character described in Section 3.08 hereof, such unpaid amounts shall bear interest from the fifth (5th) day after the due date thereof to the date of payment at the rate which is the lesser of eighteen percent (18%) per annum or the maximum interest rate permitted by law. Tenant shall in addition, pay as Additional Rent a fee of Fifty Dollars (\$50.00) for processing of late payments.

ARTICLE IV

COMMON AREAS AND OPERATING COSTS

SECTION 4.01 Operating Costs.

During each month of the Lease Term, Tenant shall pay, along with its monthly installments of Fixed Minimum Rent and without demand, deduction or set off, as additional Rent to Landlord, Tenant's proportionate share of (plus a fifteen percent (15%) administrative charge on) all costs incurred by Landlord in maintaining, repairing, operating and insuring the portions of the Shopping Center which are the responsibility of Landlord hereunder (herein sometimes referred to as the "Operating Costs"), including without limitation, the total costs of operating, repairing, lighting, cleaning, maintaining, painting, securing, managing and insuring (including liability insurance for personal injury, wrongful arrest or detainer, death and property damage; insurance and extended coverage against fire, theft, flood or other casualty; rent insurance; Workmen's Compensation insurance; fidelity bonds for personnel; and plate glass insurance) the Shopping Center and paying all taxes, public charges and assessments of whatsoever nature directly or indirectly assessed or imposed upon the land, buildings, equipment and improvements constituting the Shopping Center and the rents therefrom, including, but not limited to, all real property taxes, rates, duties and assessments, local improvement taxes, impact charges or levies, whether general or special, that are levied, charged or assessed against the Shopping Center by any lawful taxing authority whether federal, state, county, municipal, school or otherwise (other than income, inheritance and franchise taxes thereon). Landlord agrees to act reasonably in the expenditure of the operating costs.

Notwithstanding anything to the contrary, Operating Costs shall not include any of the following: *capital equipment for expansion/addition to the center;*

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ground rents; construction of tenant improvements, or other work or services which Landlord performs for a particular tenant or tenant's premises in the Shopping Center; real estate brokerage fees and commissions; advertising and marketing costs; any Operating Costs which are paid by any tenant directly to the provider of the service or for which Landlord is reimbursed directly by a tenant; electricity costs for premises occupied by any tenant in the Shopping Center; expenditures compensated by insurance, warranties, refunds, or otherwise; late charges or other penalties imposed upon Landlord; any costs or expenses representing an amount paid to an entity related to Landlord or any of its general partners which is in excess of the amount which would be paid in the absence of such relationship; costs associated with the operation of the business of the partnership or entity which constitutes the Landlord, as the same are distinguished from the costs of operation of the Shopping Center, including partnership accounting and legal matters, cost of defending any lawsuits with any mortgage, costs of selling, syndicating, or financing any of Landlord's interest in the Shopping Center, or outside fees paid in connection with leasing and disputes with tenants; interest, amortization, or other payments on loans to Landlord; expenses of Landlord which would normally be categorized as overhead or general and administrative expenses; wages, salaries, or other compensation paid to officers, principals, or executive employees of Landlord, or to anyone compensated (directly or indirectly) by the management fee; and expenses attributable to Landlord's or its agents', employees', contractors', or invitees' gross negligence or willful misconduct.

Any Operating Costs which are attributable to services, equipment or other personal property, or facilities benefitting or shared by tenants of other buildings or projects, including personnel costs for employees whose time is divided between the Shopping Center and other projects, shall be equitably prorated between this Shopping Center and other appropriate projects.

Tenant's proportionate share of Operating Costs shall be computed by multiplying Operating Costs by a fraction, the numerator of which shall be the number of square feet of floor area of the Premises and the denominator of which shall be the number of square feet of gross leasable retail area of the Shopping Center. Tenant shall pay its proportionate share of Operating Costs in advance based on estimates made by Landlord from time to time but not more frequently than twice during any calendar year. Estimates shall be revised on or before May 1 of each Lease Year on the basis of actual Operating Costs for the preceding year of operations. Should Operating Costs be underestimated, Tenant shall pay any deficiency along with the payment of Minimum rent next due, but not earlier than 10 business days after written notice of the deficiency; and thereafter pay its adjusted proportionate share of Operating Costs in equal monthly installments as herein provided. Any excess payments shall be credited against the payment of Operating Costs next due or refunded within 30 days after expiration or termination of Lease Term. Tenant shall receive annual itemized statements of Landlord's actual Operating Costs.

ARTICLE V

ARTICLE IV

COMMON AREAS AND OPERATING COSTS

SECTION 4.01 Operating Costs.

During each month of the Lease Term, Tenant shall pay, along with its monthly installments of Fixed Minimum Rent and without demand, deduction or set off, as Additional Rent to Landlord, Tenant's proportionate share of (plus a fifteen percent (15%) administrative charge on) all costs incurred by Landlord in maintaining, repairing, operating and insuring the portions of the Shopping Center which are the responsibility of Landlord hereunder (herein sometimes referred to as the "Operating Costs"), including without limitation, the total costs of operating, repairing, lighting, cleaning, maintaining, painting, securing, managing and insuring (including liability insurance for personal injury, wrongful arrest or detainer, death and property damage; insurance and extended coverage against fire, theft, flood or other casualty; rent insurance; Workmen's Compensation insurance; fidelity bonds for personnel; and plate glass insurance) the Shopping Center and paying all taxes, public charges and assessments of whatsoever nature directly or indirectly assessed or imposed upon the land, buildings, equipment and improvements constituting the Shopping Center and the rents therefrom, including, but not limited to, all real property taxes, rates, duties and assessments, local improvement taxes, import charges or levies, whether general or special, that are levied, charged or assessed against the Shopping Center by any lawful taxing authority whether federal, state, county, municipal, school or otherwise (other than income, inheritance and franchise taxes thereon). Landlord agrees to act reasonably in the expenditure of the operating costs.

Notwithstanding anything set forth above to the contrary, Operating Costs shall not include any of the following: *Capital equipment for expansion/addition to the center;*

ground rents; construction of tenant improvements, or other work or services which Landlord performs for a particular tenant or tenant's premises in the Shopping Center; real estate brokerage fees and commissions; advertising and marketing costs; any Operating Costs which are paid by any tenant directly to the provider of the service or for which Landlord is reimbursed directly by a tenant; electricity costs for premises occupied by any tenant in the Shopping Center; expenditures compensated by insurance, warranties, refunds, or otherwise; law charges or other penalties imposed upon Landlord; any costs or expenses representing an amount paid to an entity related to Landlord or any of its general partners which is in excess of the amount which would be paid in the absence of such relationship; costs associated with the operation of the business of the partnership or entity which constitutes the Landlord, or the same are distinguished from the costs of operation of the Shopping Center, including partnership accounting and legal matters, cost of defending any lawsuits with any mortgage, costs of selling, syndicating, or financing any of Landlord's interest in the Shopping Center, or outside fees paid in connection with leasing and disputes with tenants; interest, amortization, or other payments on loans to Landlord; expenses of Landlord which would normally be categorized as overhead or general and administrative expenses; wages, salaries, or other compensation paid to officers, principals, or executive employees of Landlord, or to anyone compensated (directly or indirectly) by the management fee; and expenses attributable to Landlord's or its agents', employees', contractors', or invitees' gross negligence or willful misconduct.

Any Operating Costs which are attributable to services, equipment or other personal property, or facilities benefiting or shared by tenants of other buildings or projects, including personnel costs for employees whose time is divided between the Shopping Center and other projects, shall be equitably prorated between this Shopping Center and other appropriate projects.

Tenant's proportionate share of Operating Costs shall be computed by multiplying Operating Costs by a fraction, the numerator of which shall be the number of square feet of floor area of the premises and the denominator of which shall be the number of square feet of gross leasable retail area of the Shopping Center. Tenant shall pay its proportionate share of Operating Costs in advance based on estimates made by Landlord from time to time but not more frequently than twice during any calendar year. Estimates shall be revised on or before May 1 of each Lease Year on the basis of actual Operating Costs for the preceding year of operations. Should Operating Costs be underestimated, Tenant shall pay any deficiency along with the payment of Minimum Rent next due, but not earlier than 10 business days after written notice of the deficiency; and thereafter pay its adjusted proportionate share of Operating Costs in equal monthly installments as herein provided. Any excess payments shall be credited against the payment of Operating Costs next due or refunded within 30 days after expiration or termination of Lease Term. Tenant shall receive annual itemized statements of Landlord's actual Operating Costs.

ARTICLE V

ADVERTISING AND PROMOTION

SECTION 5.01 Tenant Costs.

It is understood and agreed that it is in the best interest of Landlord and Tenant to advertise and promote the Shopping Center. Accordingly, Tenant shall pay to Landlord for such purposes in equal monthly installments, as Additional Rent, a promotion charge equal to two dollars (\$2.00) per square foot of gross leasable area in the Premises, or One Hundred Fifty Dollars ~~(150.00)~~ <sup>145.00</sup> per month, payable in advance along with Tenant's payment of Minimum Rent hereunder. Landlord agrees to use such funds for the advertising and promotion of the Shopping Center, and for no other purpose. The advertising fund shall be used for the design and placement of advertisements for Potomac Place Shopping Center in local newspapers including, for example, the Potomac Almanac, Potomac Gazette, and/or Washington Post newspapers, as well as for the periodic printing and distribution of direct-mail promotional pamphlets. Advertisements shall include Tenant's trading

ARTICLE VI

UTILITIES

SECTION 6.01 Tenant Responsibilities.

Tenant shall make application for, obtain, pay for and be solely responsible for all utilities required, used or consumed in the Premises, including, but not limited to, gas, water (including water for domestic uses and for fire protection), telephone, electricity, sewer service, garbage collection services, HVAC maintenance services, or any similar service (herein sometimes collectively referred to as the "Utility Services"). In the event that any charge for any utility supplied to the Premises is not paid by Tenant to the utility supplier when due, then Landlord may, but shall not be required to, pay such charge for and on behalf of Tenant, with any such amount paid by Landlord being repaid by Tenant to Landlord, as Additional Rent, promptly upon demand. Additionally, if Landlord shall elect to supply any of the Utility Services, then Tenant shall pay to Landlord the cost of its utility consumption, along with the cost of installing separate metering devices, if necessary. Landlord agrees that the cost to Tenant of any Landlord-provided utility service shall not exceed the amount Tenant would have had to pay had it independently obtained said utility service from the local utility supplier. Landlord and Tenant hereby agree that Landlord shall not be liable for any interruptions or curtailment in utility services due to causes beyond its control or due to Landlord's alteration, repair or improvement of the Premises or the Shopping Center. Landlord represents that at the Premises area served by electric, water and sewer. Tenant agrees to turn on the exterior light on the rear wall of its store each evening, and to leave it on at Tenant's sole expense until the following morning.

ARTICLE VII

INSTALLATION, MAINTENANCE, OPERATION AND REPAIR

SECTION 7.01 Tenant Installation.

Tenant shall, at Tenant's sole expense, install all trade fixtures and equipment required to operate its business (all of which shall be of first-class quality and workmanship). All trade fixtures, signs or other personal property installed in the Premises by Tenant shall remain the property of Tenant and may be removed at any time provided that Tenant is not in default hereunder and provided the removal thereof does not cause, contribute to, or result in Tenant's default hereunder; and further provided that Tenant shall at Tenant's sole expense promptly repair any damage to the Premises resulting from the removal of personal property and shall, except at expiration or termination of the Lease Term, replace same with personal property of like or better quality. The term "trade fixtures" as used herein shall not include carpeting, floor coverings, attached shelving, wall coverings, or similar Tenant improvements which shall become the property of Landlord upon surrender of the Premises by Tenant for whatever reason. After the initial Tenant fit-up, Tenant shall not attach any fixtures or articles to any portion of the Premises, nor make any alterations, additions, improvements, or changes or perform any other work whatsoever in or to the Premises, other than minor interior, cosmetic and decorative changes which do not exceed One Thousand and No/100 Dollars (\$1,000.00) in the aggregate per Lease Year, without in each instance obtaining the prior written approval of Landlord, which approval shall not be unreasonably withheld. Any alterations, additions, improvements, changes to the Premises or other work permitted herein shall be made by Tenant at Tenant's sole cost and expense in the manner set forth in Exhibits B and C.

SECTION 7.02 Maintenance by Tenant.

Except as provided in Section 7.06 hereof, Tenant shall, at Tenant's expense, at all times keep the Premises (interior and exterior) and appurtenances thereto in good order, condition, and repair, clean, sanitary, and safe, including the replacement of equipment, fixtures, and all broken glass (with glass of the same size and quality) and shall, in a manner satisfactory to landlord, decorate and paint the Premises when necessary to maintain at all times a clean and slightly appearance. In the event Tenant fails to perform any of its obligations as required hereunder, Landlord may, but shall not be required to, perform and satisfy same with Tenant hereby agreeing to reimburse Landlord, as Additional Rent, for the cost thereof promptly upon demand. Tenant shall make any and all additions, improvements, alterations, and repairs to or on the Premises (including, without limitation, all modifications to any fire sprinkler system located within the Premises), other than those required for the structural repair and maintenance of the roof, foundation, or exterior walls, which may at any time during the Lease Term be required or recommended by any lawful authorities, insurance underwriters, Inspection Rating Bureaus, or insurance inspectors designated by Landlord. Landlord may, but shall not be obligated to deal directly with any authorities respecting their requirements for additions, improvements, alterations, or repairs. All such work shall be performed in a good and workmanlike manner in accordance with the requirements set forth in Exhibit B. All Tenant work (as set forth in Exhibit B) and all such additions, improvements, and alterations thereto shall become the property of Landlord upon the expiration or earlier termination of this Lease.

SECTION 7.03 Signs, Awnings and Canopies.

Tenant will not place or suffer to be placed or maintained on any exterior door, wall or window of the Premises any sign, awning or canopy, or advertising matter or other thing of any kind, and will not place or maintain any exterior lighting, plumbing fixture or protruding object or any decoration, lettering or advertising matter on the glass of any window or door of the Premises without first obtaining Landlord's written approval and consent. Notwithstanding anything herein to the contrary, Landlord hereby gives its approval to I Can't Believe It's Yogurt's standard logo neon window sign. Tenant further agrees to maintain such sign, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved in good condition and repair at all times. All interior, exterior, and pylon signs (if applicable) must meet the signage guidelines established by Landlord's architect in terms of size, style, color, material, and illumination. All signs (including interior signs) are to be professionally designed, and approved in writing by Landlord (whose approval shall not be unreasonably denied or withheld, provided that all signage guidelines are observed by Tenant). No hand-lettered signs, paper signs, or temporary signs affixed directly to the storefront glass shall be permitted.

SECTION 7.04 Tenant Shall Discharge All Liens.

Tenant will not create or permit to be created or to remain, and will discharge, any lien (including, but not limited to, the liens of mechanics, laborers or materialmen for work or materials alleged to be done or furnished in connection with the Premises), encumbrance or other charge upon the Premises or any part thereof, upon Tenant's household interest therein, provided that Tenant shall not be required to discharge any such liens, encumbrances or charges as may be placed upon the Premises by the act of Landlord or Landlord's agents or employees.

Tenant shall have the right to contest, in good faith and by appropriate legal proceedings, the validity or amount of any mechanics', laborers' or materialmen's lien or claimed lien. In the event of such contest, Tenant shall give to Landlord reasonable security as may be demanded by Landlord to insure payment thereof and to prevent any sale, foreclosure or forfeiture of the Premises or any part thereof by reason of such non-payment. On final determination of such lien or such claim for lien, Tenant will immediately pay any judgment rendered, with all proper costs and charges, and shall have such lien released or judgment satisfied at Tenant's expense, and upon such payment and release of satisfaction, Landlord will promptly return to Tenant such security as Landlord shall have received in connection with such contest. Landlord reserves the right to enter the Premises to post and keep posted notices of non-responsibility for any such lien. Tenant will pay, protect and indemnify Landlord within ten (10) days after demand therefor, from and against all liabilities, losses, claims, damages, costs and expenses, including reasonable attorney's fees, incurred by Landlord by reason of the filing of any lien and/or the removal of the same, except for any such liens, encumbrances or charges as may be placed upon the Premises by the act of Landlord or Landlord's agents or employees.

SECTION 7.05 Surrender of Premises.

At the termination of this Lease, Tenant shall surrender the Premises in the same condition (subject to the removals hereinafter required) as the Premises were on the date Tenant opened the Premises for business to the public, reasonable wear and tear and loss due to increased casualty excepted, and shall surrender all keys for the Premises to Landlord at the place then fixed for the payment of Rent, and shall inform Landlord of all combinations on locks, safes and vaults, if any, in the Premises. Tenant during the last thirty (30) days of such term shall remove all its trade fixtures, and, to the extent required by Landlord by written notice, any other installation, alterations or improvements before surrendering the Premises as aforesaid and shall repair any damage to the Premises caused thereby. Tenant's obligation to observe or perform this covenant shall

survive the expiration or other termination of the Lease Term.

SECTION 7.06 Maintenance by Landlord.

Landlord shall keep the exterior supporting walls, the foundations and roof of the Premises in reasonable repair, provided that Tenant shall promptly give Landlord written notice of the necessity for such repairs, and provided that the damage hereto shall not have been caused by the negligence of Tenant, its concessionaires, officers, agents, employees, licensees, or invitees, in which event Tenant shall be responsible therefor. Landlord shall have no obligation to repair, maintain, alter, or perform any other acts with reference to the Premises or any part thereof, or any plumbing, heating, ventilating, electrical, air conditioning, or other mechanical installations therein. Landlord shall also use reasonable efforts to maintain the parking area and other Common Areas of the Shopping Center.

ARTICLE VIII

OPERATING RULES, REGULATIONS, SURRENDER

SECTION 8.01 Rules and Regulations.

Tenant agrees to comply with and observe the following rules and regulations:

(1) All loading and unloading of goods shall be done only at such times, in the areas, and through the entrances designated for such purposes by Landlord.

(2) The delivery or shipping of merchandise, supplies and fixtures to and from the Premises shall be subject to such rules and regulations as in the judgment of Landlord are necessary for the proper operation of the Premises or Shopping Center.

(3) All garbage and refuse shall be kept in the kind of container specified by Landlord, and shall be placed outside of the Premises prepared for collection in the manner and at the time and places specified by Landlord. If Landlord shall provide or designate a service for picking up refuse and garbage, Tenant shall use same at Tenant's cost. Tenant shall pay the cost of removal of any of Tenant's refuse or rubbish.

(4) No radio, television, stereo or other similar device installed in the Premises shall be audible from the outside, from office space located above the Premises (if any), or from the adjoining retail stores. No aerial shall be erected on the roof or exterior walls of the Premises or on the grounds, without in each instance, the written consent of Landlord. Any aerial so installed without such written consent shall be subject to removal without notice at any time.

(5) No loudspeakers, televisions, phonographs, radios, or other devices shall be used in a manner so as to be heard or seen outside of the Premises without the prior written consent of Landlord.

(6) If the Premises are equipped with heating facilities separate from those in the remainder of the Shopping Center, Tenant shall keep the Premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures.

(7) The exterior areas immediately adjoining the Premises shall be kept clean and free from snow, ice, dirt and rubbish by Tenant to the satisfaction of Landlord, and Tenant shall not place or permit any obstructions or merchandise in such areas.

(8) Tenant and Tenant's employees shall park their cars only in those parking areas designated for that purpose by Landlord. Tenant shall furnish Landlord with State automobile license numbers assigned to Tenant's car or cars, and cars of Tenant's employees, within five (5) days after taking possession of the Premises and shall thereafter notify Landlord of any changes within five (5) days after such changes occur. In the event that Tenant or its employees fail to park their cars in designated parking areas as aforesaid, then so long as there was parking available in the designated parking areas, Landlord at its option, shall charge Tenant One Hundred Dollars (\$100.00) per day per car parked in any area other than those designated, as and for liquidated damages. Landlord agrees that up to two employees of Tenant, while on duty, shall have the right to park up to two automobiles in the designated employee parking areas during the initial lease term and (if applicable) the renewal option term, in accordance with the provisions of Section 8.01(8). Tenant's patrons shall have access to the customer parking areas of the shopping center in common with, and on the same basis as the patrons of other retailers at the Shopping Center, subject to such time restrictions or other rules which Landlord may reasonably adopt for the benefit of the Shopping Center.

(9) The plumbing facilities shall not be used for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Tenant who shall, or whose employees, agents or invitees shall, have caused it.

(10) Tenant shall use at Tenant's cost such pest extermination contractor as Landlord may direct and at such intervals as Landlord may require.

(11) Tenant shall not burn any trash or garbage of any kind in or about the Premises, the Shopping Center, or within one mile of the outside property lines of the Shopping Center.

(12) Tenant shall not make noises, cause disturbances, or create odors which may be offensive to other tenants of the Shopping Center or their officers, employees, agents, servants, customers or invitees.

(13) Tenant shall not commit or suffer to be committed any waste upon the Premises or any nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant in the building in which the Premises may be located, or in the Shopping Center, or which may disturb the quiet enjoyment of any person within five hundred feet of the boundaries of the Shopping Center.

Notwithstanding the above, during the months of May through and including August, Tenant shall have the right to use four parking spaces for employee parking.

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(14) Tenant shall, at Tenant's sole cost and expense, comply with all of the requirements of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to the Premises, and shall faithfully observe in the use of the Premises all municipal and county ordinances and state and federal statutes now in force or which may hereafter be in force, and all regulations, orders and other requirements issued or made pursuant to any such ordinances and statutes.

Tenant agrees to comply with and observe the rules and regulations set forth above. Tenant's failure to read and observe said rules and regulations shall constitute a breach of the terms of this Lease in the manner as if the same were contained herein as covenants. Landlord reserves the right from time to time to amend or supplement said rules and regulations, and to adopt and promulgate additional rules and regulations applicable to the Leased Premises and the Shopping Center, provided that such additional rules and regulations do not materially and adversely interfere with Tenant's use and enjoyment of the Premises as provided in this Lease.

#### ARTICLE IX

##### INSURANCE

###### SECTION 9.01 Tenant's Coverage.

Tenant shall maintain at its sole expense during the term hereof, public liability insurance covering the Premises in an amount of one million dollars (\$1,000,000) for injury and/or death to any one person and \$1,000,000 for injury and/or death to any number of persons in any one accident and property damage insurance in an amount of \$500,000.00 in companies satisfactory to Landlord in the joint names of Landlord and Tenant. Tenant shall also keep in force rent insurance as well as fire and extended coverage insurance for the full replacement value of Tenant's improvements and Tenant's property, including, but not limited to, inventory, trade fixtures, plate glass, furnishings and other personal property. Tenant will cause such insurance policies to name Landlord as an additional insured and to be written so as to provide that the insurer waives all right of recovery by way of subrogation against Landlord in connection with any loss or damage covered by the policy. In addition, Tenant shall keep in force workman's compensation or similar insurance to the extent required by law. Tenant shall deliver said policies or certificates thereof to Landlord at least five (5) days prior to the commencement of the term. Should Tenant fail to effect the insurance called for herein, Landlord may, at its sole option, procure said insurance and pay the requisite premiums, in which event, Tenant shall pay all sums so expended to Landlord, as Additional Rent following invoice. Each insurer under the policies required hereunder shall agree by endorsement on the policy issued by it or by independent instrument furnished to Landlord that it will give Landlord thirty (30) days' prior written notice before the policy or policies in question shall be altered or cancelled.

###### SECTION 9.02 Increase in Fire Insurance Premium.

Tenant shall not keep, use, sell or offer for sale in or upon the Premises any article which may be prohibited by the standard form of fire insurance policy. Tenant agrees to pay any increase in premium for fire and extended coverage insurance that may be charged during the Lease term on the amount of such insurance which may be carried by Landlord on the Premises or the Shopping Center, resulting from the type of merchandise sold by Tenant in the Premises, whether or not Landlord has consented to the same. In determining whether increased premiums are the result of Tenant's use of the Premises, a schedule, issued by the organization making the insurance rate on the Premises, showing the various components of such rate, shall be conclusive evidence of the several items and charges which make up the fire insurance rate on the Premises.

In the event Tenant's occupancy causes any increase of premium for the fire, and/or casualty rates on the Premises, as evidenced by a statement from the insurance carrier for the Shopping Center, Tenant shall pay the additional premium on the fire and/or casualty insurance policies by remittance thereof. Tenant also shall pay, in such event, any additional premium on the rent insurance policy that may be carried by Landlord for its protection against rent loss through fire. Bills for such additional premiums shall be rendered by Landlord to Tenant at such times as Landlord may elect, and shall be due from, and payable by, Tenant when rendered, and the amount thereof shall be deemed to be and be paid as, Additional Rent.

###### SECTION 9.03 Indemnification.

Tenant hereby agrees to indemnify and hold Landlord harmless from any and all claims, damages, liabilities or expenses, including reasonable attorney's fees, arising out of (a) Tenant's use of the Premises or the Shopping Center, (b) any and all claims arising from any breach or default in the performance of any obligation of Tenant, and (c) any act, omission or negligence of Tenant, its agents or employees. Tenant further releases Landlord from liability for any damages sustained by Tenant or any other person claiming by, through or under Tenant due to the Premises, the Center, or any part thereof or any appurtenances thereto becoming out of repair, or due to the happening of any accident, including, but not limited to, any damage caused by water, snow, windstorm, tornado, gas, steam, electrical wiring, sprinkler systems, plumbing, heating and air conditioning apparatus and from any acts or omissions of co-tenants or other occupants of the Center, unless caused by the gross negligence or willful misconduct of Landlord or its agents or employees. Landlord shall

not be liable for any damage to or loss of Tenant's personal property, inventory, fixtures or improvements, from any cause whatsoever, except the affirmative acts of proven gross negligence or willful misconduct of Landlord or its agents or employees, and then only to the extent not covered by insurance to be obtained by Tenant in accordance with Section 9.01 hereof.

## ARTICLE X

### CONDIGNATION

#### SECTION 10.01 Fire Explosion or Other Casualty.

In the event the Premises are damaged by fire, explosion or any other casualty, the damage, except as provided in Section 10.02, shall promptly be repaired by Landlord at Landlord's expense, provided that Landlord shall not be obligated to expend for such repair an amount in excess of the insurance proceeds recovered or recoverable as a result of such damage, and that in no event shall Landlord be required to repair or replace Tenant's stock in trade fixtures, furniture, furnishings, floor coverings and equipment, which items shall be Tenant's obligation to repair or replace unless there shall be less than two (2) years remaining on the lease (including unexercised options thereto), in which event Tenant may, provided the damage was not due to the default or neglect of Tenant, terminate this Lease within ninety (90) days after the occurrence of the event causing the damage. In the event of any such damage and (a) the building of which the Premises are a part is damaged to the extent of twenty-five percent (25%) or more of the cost of replacement, or (b) the building (taken in the aggregate) in the Shopping Center shall be damaged to the extent of more than twenty-five percent (25%) or more of the cost of replacement, Landlord may elect either to repair or rebuild the Premises or the building or buildings, or to terminate this Lease upon giving notice of such election in writing to Tenant within ninety (90) days after the occurrence of the event causing the damage; provided that Landlord agrees with respect to lease termination as a result of casualty that during the balance of the term of this lease, Tenant shall have a one-time right of first refusal to lease the restored Premises on whatever terms and conditions Landlord has offered the space to other prospective tenants. If the casualty, repairing, or rebuilding shall render the Premises unfit for the conduct of Tenant's business therein, in whole or in part, and the damage shall not have been due to the default or neglect of Tenant, a proportionate abatement of the Fixed Minimum Rent shall be allowed from the date when the damage occurred until the date Landlord completes its work, said proportion to be computed on the basis of the relation which the gross square foot area of the space rendered unfit bears to the floor area of the Premises. Nothing in this Section shall be construed to permit the abatement in whole or in part of the Percentage Rent, but, for the purpose of Section 3.02 hereof, the computation of Percentage Rent shall be based upon the revised Fixed Minimum Rent as the same may be abated pursuant to this Section 10.01.

#### SECTION 10.02 Landlord's and Tenant's Work.

The provisions of this Article X with respect to repair by Landlord shall be limited to such repair as is necessary to place the Premises in the same condition as when possession was delivered by Landlord. Promptly following such condemnation, Tenant shall, at Tenant's expense, perform any work required to place the Premises in the condition pursuant to Exhibit B and Tenant shall restore, repair or replace its stock in trade fixtures, furniture, furnishings, floor coverings and equipments, and if Tenant has closed, Tenant shall promptly reopen for business.

#### SECTION 10.03 Condemnation.

If the whole of the Premises, or so much thereof as to render the balance unusable by Tenant, shall be taken under power of eminent domain, or otherwise transferred in lieu thereof, or if any part of the Shopping Center is taken and its continued operation is not, in Landlord's sole opinion, economical, this Lease shall, at Landlord's option, terminate as of the date possession is taken by the condemning authority. No award for any total or partial taking shall be apportioned, and Tenant hereby unconditionally assigns to Landlord any award which may be made in such taking or condemnation, subject to Section 10.04 below. In the event of a partial taking which does not result in the termination of this Lease, Minimum Rent shall be apportioned according to the part of the Premises remaining usable by Tenant.

#### SECTION 10.04 Condemnation Award.

All compensation awarded or paid for any taking or acquiring under the power or threat of eminent domain, whether for the whole or a part of the Premises or Shopping Center, shall be the property of Landlord, whether such damages shall be awarded as compensation for diminution in the value of the leasehold or to the fee of the Premises or otherwise, and Tenant hereby assigns to Landlord all of the Tenant's right, title and interest in and to any and all such compensation; provided, however, that Landlord shall not be entitled to any award specifically made to Tenant for the taking of Tenant's trade fixtures, furniture or leasehold improvements to the extent of the cost to Tenant for said improvements (exclusive of Landlord's contribution), less depreciation computed from the date of said improvements to the date of the taking.

SECTION 11.01 Definitions.

In the event that Tenant (a) fails to pay all or any sum due from Tenant hereunder or pursuant to any exhibit hereto within five (5) days following notice; (b) fails to cease all conduct prohibited hereby immediately upon receipt of written notice from Landlord; (c) fails to take actions in accordance with the provisions of written notice from Landlord to remedy Tenant's failure to perform any of the terms, covenants and conditions hereof within ten (10) business days provided however, that Tenant's default pursuant to Article VII shall have a cure period of fifteen (15) calendar days after such written notice or such additional time as is reasonably necessary to cure the default provided that Tenant has commenced and diligently pursued said cure; (d) fails to conduct business in the Premises as herein required; (e) commits an act in violation of this Lease which Landlord has previously notified Tenant to cease more than three times in any year; (f) become bankrupt, insolvent or files any debtor proceeding, takes or has taken against Tenant any petition of bankruptcy; takes action or has action taken against Tenant for the appointment of a receiver for all or a portion of Tenant's assets; files a petition for a corporate reorganization; makes an assignment for the benefit of creditors, or if in any other manner Tenant's interest hereunder shall pass to another by operation of law (any or all of the occurrences in this said Section 11.01(f) shall be deemed a default on account of bankruptcy and such default on account of bankruptcy shall apply to and include any Guarantor of this Lease); (g) commits waste to the Premises; or (h) is otherwise in breach of Tenant's obligations hereunder and shall not have cured same within ten (10) business days following written notice from Landlord; then Tenant shall be in default provided however, that Tenant's default pursuant to Article VII shall have a cure period of fifteen (15) calendar days after such written notice or such additional time as is reasonably necessary to cure the default provided that Tenant has commenced and diligently pursued said cure, and Landlord may at its option and without further notice to Tenant, terminate Tenant's right to possession of the Premises and without terminating this Lease re-enter and resume possession of the Premises and/or declare this Lease terminated and may thereupon in either event remove all persons and property from the Premises, with or without resort to process of any court, either by force or otherwise. Notwithstanding such re-entry by Landlord, Tenant hereby indemnifies and holds Landlord harmless from any and all loss or damage which Tenant may incur by reason of the termination of this Lease and/or Tenant's right to possession hereunder, except to the extent arising out of the gross negligence or willful misconduct of Landlord or its agents or employees. In no event shall Landlord's termination of this Lease and/or Tenant's right to possession of the Premises abrogate Tenant's agreement to pay rent and additional charges due hereunder for the full term hereof. Following re-entry of the Premises by Landlord, Tenant shall continue to pay all such rent and additional charges as the same become due under the terms of this Lease, together with all other expenses incurred by Landlord in regaining possession until such time, if any, as Landlord rejects same and the Premises are occupied by such successor, it being understood that Landlord shall have no obligations to mitigate Tenant's damages by reletting the Premises. Notwithstanding the foregoing Landlord agrees to exercise reasonable efforts to relet. Upon reletting, sums received from such new lessee by Landlord shall be applied first to payment of normal costs incident to reletting; any excess shall then be applied to any indebtedness to Landlord from Tenant other than for Fixed Minimum and Percentage Rent; and any excess shall then be applied to any indebtedness to Landlord from Tenant for Fixed Minimum and Percentage Rent due and unpaid. The balance, if any, shall be applied against the deficiency between all amounts received hereunder and sums to be received by Landlord on reletting, which deficiency Tenant shall pay to Landlord in full within five (5) days of notice of same from Landlord. Tenant shall have no right to any proceeds or reletting that remain following application of same in the manner set forth herein. The Percentage Rent for which Tenant remains prospectively liable under the provisions hereof shall be a sum equal to the greatest amount of Percentage Rent paid by Tenant for any Lease Year since the Commencement Date multiplied by the number of years remaining in the term at the time of such termination.

SECTION 11.02 Rights and Remedies.

The various rights and remedies herein granted to Landlord shall be cumulative and in addition to any others Landlord may be entitled to by law or in equity, and the exercise of one or more rights or remedies shall not impair Landlord's right to exercise any other right or remedy. In all events, Landlord shall have the right upon notice to Tenant to cure any breach by Tenant at Tenant's sole cost and expense, and Tenant shall reimburse Landlord for such expense upon demand.

SECTION 11.03 Bankruptcy.

If Landlord shall not be permitted to terminate this Lease as hereinabove provided because of the provisions of Title 11 of the United States Code relating to Bankruptcy, as amended (Bankruptcy Code), then Tenant as a debtor-in-possession or any trustee for Tenant agrees promptly, within no more than fifteen (15) days upon request by Landlord to the Bankruptcy Court, to assume or reject this Lease and Tenant on behalf of itself, and any trustee agrees not to seek or request any extension or adjournment of any application to assume or reject this Lease by Landlord with such Court. In such event, Tenant or any trustee for Tenant may only assume this Lease if (A) it cures or provides adequate assurance that the trustee will promptly cure any default hereunder, (B) compensates or provides adequate assurance that Tenant will promptly compensate Landlord

for any actual pecuniary loss to Landlord resulting from Tenant's defaults, and (C) provides adequate assurance of performance during the fully stated term hereof of all of the terms, covenants, and provisions of this Lease to be performed by Tenant. In no event after the occupation of this Lease shall any then-existing default remain uncured for a period in excess of the earlier of ten (10) days or the time period set forth herein. Adequate assurance of performance of this lease, as set forth hereinabove, shall include, without limitation, adequate assurance (1) of the source of rent reserved hereunder, (2) that any Percentage Rent due hereunder will not decline from the levels anticipated, and (3) the assumption of this Lease will not breach any provision hereunder. In the event of a filing of a petition under the Bankruptcy Code, Landlord shall have no obligation to provide Tenant with any services or utilities as herein required, unless Tenant shall have paid and be current in all payments of Operating Costs, utilities or other charges therefor.

**SECTION 11.04 Furnishing of Financial Statements.**

Upon Landlord's written request from time to time, but not more than one (1) time per year, Tenant shall furnish Landlord, within ten (10) business days thereof, financial statements outlining Tenant's current financial condition and any of Tenant's guarantors, if applicable, as of the last annual audit or the last regularly prepared report including tax returns. Landlord shall keep such financial statements confidential and shall exhibit same only to prospective lenders or purchasers regarding Landlord's interest herein.

**ARTICLE XII**

**ASSIGNMENT AND SUBLETTING**

**SECTION 12.01 Assignment and Subletting.**

Tenant acknowledges that Tenant's agreement to operate in the Premises for the Permitted Use set forth in Section 1.01 hereof for the fully stated term hereof was a primary inducement and precondition to Landlord's agreement to lease the Premises to Tenant. Accordingly, Tenant's interest in the Premises shall be limited to the use and occupancy thereof in accordance with the provisions hereof and shall be non-transferable. Any attempt by Tenant to sublet the Premises in whole or in part or to sell, assign, lien, encumber or in any manner transfer this Lease or any interest therein shall constitute a default hereunder, except that with Landlord's prior written consent, (which consent shall not be unreasonably withheld), Tenant may sublet or assign its Lease to an equally experienced and financially strong assignee, (as determined in Landlord's sole discretion) provided that the use of the Premises continues to be in accordance with the Permitted Use. Landlord and Tenant acknowledge and agree that the foregoing provisions have been freely negotiated by the parties hereto and that Landlord would not have entered into this lease without Tenant's consent to the terms of this Section 12.01. Any attempt by Tenant without Landlord's consent to sublet all or any portion of the Premises, to encumber same, or to in any manner transfer, convey, assign Tenant's interest therein, allow the use or management thereof, shall be void ab initio. In the event of an assignment or transfer of this Lease without Landlord's consent, Landlord reserves the right, among its other available remedies, to terminate Tenant's lease and relet the Premises to another tenant.

**SECTION 12.02 Change of Control.**

In furtherance of the provisions of Section 12.01 hereof, if Tenant is a corporation and if the person or persons who own a majority of its voting shares at the time of the execution hereof cease to own a majority of such shares at any time hereafter, except as a result of transfers by gift, bequest, or inheritance by or among immediate family members, Tenant shall so notify Landlord. In the event of such change of ownership, whether or not Tenant has notified Landlord thereof, Landlord may terminate this Lease by notice to Tenant effective sixty (60) days from the date of such notice from Tenant, or the date on which Landlord first has knowledge of such transfer, whichever shall occur first. This Section 12.02 shall not apply as long as Tenant is a publicly held corporation, the outstanding voting stock of which is listed on a recognized security exchange. If Tenant is a sole proprietorship, in the event of his incapacity or death, Landlord shall have the option to terminate this Lease upon sixty (60) days' prior written notice to Tenant or his legal representative.

**SECTION 12.03 Dissolution of Partnership.**

If Tenant is a partnership or if any partner and partners withdraw from the partnership, or if the partnership is otherwise dissolved, or control of the partnership changes, Tenant shall so notify Landlord. In the event of such withdrawal or dissolution, Landlord may terminate this lease by notice to Tenant effective ninety (90) days from the date of such notice from Tenant or the date on which Landlord first has knowledge of such withdrawal or dissolution, whichever shall first occur.

ARTICLE XIII

RIGHT OF ENTRY

SECTION 13.01 Right of Entry.

Landlord agrees that insofar as possible its right of entry to the Premises shall not unreasonably interfere with the normal business operations of Tenant. Emergency repairs may be undertaken by Landlord at any time. Any remodeling work undertaken by Landlord within the premises shall be conducted so as to minimize any inconvenience to Tenant's operations and customers. Landlord or Landlord's agents shall have the right to enter the Premises upon reasonable prior notice in order to examine the same and to show them to prospective lessees or purchasers of the Shopping Center. Provided that Landlord exercises reasonable efforts to minimize any disruption to Tenant's business, Rent shall in no way abate during the completion of necessary repairs, by reason of loss or interruption of business of Tenant, or otherwise. During the six months prior to the expiration of the Lease Term or any renewal term, Landlord may exhibit the Premises to prospective tenants, and place upon the Premises the usual notice "To Let", which notices Tenant shall permit to remain thereon without objection.

ARTICLE XIV

TENANT'S PROPERTY

SECTION 14.01 Taxes

Tenant shall be responsible for and shall pay before delinquency all municipal, county and state taxes, levies and fees of every kind and nature, including, but not limited to, general or special assessments assessed during the Lease Term against any personal property of any kind, owned by or placed in, upon or about the Premises by the Tenant and taxes assessed on the basis of Tenant's occupancy thereof, including, but not limited to, taxes measured by Rents due from Tenant hereunder.

SECTION 14.02 Notices by Tenant.

Tenant shall give immediate telephone or telegraphic notice to Landlord in case of fire, casualty, or accidents in the Premises or in the building of which the Premises are a part or of defects therein or in any fixtures or equipment and shall promptly thereafter confirm such notice in writing.

ARTICLE XV

SUCCESSION TO LANDLORD'S INTEREST

SECTION 15.01 Attornment.

If at any time prior to the termination of this Lease, any senior interest holder or any other person or the successors or assigns of the foregoing (collectively, the "Successor Landlord") shall succeed to the rights of Landlord under this Lease, Tenant agrees, at the election and upon request of any such Successor Landlord, to fully and completely attorn to and recognize any such Successor Landlord as Tenant's Landlord under this Lease upon executory terms of this Lease. If such an attornment is not signed by Tenant within ten (10) business days of its receipt, Landlord is hereby granted the right to sign it on Tenant's behalf.

Said attornment shall be effective and self-operative, without the execution of any further instruments on the part of any of the parties hereto, immediately upon the Successor Landlord, or such other designated party, succeeding to the interest of Landlord under the Lease, but Tenant agrees to execute any further instruments or documents to effectuate or confirm such attornment if requested by the holder, purchaser or Successor Landlord. Tenant hereby waives the provisions of any statute or rule of law now or hereafter in effect which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect the Lease and the obligation of Tenant hereunder by reason of any such action or foreclosure proceeding. Upon such attornment, this Lease shall continue in full force and effect as a direct lease between such Successor Landlord and Tenant upon all of the then executory terms of this Lease except that such Successor Landlord shall not (i) be liable for any act of any prior landlord under the Lease, (ii) be subject to any claims or defenses which Tenant might otherwise have with respect to any such prior landlord, (iii) be bound by any rent which Tenant might have paid for more than the current month to any prior landlord without the express written consent of Successor Landlord, except for the advance payment of the first month's rent, (iv) be bound by an amendment or modification of the Lease made after the date Tenant receives written notice of such Successor Landlord without the express written consent of the Successor Landlord, or (v) be subject to any obligation with respect to any security deposit under the Lease unless such deposit has been physically delivered to Successor Landlord.

SECTION 15.02 Subordination.

This Lease shall be subordinate to the lien of any mortgage or security deed or the lien resulting from any other method of financing or refinancing now or hereafter in force against the Shopping Center, any portion thereof, or upon any buildings hereafter placed upon the land of which the Premises are a part, and to any and all advances to be made under such mortgages, and all renewals, modifications, extensions, consolidations and replacement thereof. The aforesaid provisions shall be self-operative and no further instrument of subordination shall be required to evidence such subordination. Tenant covenants and agrees to execute and deliver, upon demand, such further instrument or instruments subordinating this Lease on the foregoing basis to the lien of any such mortgage or mortgages as shall be desired by Landlord and any mortgagees or proposed mortgagees. If such an instrument of subordination is not signed by Tenant within ten (10) business days of its receipt, Landlord is hereby granted the right to sign it on Tenant's behalf. Landlord will exercise reasonable efforts to have its mortgagee(s) enter into a non-disturbance agreement with Tenant.

SECTION 15.03 Mortgagee's Approval.

If any mortgagee of the Shopping Center requires any modification of the terms and provisions of this Lease as a condition to such financing as Landlord may desire, then Landlord shall have the right to cancel this Lease if Tenant fails or refuses to approve and execute such modification(s) within thirty (30) days after Landlord's request therefor, provided said request is made prior to the Next Commencement Date. Upon such cancellation by Landlord, this Lease shall be null and void and neither party shall have any liability either for damages or otherwise to the other by reason of such cancellation. In no event, however, shall Tenant be required to agree, and Landlord shall not have any right of cancellation for Tenant's refusal to agree, to any modification of the provisions of this Lease relating to: the amount of Rent or other charges reserved herein; the size and/or location of the Premises; the duration and/or Commencement Date of the term; or the reduction of the improvements to be made by Landlord to the Premises prior to delivery of possession; or any other amendment which limits Tenant's use of the Premises, increases Tenant's obligations under this Lease, or decreases Landlord's obligations under this Lease.

SECTION 15.04 Estoppel Certificate.

Within ten (10) days after request therefor by either Landlord or Tenant, or in the event that upon any sale, assignment or hypothecation of the Premises and/or the land thereunder by Landlord an estoppel certificate shall be required from the other, Landlord or Tenant (as the case may be) agrees to deliver in recordable form, a certificate to any proposed mortgagee or purchaser, or to Landlord or Tenant (as the case may be), certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), that there are no defenses or offsets thereto (or stating those claimed), the dates to which Fixed Minimum Rent, Percentage Rent and other charges have been paid, that Tenant has taken possession of the Premises and unconditionally accepts the same, that neither Landlord nor Tenant is in default in the performance of the terms and provisions of the Lease, nor is there now any fact or condition of which with notice or lapse of time or both will become such a default, and that the build-out of improvements to the Premises required under the Lease to be performed by Landlord has been fully and satisfactorily completed. In addition, Tenant or Landlord shall provide such other reasonable information requested by the other concerning this Lease in such estoppel certificate.

SECTION 15.05 Notices to Mortgagee or Successor Landlord.

If any act or omission by Landlord would give Tenant the right, immediately or after lapse of time, to cancel or terminate this Lease or to claim a partial or total eviction, Tenant will not exercise any such right until (i) it has given written notice of such act or omission to each mortgagee and each Successor Landlord, whose name and address shall have previously been furnished to Tenant, by delivering notice of such act or omission addressed to each such party at its last address so furnished and (ii) a reasonable period for remedying such act or omission shall have elapsed following such giving of notice provided such senior interest holder shall, with reasonable diligence, give Tenant notice of its intention to remedy such act or omission and shall commence and continue to act upon such intention. Landlord hereby notifies Tenant that the present mortgagee is Home Federal Savings and Loan Association ("Home Federal") and the aforementioned notices to mortgagee shall be delivered pursuant to the terms of Section 17.06 hereof to Home Federal, c/o Nationwide Capital Corporation, 1525 Wilson Blvd., Rosslyn, Virginia 22209.

**ARTICLE VII**

**SURRENDER OF PREMISES**

SECTION 16.01 Condition of Surrender.

"Section deleted"

SECTION 16.02 Holding Over.

Should Tenant, with Landlord's written consent, hold over at the end of the term, Tenant shall become a Tenant at will and any such holding over shall not constitute an extension of this Lease. During such holding over, Tenant shall pay rent and other charges at the highest monthly rate provided for herein. If Tenant holds over at the end of the term without Landlord's written consent, Tenant shall pay Landlord as liquidated damages, a sum equal to three (3) times the rent to be paid by Tenant to Landlord for all the time Tenant shall so retain possession of the Premises; provided that the exercise of Landlord's rights under this clause shall not be interpreted as a grant of permission to Tenant to continue in possession.

ARTICLE XVII

MISCELLANEOUS

SECTION 17.01 Waiver.

The waiver by Landlord 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 of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of 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 rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord, unless such waiver be in writing by Landlord.

SECTION 17.02 Accord and Satisfaction.

No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided.

SECTION 17.03 Entire Agreement.

This Lease and the Exhibits and Sides, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as set forth herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by them.

SECTION 17.04 No Partnership.

Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint adventurer or a member of a joint enterprise with Tenant. The provisions of this Lease relating to the Percentage Rent payable hereunder are included solely for the purpose of providing a method whereby the rent is to be measured and ascertained.

SECTION 17.05 Force Majeure.

In the event that Landlord shall be delayed or hindered in or prevented from doing or performing any act or thing required hereunder by reason of strikes, lock-outs, casualties, Acts of God, labor troubles, inability to procure materials, failure of power, governmental laws or regulations, riots, insurrection, war or other causes beyond the reasonable control of Landlord, then Landlord shall not be liable or responsible for any such delays and the delay or performing of such act or thing shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

SECTION 17.06 Notices.

Any notice, demand, request or other instrument which may be or are required to be given under this Lease shall be delivered personally or sent by either United States certified mail (postage prepaid) or expedited mail service and shall be addressed (a) if to Landlord at the address provided in Section 1.01 for Landlord or at such other address as Landlord may designate by written notice and (b) if to Tenant at the address provided in Section 1.01 for Tenant or at such other address as Tenant shall designate by written notice. Notices shall be effective upon delivery unless delivery is refused or cannot be made in which event notice shall be effective on mailing.

SECTION 17.07 Captions and Section Numbers.

The captions, section numbers, article numbers, and index appearing in this lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such section or articles of this lease nor in any way affect this lease.

SECTION 17.08 Tenant Defined, Use of Pronoun.

The word "Tenant" shall be deemed and taken to mean each and every person or party mentioned as a Tenant herein, be the same one or more; and if there shall be more than one Tenant, 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. The use of the neuter singular pronoun to refer to Landlord or Tenant shall be deemed a proper reference even though Landlord or Tenant may be an individual, a corporation, or a group of two or more individuals or corporations. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Landlord or Tenant and to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in such case fully expressed.

SECTION 17.09 Partial Invalidity.

If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenants or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

SECTION 17.10 Execution of Lease.

The submission of this Lease for examination does not constitute a reservation of an option for the Premises and this Lease becomes effective as a lease only upon execution and delivery thereof by Landlord and Tenant. If Tenant is a corporation, Tenant shall furnish Landlord with such evidence as Landlord reasonably requires to evidence the binding effect on Tenant of the execution and delivery of this Lease.

SECTION 17.11 Recording.

Tenant agrees not to record this Lease. However, Tenant and Landlord, upon request of either, agree to execute and deliver a memorandum or so-called "short form" of this lease in recordable form for the purpose of recordation at the expense of the party requesting recordation. Said memorandum or short form of this Lease shall describe the parties, the Premises and the Lease Terms and shall incorporate this Lease by reference.

SECTION 17.12 Applicable Law.

The laws of the State of Maryland shall govern the validity, performance and enforcement of this Lease.

SECTION 17.13 Rider. (not applicable)

SECTION 17.14 Time is of the Essence.

Time is of the essence of this agreement.

SECTION 17.15 Successors and Assigns.

Except as otherwise provided herein, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, executors, successors and assigns.

SECTION 17.16 Survival of Obligations.

The provisions of this Lease with respect to any obligation of Landlord or Tenant to pay any sum owing in order to perform any act after the expiration or other termination of this Lease shall survive the expiration or other termination of this Lease.

SECTION 17.17 Counterclaim and Jury Trial.

In the event that Landlord commences any summary proceedings or action for non-payment of rent or other charges provided for in this Lease, Tenant shall not interpose any counterclaims of any nature or description in any such proceeding or action, except compulsory counterclaims. Tenant and Landlord both waive a trial by jury of any or all issues arising in any action or proceeding between the parties hereto or their successors, under or connected with this Lease, or any of its provisions. Landlord and Tenant agree that the prevailing party in any action between themselves shall be entitled to reimbursement for reasonable attorney's fees and court costs.

SECTION 17.18 Representations.

Tenant acknowledges that neither Landlord nor Landlord's agents, employees or contractors have made any representations or promises with respect to the Premises, the Shopping Center or this Lease except as expressly set forth herein.

SECTION 17.19 Landlord's Liability.

Landlord's liability hereunder shall be limited solely to Landlord's interest in the Shopping Center, including proceeds of any disposition of the Shopping Center or any portion thereof, insurance proceeds, and condemnation awards.

SECTION 17.20 Brokerage.

Landlord and Tenant warrant and represent that there was no broker or agent acting on either Landlord's or Tenant's behalf in consummating this Lease, except for James H. Mobil, Jr. of Washington Commercial Properties, Inc., and that no conversations or prior negotiations were had by Tenant with any other broker or agent on Tenant's behalf concerning the renting of the Leased Premises. Landlord and Tenant agree to indemnify and hold harmless each other against any claims for brokerage or other commissions arising by reason of breach by either party of the aforesaid representation and warranty. Landlord's responsibility to pay brokerage fees to the brokers named herein is outlined in a separate agreement between Landlord and Washington Commercial Properties, Inc. Tenant has no obligation to pay brokerage fees pursuant to the above-referenced agreement.

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

WITNESS

[Signature]

Agent:

\_\_\_\_\_

Witness:

[Signature]

LANDLORD:

POTOMAC PLACE LIMITED PARTNERSHIP  
By: Potomac Place Limited Partnership  
By: Potomac Shopping Center, Inc.

By: [Signature]

TENANT: SUPT SERVE, INCORPORATED

[Signature]  
T. Orban, President

AGENT: WASHINGTON COMMERCIAL PROPERTIES, INC.

By: [Signature]  
James H. Mobil, Jr., President

during the original term here as.

TO

In consideration of the agreement by Landlord to enter into this Lease at the request of the undersigned, and as a material inducement to Landlord entering into this Lease, and of the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged, the undersigned hereby jointly, severally and unconditionally guarantee to Potomac Place Limited Partnership, its successor or successors, endorsees or assigns, the prompt performance of all the obligations under this Lease. The undersigned's liability on this guarantee shall be direct and immediate, and not conditional or contingent upon the pursuit by said Potomac Place Limited Partnership, its successor or successors, endorsees, or assigns, of whatever remedies it or they may have against Tenant, and this shall be a continuing guarantee of any and all obligations so incurred by the Tenant.

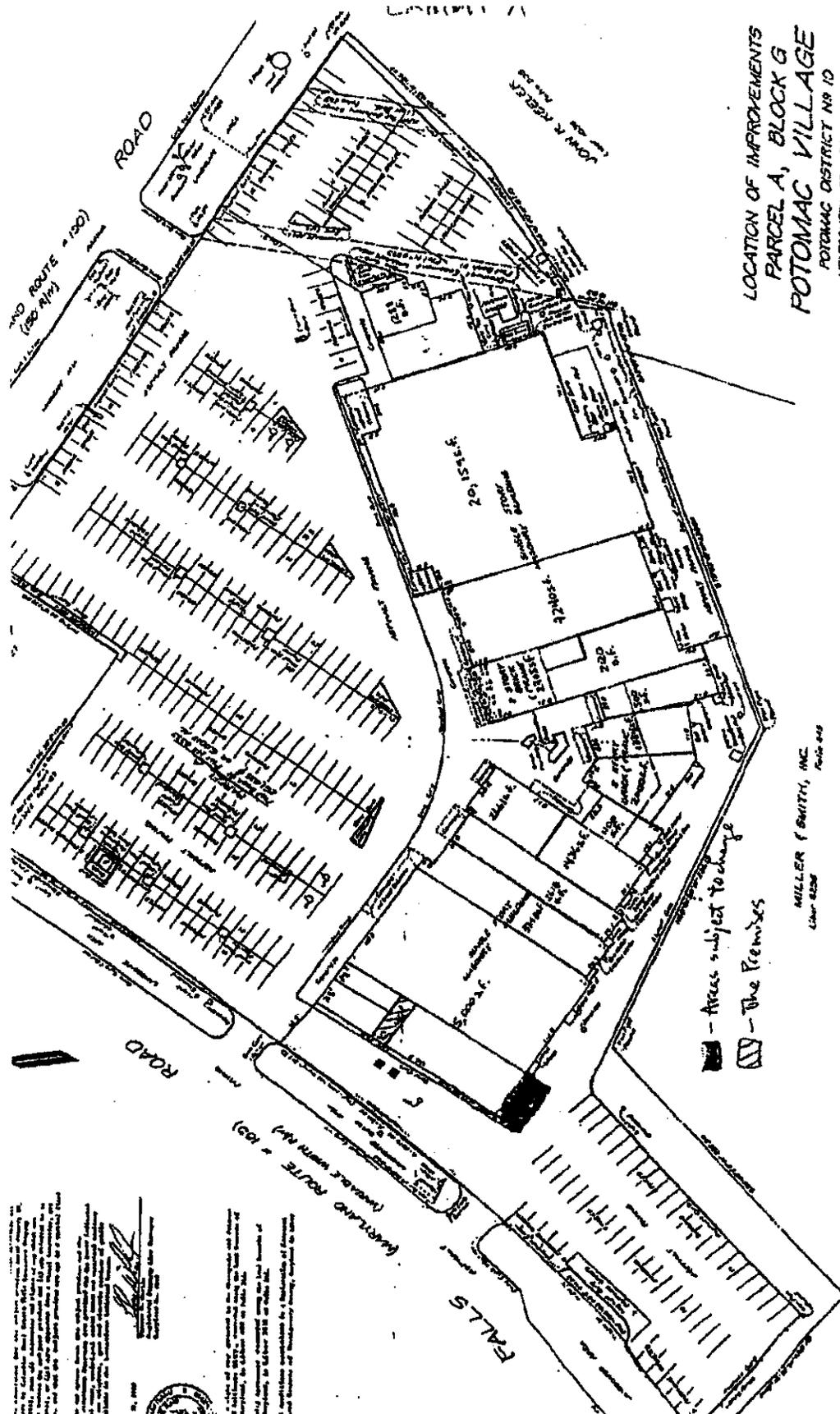
Witness:

\_\_\_\_\_

[Signature]  
Thomas J. Orban

\_\_\_\_\_

TO



LOCATION OF IMPROVEMENTS  
 PARCEL A, BLOCK G  
 POTOMAC VILLAGE  
 POTOMAC DISTRICT NR 10  
 MONTGOMERY COUNTY, MARYLAND

— Areas subject to change  
 — The Premises

MILLER (SMITH), INC.  
 CIVIL ENGINEERS

NOTICE: This plan is a preliminary plan and is subject to change without notice. It is not to be used for any purpose other than that for which it was prepared. The engineer assumes no responsibility for the accuracy of the information furnished hereon, and the user of this plan is advised to verify the same by independent means. The engineer's liability is limited to the professional services rendered by him.

EXHIBIT B

LANDLORD'S WORK  
TENANT'S WORK  
SIGNAGE CRITERIA

Landlord's Work

The space shall be delivered to Tenant in a clean condition with demising walls ready to receive paint, the concrete floor surface ready to receive carpeting or tile, standard electric service to a rear panel box, a roof-mounted HVAC unit, and rough-in plumbing for one (1) rear lavatory. *Tenant may opt to upgrade the HVAC unit, electric service, and plumbing in co operation with landlord's Cash Allowance Contractor. Tenant will be responsible for cost increments associated with these upgrades.*

Landlord shall provide to Tenant, upon completion of Tenant's work and submission of signed lien waivers from all of Tenant's contractors, a cash allowance of ~~\$3,450~~ *\$7,000* (Three Thousand Four Hundred Fifty Dollars).

Tenant's Work

Tenant shall be responsible for the design and installation of:

- 1) a new storefront sign (in conformity with signage criteria attached hereto, as well as with the schedule of sign and trim colors specified by Landlord's Architect); and
- 2) all interior betterments and improvements, which shall be in the style of a first-class retail store (including but not limited to trade fixtures, partitioning, ceiling, HVAC ductwork, lighting, electrical, mechanical, and plumbing fixtures, window treatments, wall treatments, floor coverings, and security devices.) All permit fees, space planning and interior design fees, as well as fees for the preparation of working drawings shall be the responsibility of Tenant. Tenant's architect shall be responsible for all field measurements, compliance with zoning and code requirements, and procurement of building permits and occupancy permits.

All of Tenant's work (including signage) is to be constructed in accordance with detailed plans approved in advance in writing by Landlord. During the term of the lease, Tenant will be responsible for the maintenance, repair and (if necessary) replacement of its signs and interior improvements and betterments.

HVAC Agreement

Tenant agrees to enter into a service agreement with a reputable contractor (approved by Landlord) who will maintain and service the existing HVAC equipment serving the premises. Tenant's responsibility to maintain a service contract on the HVAC equipment shall extend for the full term of the lease.

EXHIBIT C

PERFORMANCE SCHEDULE AND APPROVALS  
REQUIRED FOR TENANT'S IMPROVEMENTS

This Exhibit C is attached to and made a part of that certain Retail Space Lease dated as the \_\_\_ day of December, 1968 (the "Lease"), by and between Potomac Place Limited Partnership ("Landlord") and Soft Serve, Inc. ("Tenant"). Any capitalized term used in this Exhibit C but not defined shall have the same meaning given such term in the Lease. The provisions of this Exhibit C set forth Tenant's responsibilities in connection with construction of improvements to be made to the Premises (hereinafter the "Tenant Improvements").

1. Performance of Tenant Improvements.

Tenant, at its sole cost and expense, shall perform all of Tenant Improvements required to complete the Premises to a finished condition ready for the conduct of business therein, subject to the provisions of this Exhibit C.

2. Space Layout Drawings.

*and assuming the exact configuration of the space is <sup>available to tenant</sup> ~~known~~ in advance*  
(a) Prior to execution of this Lease or within seven (7) days of the date hereof, Tenant shall have provided to Landlord for Landlord's approval, preliminary space plans (the "Store Design Drawings") for Tenant Improvements within the Premises showing the intended design, character and finishes of the Premises, and containing sufficient information (including, but not limited to, the location of dividing partitions, electrical panel, electrical meter and telephone conduit) to permit Landlord to thoroughly review and approve such drawings. The Store Design Drawings also shall include storefront elevations for the Premises showing the proposed nature of the storefront displays.

(b) In the event the Store Design Drawings are not delivered to Landlord's architect by such date, Landlord's architect may prepare the merchandise layout, storefront design and mechanical and electrical requirements for Tenant, and in such event, such layouts, designs and mechanical and electrical requirements shall be conclusive and binding upon Tenant, and Tenant shall pay all of Landlord's costs and architect's fees for preparing same.

(c) Within five (5) business days after receipt of Store Design Drawings, Landlord shall return to Tenant a copy of the Store Design Drawings with its suggested modifications and/or approvals. If upon receipt of approved Store Design Drawings bearing Landlord's comments, Tenant wishes to take exception thereto, Tenant may do so in writing by certified or registered mail, addressed to Landlord within seven (7) days from date of receipt of Store Design Drawings. Unless such action is taken, it will be deemed that all comments made by Landlord on Store Design Drawings are acceptable to and approved by Tenant.

(d) If Store Drawings are returned to Tenant with comments, but not bearing approval of Landlord, said Store Design Drawings shall immediately be revised by Tenant and resubmitted to Landlord for approval within ten (10) days of their receipt by Tenant.

(e) Following the date on which the Store Design Drawings bearing Landlord's approval (with or without comments) are returned to Tenant, Tenant shall engage an architect registered in the State of Maryland, approved by Landlord, for the purpose of preparing final store working drawings and specifications (the "Store Working Drawings and Specifications") for the Premises based on the Store Design Drawings as approved by Landlord. The fees of Tenant's architect shall be the responsibility of Tenant.

(f) Within twenty-one (21) days from receipt by Tenant of Landlord's approval of the Store Design Drawings, Tenant's architect shall submit to Landlord for approval, two (2) sets of reproducible Store Working Drawings and Specifications. The Store Working Drawings and Specifications shall set forth the requirements of Tenant within the Premises. Said drawings and specifications shall include but not be limited to the following:

(i) architectural design of the space: including storefront, floor plans, elevations, sections and renderings indicating material and color of all finishes.

(ii) mechanical system: including basic equipment to be used and its position, duct distribution system, and diffuser locations.

(iii) electrical system: including floor and reflected ceiling plans showing outlets, type of lighting fixtures, other electrical equipment contemplated and location of panel and switchboards together with projected electrical loads.

(iv) plumbing: including location and type of fixtures, including plumbing layout.

(g) Within seven (7) business days after receipt of final Store Design Drawings, Landlord shall return to Tenant a copy of the prints of such drawings and specifications with its suggested modifications and/or approvals. If, upon receipt of approved Store Design Drawings bearing Landlord's comments, Tenant wishes to take exception thereto, Tenant may do so in writing by certified or registered mail, addressed to Landlord within seven (7) days from date of receipt of such Store Design Drawings and Specifications. Unless such action is taken, it will be deemed that all comments made by Landlord on Store Design Drawings are acceptable to and approved by Tenant.

(h) If Store Working Drawings and Specifications are returned to Tenant with comments, but not bearing approval by Landlord, the Store Working Drawings and Specifications shall immediately be revised by Tenant and resubmitted to Landlord for approval within ten (10) days of their receipt by Tenant.

(i) Any changes or modifications that Tenant desires to make to any of its plans or working drawings shall also be subject to Landlord's prior written approval.

(j) Landlord shall be responsible for all costs incurred by Landlord for outside consultants in connection with the review and approval of Tenant's Store Design Drawings and Store Working Drawings and Specifications.

3. Procedure and Schedule for Construction of Desired Premises by Tenant.

(a) Tenant shall obtain all building permits necessary for Tenant Improvements and start construction of the Premises not later than fifteen (15) days from the date on which the Store Working Drawings and Specifications are approved for Tenant's Premises, and Tenant has received all necessary building permits. Tenant agrees to cause its contractor to commence and thereafter proceed with the completion of the construction of Tenant Improvements to the Premises with all due diligence.

(b) Tenant shall submit to Landlord, at least five (5) days prior to the commencement of construction, the following information:

(i) The names and addresses of the contractors Tenant intends to engage in the construction of the Premises.

(ii) The actual commencement of construction date and the estimated date of completion of construction work, fixturing work and date of projected opening.

(iii) Evidence of insurance required in connection with such construction. Tenant shall secure, pay for, and maintain or cause its contractors to secure, pay for and maintain, during the continuance of construction and fixturing work within the Premises (a) comprehensive general liability insurance with single limit combined coverage of not less than one million dollars (\$1,000,000.00) per occurrence whether involving bodily injury, death or property damage and including the following extensions of coverage: blanket contractual liability, contractor's protective liability, explosion, collapse and underground property damage, broad form property damage, personal injury, workers compensation, and automobile insurance with limits as required by law, insuring Tenant's contractors and subcontractors (b) comprehensive general liability insurance with single limit combined coverage of one million dollars (\$1,000,000.00) per occurrence whether involving bodily injury, death or property damage, and all risk builders risk insurance for the full value of the improvements to the Premises, insuring Tenant and naming Landlord as an additional insured, and (c) such additional insurance as Landlord shall reasonably require. Such policies shall contain a clause stating that no change or cancellation of coverage shall be undertaken without thirty (30) days prior written notice to Landlord. Tenant shall not permit its contractors to commence any work until all required insurance has been obtained, and certificates of insurance evidencing the same have been delivered to Landlord.

(c) All contractors engaged by Tenant shall be bondable, licensed contractors capable of performing quality workmanship in a timely manner.

(d) Tenant's contractor and construction shall comply in all respects with applicable federal and/or local statutes, ordinances, regulations, laws and codes. All required building and other permits in connection with the construction and completion of the Premises shall be obtained and paid for by Tenant.

(e) Landlord shall have the right to perform on behalf of and for the account of Tenant, subject to reimbursement by Tenant, any Tenant Improvements which Landlord deems necessary to be done on an emergency basis and which pertain to structural components of the Shopping Center.

(f) Tenant Improvements shall be subject to the inspection and approval of Landlord and Landlord's architect.

(g) Tenant shall be responsible for all utility costs or charges for any service to the Premises from the date Tenant is obligated to commence Tenant Improvements.

(h) Tenant shall apply and pay for all utility meters, except for metered services provided by Landlord (if any).

(i) Upon the completion of Tenant Improvements all fixtures and facilities shall be fully functional and without defects.

(j) On the completion of Tenant's store work, copies of the warrantion (one year minimum) on all work and equipment, shall be provided to Landlord by Tenant.

(k) All work performed by Tenant during the term of this Lease shall be performed so as to cause a minimum of interference with other tenants and the operation of the Shopping Center. Tenant will take all precautionary steps to protect the facilities of others affected by Tenant Improvements and properly police raw. All construction equipment and materials are to be located in confined areas. Truck traffic is to be routed in and from the site as directed by Landlord so as not to burden the operation of the Shopping Center.

(l) Landlord shall have the right to order Tenant or any of Tenant's contractors who willfully violates the above requirements to cease work, and to remove himself, his equipment and employees from Landlord's property.

(m) Landlord and/or Landlord's architect shall, from time to time, monitor Tenant Improvements and shall have the right to require all work which does not comply with Tenant's approved plans and specifications to be corrected within fifteen (15) days of written notification to Tenant.

#### 4. Completion of Construction.

(a) All Tenant Improvements shall be completed in accordance with the final Store Working Drawings and Specifications.

(b) Upon the completion of Tenant's construction and fixturing work within the Premises, Landlord, upon request in writing by Tenant, shall issue a Certificate of Acceptance of said Premises. The issuance of a Certificate of Acceptance by Landlord to Tenant shall be required before the allowance for Tenant Improvements, if any, shall be paid by Landlord to Tenant. The issuing of such a certificate shall be contingent upon all of the following:

(i) The satisfactory completion by Tenant of the work to be performed by Tenant under the final approved Store Working Drawings and Specifications.

(ii) Receipt from Landlord or Landlord's architect of a premises acceptance letter, said letter to be issued upon correction of deficiencies noted by the inspection of the Premises.

(iii) Tenant shall furnish Landlord with waivers of liens and sworn statements in such form as may be required by Landlord from all persons performing labor and/or supplying materials in connection with such work showing that all said persons shall have been compensated in full.

(iv) Submission by Tenant to Landlord of a detailed breakdown of Tenant's final and total construction costs, together with receipted invoices showing payment thereof.

(v) Submission by Tenant to Landlord of warrantion for workmanship, materials and equipment as required herein.

(vi) Submission by Tenant of a statement wherein Tenant agrees to indemnify Landlord against any and all liess against the Premises or any claims by any material suppliers, contractors or sub-contractors.

EXHIBIT D

Three Broker Method Confined.

Landlord and Tenant agree that the "three broker method" referenced in the definition of Option Term set forth in Section 1.01 hereof shall be applied as follows: In the event Landlord and Tenant shall not have agreed within thirty (30) days after Tenant's exercise of said option to renew this Lease, or what constitutes prevailing market rate, then the prevailing market rate shall be determined by an independent third party acceptable to Landlord and Tenant, who shall be experienced in the retail real estate market in the Potomac Village, Montgomery County, Maryland area, and who shall render a decision within thirty (30) days of being selected. If the parties cannot agree upon a mutually acceptable third party within thirty (30) days after the date of exercise of said option, then the then-prevailing market rate shall be determined by a committee of three (3) individuals, each of whom shall be unrelated to either Landlord or Tenant and shall be experienced in the retail real estate market in the Potomac Village, Montgomery County, Maryland area, as follows: One such individual shall be chosen by Landlord, a second individual shall be chosen by Tenant and a third shall be chosen by the two individuals chosen aforesaid. If either party does not select an individual within thirty (30) days of the date of the exercise of said option, then an individual will be selected for that party within an additional ten (10) days by the other party. Each individual shall make an independent determination within thirty (30) days of appointment and the fair market value shall be the average of the two (2) determinations closest in value. Expenses of these individuals shall be borne by the respective parties choosing said individual, except that the expense of the single individual (in the event the parties can agree upon a single individual) or third individual (in the event of the three individual method) shall be borne one-half (1/2) by Landlord and one-half (1/2) by Tenant.

SM/TSERV.WS

OPTION TERM: Provided that Tenant 1) is not in default hereunder and 2) ~~the Lease is not terminated or assigned~~ Tenant shall have the right to extend this lease of one (1) five-year renewal term. ~~At the end of the first five-year term, the rent shall be calculated by one hundred (100%) percent of any increase in the CPI, with a minimum increase of three (3%) percent and a maximum of five (5%) percent annually, such escalation to be effective as of the first day of each such option year.~~

The Option Term shall be subject to the same terms and conditions as the initial Lease Term. Notwithstanding anything else to the contrary, in no event shall the rental rate be less than that paid by Tenant immediately prior to the effective date of the Option Term. In the absence of agreement between Landlord and Tenant regarding the prevailing market rent, the Option Term rental ~~shall be~~ shall be determined by the "three-broker method" described in Exhibit H.

PERCENTAGE RENT RATE (Section 3.02): Six percent (6%) of Gross Receipts in excess of Fixed Minimum Rent.

CAPEx AREA MAINTENANCE PAYMENT (Section 4.01): Proportional Share ~~OF~~ 100,000 1.0%.

REAL ESTATE TAX EXPENSE (Section 4.01): Proportional Share ~~OF~~ 1,000,000 1.0%.

ADVERTISING AND PROMOTION (Section 5.01): \$2.00 per square foot per annum, \$115.00 per month.

PREPAID RENT: \$2,567.50 paid upon execution of this Lease to be applied to the first installment of Fixed Minimum Rent due hereunder.

~~Security Deposit~~ (Section 3.07): Two Thousand Five Hundred Eighty-Seven and 50/100 Dollars (\$2,587.50) which will be held in escrow ~~to secure the performance of the terms of this Lease~~ as provided in Section 3.07.

GUARANTOR: Thomas J. Urban  
Guarantor's Address: c/o Soft Serve, Inc.  
1136 St. Florence Terrace  
Gibson, MD 21032

EXCLUSIVE GUARANTEE: Tenant shall be the only frozen yogurt store in the Shopping Center, in accordance with the terms and conditions outlined in Exhibit F attached hereto.

RADIUS RESTRICTION: 3 miles.

SECTION 1.02 Significance of a Basic Lease Provision.

Each reference in this "Lease" to any of the basic lease provisions contained in Section 1.01 of this Article shall be deemed and construed to incorporate all of the terms thereof. The basic lease provisions shall be construed in connection with and limited by any such reference.

SECTION 1.03 Enumeration of Exhibits.

The exhibits enumerated in this Section and attached to this Lease are incorporated in this Lease by this reference and are to be construed as a part of this Lease.

- Exhibit A. Site Plan of Shopping Center.
- Exhibit B. Specifications (Landlord's Mark, Tenant's Mark and Sign Criteria).
- Exhibit C. Performance Schedule and Approval's Required for Tenant's Improvements.
- Exhibit D. Definition of the "Three Broker Method".
- Exhibit E. Tenant's Business Plan.
- Exhibit F. Asbestos Report on the Premises.
- Exhibit G. Restrictive Covenants.
- Exhibit H. Delivery of Possession.

## ARTICLE II

### LEASE OF PREMISES AND QUIET ENJOYMENT

SECTION 2.01 Description and General Obligations.

Landlord owns or controls the land shown on Exhibit A, together with the certain buildings and improvements thereon depicted, all of which constitute the Shopping Center. In consideration of the rents, covenants and

ARTICLE I

BASIC LEASE PROVISIONS

EXPLANATION OF EXHIBITS

SECTION 1.0) Basic Lease Provisions.

- (A) DATE: December \_\_\_\_\_, 1988
- (B) LANDLORD: Potomac Place Limited Partnership
- (C) ADDRESS OF LANDLORD: c/o The Sigal/Zuckerman Company  
Two Wisconsin Circle, Suite 800  
Chevy Chase, Md. 20815
- (D) TENANT: Soft Serve, Inc., A Maryland Corporation
- (E) ADDRESS OF TENANT: c/o Thomas J. Gebon  
3116 Glendon Terrace  
Olney, Md. 20852

PERMITTED USE (Section 3.02): Retail sale of "I Can't Believe It's Yogurt" ~~products, frozen yogurt products, soft serve and dairy drinks for off and on premises consumption without seating (or, if applicable, the minimum seating required by zoning code).~~

TENANT'S TRADE NAME (Section 3.02): "I Can't Believe It's Yogurt."

SHOPPING CENTER (Section 2.01): Potomac Place Shopping Center ("Shopping Center"), situated in the Village of Potomac, Montgomery County, Maryland.

PREMISES (Section 2.01): That portion of the Shopping Center outlined in red on Exhibit A with an approximate area of ~~10,000~~ <sup>10,000</sup> sq. ft. Exhibit A is attached solely for the purpose of showing the location of the Premises.

LEASE YEAR: Twelve consecutive calendar months starting with the Rental Commencement Date. If, however, the Rental Commencement Date is other than the first day of a calendar month, the first Lease Year shall be the period of time from said Rental Commencement Date to the end of the month in which said Rental Commencement Date shall occur plus the following twelve (12) calendar months. Each Lease Year thereafter shall be a successive period of twelve (12) calendar months.

LEASE DATES:

COMMENCEMENT DATE: The date of full execution of this lease by Landlord and Tenant (the "Commencement Date").

LEASE TERM: The term of the Lease commencing on the Commencement Date and terminating five (5) years after the Rental Commencement Date (the "Lease Term").

RENTAL COMMENCEMENT DATE: The earlier of forty-five (45) days after Landlord's delivery of possession of the Premises or the date Tenant opens for business, (the "Rental Commencement Date").

FIXED MINIMUM RENT (Section 3.01):

(a) Two Thousand Five Hundred Eighty Seven and 00/100 Dollars ~~(2,587.00)~~ each calendar month of each Lease Year (the first through the fifth Lease Year inclusive).

ANNUAL ESCALATION: One hundred (100%) percent of any increase in the ~~cost of~~ <sup>cost of</sup> ~~the~~ <sup>the</sup> ~~land~~ <sup>land</sup> ~~with~~ <sup>with</sup> a minimum annual increase of three (3%) percent, and a maximum of five (5%) percent.

ARTICLE I

BASIC LEASE PROVISIONS

ENUMERATION OF EXHIBITS

SECTION 1.01 Basic Lease Provisions.

(A) DATE: December \_\_\_\_\_, 1988

(B) LANDLORD: Potomac Place Limited Partnership

(C) ADDRESS OF LANDLORD: c/o The Sigal/Zuckerman Company  
Two Wisconsin Circle, Suite 600  
Chevy Chase, MD 20815

(D) TENANT: Soft Serve, Inc., A Maryland Corporation

(E) ADDRESS OF TENANT: c/o Thomas J. Urban  
3136 Florence Terrace  
Diney, MD 20812

PERMITTED USE (Section 3.02): Retail sale of "I Can't Believe It's Yogurt" ~~products, beverages and dairy products~~ for all and on premises consumption without seating (or, if applicable, the minimum seating required by zoning code).

TENANT'S TRADE NAME (Section 3.02): "I Can't Believe It's Yogurt."

SHOPPING CENTER (Section 2.01): Potomac Place Shopping Center ("Shopping Center"), situated in the Village of Potomac, Montgomery County, Maryland.

PREMISES (Section 2.01): That portion of the Shopping Center outlined in red on Exhibit A with an approximate area of ~~XXXXXX~~ Exhibit A is attached solely for the purposes of showing the location of the Premises.

LEASE YEAR: Twelve consecutive calendar months starting with the Rental Commencement Date. If, however, the Rental Commencement Date is other than the first day of a calendar month, the first Lease Year shall be the period of time from said Rental Commencement Date to the end of the month in which said Rental Commencement Date shall occur plus the following twelve (12) calendar months. Each Lease Year thereafter shall be a successive period of twelve (12) calendar months.

LEASE DATES:

COMMENCEMENT DATE: The date of full execution of this lease by Landlord and Tenant (the "Commencement Date").

LEASE TERM: The term of the Lease commences on the Commencement Date and terminates five (5) years after the Rental Commencement Date (the "Lease Term").

RENTAL COMMENCEMENT DATE: The earlier of forty-five (45) days after Landlord's delivery of possession of the Premises or the date Tenant opens for business, (the "Rental Commencement Date").

FIXED MINIMUM RENT (Section 3.01):

41.750

(a) Two Thousand Five Hundred Eighty-seven and 50/100 Dollars ~~per~~ each calendar month of each Lease Year (the first through the fifth Lease Year inclusive).

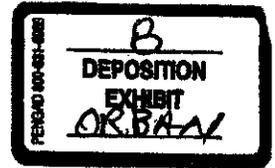
ANNUAL ESCALATION: One hundred (100%) percent of any increase in the ~~rent~~ with a minimum annual increase of three ~~percent~~ and a maximum of ~~percent~~.

43,100/100



# **Exhibit 9**

Soft Serve, Inc.  
10148 River Rd.  
Potomac, Md. 20854



October 18, 2002

Mr. Sheldon Zuckerman  
Sigal Zuckerman  
2 Wisconsin Circle, #560  
Chevy Chase, Md. 20815

Dear Sheldon: Re. Lease extension

Several weeks ago I signed an amendment extending the term by five years. I requested this because I have capital expenditures which are substantial in relation to the store's profitability. Besides the money, I put a lot of time into each decision. So I wanted to have the security of a longer lease. I have not received a copy back from your office, so I am writing to ask for one and to take the opportunity to tell you what I am doing.

So far this year I spent about \$6,000 on the shop. The ceiling lights were replaced with brighter ones. I showed you pictures of tables imported from France. They do not impede foot traffic and were used a lot. All shelves in the store were exchanged. There is a new refrigerator. The front of the store was just reconfigured and this week we will have a line of lo-carbohydrate items (at least 30) on display. This ties in with lo-carb soft serve which has gained popularity. Three signs were ordered. 1) a menu board featuring ice cream soda classics. 2) a neon "Java Coast", our brand of coffee. 3) Thomas Sweet Ice Cream and Custard will replace the "donuts & yogurt" outside. Thomas Sweet has won "best in DC" from Washingtonian Magazine two years in a row, and similar acclaim from the Post. The marketing dept. of Sara Lee is helping upgrade our coffee graphics, particularly the light box above the donut cabinet.

This is just the start. Store sales will be about \$425 per square foot this year, steadily up from \$185/ft seven years ago. The store needs a good name. It will be called "Sprinkles", which is American, and kids like it. Sprinkles says ice cream. There are sprinkled donuts, too. It is an easy name. I need a logo designed, freezer labels printed for products and t-shirts. The outside sign will be redone. Also, another refrigerator will be replaced. Finally, something needs to be done about the wallpaper, which is tired looking.

You can understand that as my lease term draws nearer to its end there is a rational disincentive to invest in the business, which is why I requested the extension several months ago. I want to continue to "upgrade", but at this point I need some guarantee that it makes economic sense.

Yours truly,

T. J. Orban

# **Exhibit 10**

# TRADE NAME APPROVAL SHEET

**\*\* KEEP WITH DOCUMENT \*\***



1090361887710782

### TRANSACTION TYPE

### FEES REMITTED

TN - Trade Name Registration 12.00  
TA - Amendment \_\_\_\_\_  
TA1 - Amendment Owner Added \_\_\_\_\_  
TA2 - Amendment Owner Deleted \_\_\_\_\_  
TA3 - Amendment Owner Name Change \_\_\_\_\_  
TA4 - Amendment Location Added \_\_\_\_\_  
TA5 - Amendment Location Deleted \_\_\_\_\_  
TA6 - Amendment Location Changed \_\_\_\_\_  
TC - Cancellation \_\_\_\_\_  
TR - Renewal \_\_\_\_\_

ID N T00182058 ACK N 1808361987710782  
LIBER: 880448 FOLIO: 8948 PAGES: 8882  
SPRINKLES

11/21/2002 AT 10:57 A WO N 0000688498

\_\_\_\_ Certified Copies  
\_\_\_\_ Copy Fee: \_\_\_\_\_  
\_\_\_\_ Certificates  
\_\_\_\_ Certificate of Fact Fee: \_\_\_\_\_  
TOTAL FEES: 12.00

\_\_\_\_ Other Change(s)  
\_\_\_\_\_  
\_\_\_\_\_

### NO FEE TRANSACTION TYPES

- 99T - Departmental Action
- 99TA - Departmental Action - Name Change
- 220T - Void Non-Payment
- 220TA - Departmental Action - Amendment
- 220TA1 - Departmental Action - Owner Added
- 220TA2 - Departmental Action - Owner Deleted
- 220TA3 - Departmental Action - Owner Name Change
- 220TA4 - Departmental Action - Location Added
- 220TA5 - Departmental Action - Location Deleted
- 220TA6 - Departmental Action - Location Changed
- 220TC - Departmental Action - Cancellation

Code \_\_\_\_\_  
Attention: \_\_\_\_\_  
Mail to Address: \_\_\_\_\_

SOFT SERVE, INC.  
10148 RIVER RD  
POTOMAC MD 20854-4903

Credit Card \_\_\_\_\_ Check  Cash \_\_\_\_\_  
\_\_\_\_ Documents on \_\_\_\_\_ Checks

Approved By: [Signature]  
Keyed By: [Signature]

COMMENT(S):

Stamp Work Order and Customer Number HERE

QUANT 1010001007306  
WORK ORDER: 880888498  
DATE: 11-20-2002 03:07 PM  
INTL. PURCHASER: 00

CUST ID: 0001007365  
WORK ORDER: 0000000400  
DATE: 11-25-2002 03:07 PM  
RTY. PRID: 012.00

State of Maryland  
DEPARTMENT OF  
ASSESSMENTS AND TAXATION  
General Services Administration  
Consumer Services Division

HARRIS N. GLENDENFUNG  
Governor  
RONALD W. WINEBOLT  
Director  
PAUL B. ANDERSON  
Administrator

TRADE NAME APPLICATION

TRADE NAME: SPRINKLES

ADDRESSES WHERE NAME IS USED: 10148 River Road  
Potomac, Maryland 20854

LEGAL NAME OF OWNER OF BUSINESS USING THE TRADE NAME: D2245389  
Soft Serve, Inc.

Is owner an individual or general partnership, does it have a personal property account (an "L" number)? YES NO

If yes, what is that number? L \_\_\_\_\_  
See instruction 7 on the other side of this form.

ADDRESS OF OWNER: 10148 River Road  
Potomac, Maryland 20854

ZIP: \_\_\_\_\_

DESCRIPTION OF BUSINESS: Retail store selling donuts and ice cream.

I AFFIRM AND ACKNOWLEDGE UNDER PENALTIES OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SIGNATURE OF OWNER \_\_\_\_\_  
SIGNATURE OF OWNER [Signature]

SIGNATURE OF OWNER \_\_\_\_\_  
SIGNATURE OF OWNER \_\_\_\_\_

Form 801 - 301 West Preston Street - Baltimore, Maryland 21201

**TRADE NAME APPROVAL SHEET**  
**\*\* KEEP WITH DOCUMENT \*\***

T182059



1000361995187584  
 ID N T00182059 ACK N 1000361995187584  
 LIDER: 851163 POLIO: 0761 PAGES: 0002  
 SPRINKLES  
 07/18/2007 AT 11:18 A WO N 0001453356

TRANSACTION TYPE	FEE REMITTEE
TN - Trade Name Registration	_____
TA - Amendment	_____
TA1 - Amendment Owner Added	_____
TA2 - Amendment Owner Deleted	_____
TA3 - Amendment Owner Name Change	_____
TA4 - Amendment Location Added	_____
TA5 - Amendment Location Deleted	_____
TA6 - Amendment Location Changed	_____
TC - Cancellation	_____
TR - Renewal	<u>76</u>

\_\_\_\_ Certified Copies      Copy Fee: \_\_\_\_\_  
 \_\_\_\_ Certificates      Certificate of Fact Fee: \_\_\_\_\_ Other Charge(s) \_\_\_\_\_  
**TOTAL FEES:** 25

**NO FEE TRANSACTION TYPES**

- 99T - Departmental Action
- 99TA - Departmental Action - Name Change
- 220T - Void Non-Payment
- 220TA - Departmental Action - Amendment
- 220TA1 - Departmental Action - Owner Added
- 220TA2 - Departmental Action - Owner Deleted
- 220TA3 - Departmental Action - Owner Name Change
- 220TA4 - Departmental Action - Location Added
- 220TA5 - Departmental Action - Location Deleted
- 220TA6 - Departmental Action - Location Changed
- 220TC - Departmental Action - Cancellation
- 220TR - Departmental Action - Renewal

Code \_\_\_\_\_  
 Attention: \_\_\_\_\_  
 Mail to Address:  
 SOFT SERVE, INC.  
 18148 RIVER RD  
 POTOMAC MD 20854-4983

Credit Card \_\_\_\_\_ Check  Cash \_\_\_\_\_

\_\_\_\_ Documents on \_\_\_\_\_ Checks

Approved By: [Signature]

Keyed By: [Signature]

COMMENT(S):

CUST ID: 0002010320  
 WORK ORDER: 0001453356  
 DATE: 08-21-2007 10:56 AM  
 AMT. PAID: \$25.00

OP 5167

# **Exhibit 11**



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
 LICENSURE AND REGULATORY SERVICES  
 255 ROCKVILLE PIKE, 2ND FLOOR  
 ROCKVILLE, MARYLAND 20850  
 240-777-3986 FAX 240-777-3088

**FOOD SERVICE FACILITY/EATING AND DRINKING ESTABLISHMENT  
 PERMIT APPLICATION**

Application is hereby made for a permit to operate a Food Service Facility/Eating and Drinking Establishment in Montgomery County, Maryland.

(PLEASE PRINT)

Please review data and change if different, fill in any blanks, and sign this application.

TODAY'S DATE Dec 18, 2002

OWNER OR CORPORATION NAME: **SOFT SERVE, INC.**  
 OWNER OR CORPORATION ADDRESS: **3136 ST. FLORENCE TERR.**  
**OLNEY MD 20832**

OWNER PHONE #: ~~301-570-8796~~  
103-748-0978

NAME OF FACILITY: ~~+CANT BELIEVE IT'S YOGURT-~~ **PHONE #: 301-299-8415**  
SPRINKLES

FACILITY ADDRESS: **10148 RIVER RD.**  
**POTOMAC MD 20854**

DOES THE BUSINESS DO CATERING? [ ] Yes [X] No

FORMER NAME OF FACILITY (IF APPLICABLE): \_\_\_\_\_

NORMAL WORKING HOURS AND DAYS OPEN FOR BUSINESS: **6-9**

WATER SUPPLY: [X] PUBLIC OR [ ] WELL  
 (30 days required for well water testing - contact Well & Septic Section at 301-217-6160.)  
 SEWERAGE: [X] PUBLIC OR [ ] SEPTIC SYSTEM

SIGNATURE OF OWNER: *Thomas Orban*

NAME OF ABOVE SIGNATURE (PRINTED): THOMAS ORBAN

PLEASE PAY THIS AMOUNT: \$365.00 Please submit fee (NO CASH) with application and make check payable to "Montgomery County". Return application and fee by December 16, 2002. If application and fee are not received by January 31, 2003, an additional fee of \$100.00 will be required.

OFFICE USE ONLY

Receipt Number: 304106 Date Issued: 12/31/02  
 Amount: 365.00 Date Expires: 1/31/04

License # 1230 Area 09

**2003 RENEWAL**

# **Exhibit 12**



File: Name: sprinkls

File Date: 12/31/2002, Time: 2:01 pm

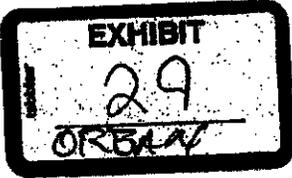
File Size: 3,159

File Type: FlexiSIGN-PRO

OP 5172



# **Exhibit 13**



16159 Shady Grove Rd.  
 Gaithersburg, MD 20877  
 301.948.8088 (P); 301.948.8244 (F)  
 s.sterico@STERICOSIGNS.com

**Invoice**

Date: 10/22/2003  
 No.: 18772

Sold To:

SOFT SERVE, INC.  
 10148 RIVER ROAD  
 POTOMAC, MD 20854

Ship To:

P.O. #:	TERMS: Net 30	PAYMENT DUE: 11/21/2003	ACC'T MGR: EG	ORDERED BY:	VIA: PICK UP
---------	------------------	----------------------------	------------------	-------------	-----------------

QTY.	CODE	DESCRIPTION	UNIT COST	EXTENSION
1	PLEXIGL...	VINYL INSTALLED ON PLEXIGLASS-SPRINKLES	105.00	105.00T
1	NEON	NEON SIGN-BAGELS	123.00	123.00T

Thank you for your business.

Subtotal \$228.00

Refunds are not permitted on custom work. All product remains the property of Sterico, Inc. until paid in full. If not paid according to terms, Sterico, Inc. has the right to remove product from client's premises and to assess interest fees of 1.5% per month plus collection costs.  
 STERICO SIGNS is locally and independently owned and operated.  
 FEIN #: 521638173

Sales Tax (5.0%) \$11.40

**Total** \$239.40

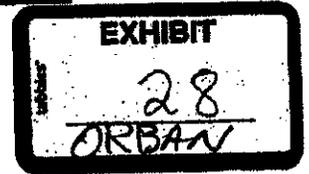
**YOUR FULL SERVICE SIGN CENTER**

[www.STERICOSIGNS.com](http://www.STERICOSIGNS.com)

OP 5173

# **Exhibit 14**

American Express  
Establishment Services  
P.O. Box 53773  
Phoenix, AZ 85072-3773



Sprinkles  
10148 River Road  
Potomac, MD 20854



01007

July 21, 2003



Merchant Number: 219-030-109-3

Dear Sprinkles:

Welcome! We are delighted that you have joined the network of fine establishments worldwide that welcome American Express® Cards. Attached is your confirmed discount rate and payment information for accepting American Express Cards. If this information is incorrect please call us immediately at 1-800-528-5200.

You have elected to authorize and submit charges electronically. Please contact your terminal provider, notify them of your new American Express Merchant number, and request to have your terminal programmed accordingly. Advise your terminal provider of your American Express Merchant number. Remember to ask your terminal provider how long it will take to program your terminal, and when you will be ready to start accepting American Express charges. Your terminal provider should provide you with a phone number for servicing issues on a statement or terminal decal.

American Express will automatically deposit payments due to you into your banking account. If you have not already provided your bank account information to your bankcard service provider, please call American Express directly at 1-800-528-5200.

If you have questions or need assistance, please call 1-800-528-5200, 24 hours a day. Your welcome kit should arrive within the next week. Please place the American Express decal on your door. This will ensure that Cardmembers know that you now accept American Express Cards.

Thank you for giving us the opportunity to work with you. We look forward to sharing a productive and mutually profitable relationship with you for many years to come.

Sincerely,

William H. Glenn  
President  
Establishment Services North America

Enc: Terms & Conditions 21144 C (Rev. 10/02)

**Merchant Number:** 219-030-109-3

**Floor Limit:** \$0; ALL charges must be authorized.

**Discount Rate:** 3.50%

**Check Payment/Advice Address:** Please review address listed below as we will be sending your payment/advice to this address:  
  
SPRINKLES 10148 RIVER RD.  
POTOMAC, MD 20854

**Payment Method:** You have elected for your payment to be automatically deposited into your bank account and to authorize and submit your charges electronically.

**Payment Plan:** Payment is sent in 3 business days after we receive and process charges.

WHETHER OR NOT YOU HAVE SIGNED ANOTHER AGREEMENT, BY ACCEPTING THE AMERICAN EXPRESS® CARD FOR THE PURCHASE OF GOODS AND/OR SERVICES, YOU AGREE TO BE BOUND BY THIS LETTER AND THE TERMS AND CONDITIONS (Rev. 10/02) FOR AMERICAN EXPRESS CARD ACCEPTANCE (THE "TERMS AND CONDITIONS") ENCLOSED WITH THIS LETTER. THIS LETTER ALONG WITH THE TERMS AND CONDITIONS FORM THE AGREEMENT WHICH IS REFERENCED IN THE TERMS AND CONDITIONS.

# **Exhibit 15**

**DISCOVER**  
BUSINESS SERVICES

DISCOVER BUSINESS SERVICES  
PO BOX 3016  
NEW ALBANY OH 43054

MERCHANT NUMBER 601



MONTHLY DETAIL REPORT

PAGE 1 OF 2  
ACTIVITY ENDING 10/31/2003

**ACTIVITY REPORT**

Did you know that we can send this report to your e-mail address? Please visit us at [Discoverbiz.com](http://Discoverbiz.com) to learn more about paperless reporting.

Did you know that we can send this report to your e-mail address? Please visit us at [Discoverbiz.com](http://Discoverbiz.com) to learn more about paperless reporting.

#BMNBCRL 31 SMMNR02 0156292\*\*\*  
#1320019050#  
SPRINKLES  
10148 RIVER RD  
POTOMAC MD 20854-4903

**Transaction Summary**

TYPE	COUNT	AMOUNT
Sales Accepted	1	63.78
Discount Activity		-1.69

**Settlement Activity**

The following activity was settled via **ELECTRONIC TRANSFER** to:  
RIGGS BANK NATIONAL ASSOCIATIO Account# 50081902

DATE SETTLED	MERCHANT OUTLET NUMBER	TYPE BATCHES	AMOUNT SETTLED
10/20/03	601101320019050	TOTAL AMOUNT SETTLED:	63.78
11/03/03	601101320019050	DISCOUNT	-1.69
		TOTAL AMOUNT SETTLED:	-1.69

**Batches Received**

6011 0132 0019 050 SPRINKLES

BATCH DATE	BATCH REF #	CARD BRAND	NUMBER OF ITEMS	TRAN TYPE	RECEIVED AMOUNT
10/18/03		DISCOVER CARD	1	S	63.78
				OUTLET TOTAL:	63.78

**Discount Activity**

Discover Card discount is calculated by multiplying gross sales volume by your discount rate. Gross sales volume equals sales, plus or minus any adjustments.

DATE SETTLED	MERCHANT OUTLET NUMBER	GROSS SALES VOLUME	DISCOUNT RATE	DISCOUNT AMOUNT
10/31/03	601101320019050	63.78	0.02520	-1.61
			TOTAL:	-1.61

1136002 SMMNR02 0156292 7

Look for us at [www.discoverbiz.com](http://www.discoverbiz.com)  
If you have questions or need additional information, please contact your Merchant Service Specialist or call:  
Merchant Service Center 1-800-347-2000  
Si requiere más asistencia (en español) 1-800-347-7000

OP 5191

MERCHANT NUMBER 6011 0132 0019 050

MONTHLY DETAIL REPORT

PAGE 2 OF 2  
ACTIVITY ENDING 10/31/2003

**Discount Activity Continued**

*Discover Card processing fee is calculated by multiplying total number of Discover Card sales transactions by your processing fee rate.*

<u>DATE</u> <u>SETTLED</u>	<u>MERCHANT</u> <u>OUTLET NUMBER</u>	<u>TOTAL</u> <u>SALES TRANS</u>	<u>PROCESSING</u> <u>FEE RATE</u>	<u>PROCESSING</u> <u>FEE AMOUNT</u>
10/31/03	601101320019050	1	0.08000	-0.08
			<b>TOTAL:</b>	<b>-0.08</b>

**THIS IS A STATEMENT OF YOUR ACCOUNT.  
THE REPORTED ACTIVITY WILL BE REFLECTED IN YOUR SETTLEMENT.**

FOR SERVICE REQUESTS PLEASE CALL 1-800-347-2000

Look for us at [www.discoverbiz.com](http://www.discoverbiz.com)  
If you have questions or need additional information, please contact your Merchant Service Specialist or call:  
Merchant Service Center 1-800-347-2000  
Si requiere más asistencia (en español) 1-800-347-7009

OP 5192

# **Exhibit 16**



# Yellow Pages Maryland Suburban

Northern Montgomery County Edition

Includes Yellow Pages Listings for All of Maryland Suburban Area Codes 301/240

October 1999 — September 2000

**NEW!**  
See Physician & Surgeons and Home Improvement Headings for New Consumer Guides



**INTERNET GUIDE!**  
LOOK FOR THE SECTION INSIDE

**INFOSCENE®**  
ENTERTAINMENT & TOURISM GUIDE

**INFOTIPS®**  
FREE CONSUMER INFORMATION

**Big Atlantic Yellow Pages**  
Supports Children's Literacy



ife. Listed Alphabetically.

**BigYellow**  
Your White & Yellow Pages On The Internet®  
[www.bigyellow.com](http://www.bigyellow.com)

Includes customer listings of all local telephone companies

**ICE (Cont'd)**

**METROPOLITAN ICE & BEVERAGE**  
**WHOLESALE & RETAIL ICE**  
 • Carving Block • Block Ice  
 • Party Ice • Snow  
**OPEN 7 DAYS A WEEK**  
**FREE OFF STREET PARKING**  
**DC Lottery**  
 50 Florida Av NE ----- 202 635-0933

**ON THE ROCKS ICE COMPANY**  
 3424oughDr Waldorf ----- 301 374-9384  
 (Please See Our Display Ad Previous Page)  
**On The Rocks Ice Company**  
 3440oughDr Waldorf ----- 301 893-2929

**PENGUIN ICE COMPANY**  
 \* FOR MORE INFORMATION \*  
 Please See Our Display Ad Previous Page  
 4933FairmanAv Bethesda ----- 301 654-7333

**PRECISION GENERAL SERVICES**  
**WHOLESALE & RETAIL ICE**  
 • CRUSHED • CUBED  
 WE DELIVER  
**Call 301-948-9177**  
**Fax 301-417-0164**  
 217 Water St Gaithersburg ---- 301 948-9177

**REDDY ICE**  
 \* FOR MORE INFORMATION \*  
 Please See Our Display Ad Previous Page  
 4515 14thSt NW ----- 202 726-7800  
**TALBERT'S ICE & BEVERAGE SERV**  
 5234RiverRd Bethesda ----- 301 652-3000

**WATSON'S ICE & BEVERAGE CO**  
 Wholesale - Retail  
 Block - Nuggets Or Crushed  
 Dry Ice / Nuggets  
 "Good Time Ice - The Natural Cool"  
 300 East St Frederick ----- 301 662-8882

**ICE CREAM FREEZERS**

**ELECTRO FREEZE SOFTSERVE-**  
**SHAKE-SLUSH-FREEZERS-**  
 AUTHORIZED DISTRIBUTOR  
**LAUREL**

**HELCO CORPORATION**  
 18011WashingtonBlvd Laurel  
 Washington Metro Tel No. ----- 301 470-2100

**TAYLOR EQUIPMENT**  
**DISTRIBUTORS INC**  
 \* FOR MORE INFORMATION \*  
 Please See Our Display Ad This Page  
 8012FernhamLn Forestville ----- 301 735-4200

Find It Fast In The Bell Atlantic Yellow Pages.

**ICE CREAM & FROZEN DESSERTS-DEALERS**

- A & B Soft Serve Ice Cream Caterers**  
 Owings ----- 301 855-0377
- Ardis Enterprises Inc**  
 5640RichwoodLn Rockville ----- 301 770-3025
- Baskin-Robbins**  
 11437GeorgiaAv Wheaton ----- 301 949-0273
- Baskin-Robbins**  
 8865GreenbeltRd Greenbelt ----- 301 552-3200
- Baskin-Robbins 31 Ice Cream Stores**  
 3917BranchAvenue Temple Hills ----- 301 423-4300
- Baskin-Robbins 31 Ice Cream Stores**  
 CalvertonShoppingCenter Beltsville ----- 301 572-5533
- Baskin-Robbins 31498**  
 7071MarketPlaceBethesda/Arthry Landover ----- 301 772-3100
- Baskin-Robbins 2489**  
 ChesterCountyPb Waldorf ----- 301 870-0310
- Baskin & Robbins At Beltway Plaza**  
 6000GreenbeltRd Greenbelt ----- 301 345-0550
- Baskin-Robbins-Clinton**  
 ClintonCrossingsWoodyardRd Clinton ----- 301 856-0031
- Baskin-Robbins Ice Cream**  
 CabinJohnShoppingCenter ----- 301 983-2300
- Baskin-Robbins Ice Cream**  
 2000HowardSquareBethesda/College Park ----- 301 869-3111
- Baskin-Robbins Ice Cream**  
 9621Northfield Gaithersburg ----- 301 943-3331
- Baskin-Robbins Ice Cream Store**  
 Fort Washington ----- 301 248-3131
- Baskin-Robbins Silver Spring**  
 863716thSt Silver Spring ----- 301 565-5280
- BASKIN-ROBBINS 31 FLAVORS**  
 Ice Cream & Yogurt - Special Cakes For A Special Occasion
- 3904HamiltonSt Hyattsville ----- 301 559-7979
- Baskin-Robbins 31 Ice Cream**  
 10592BristlewoodWay Kensington ----- 301 942-1998
- Baskin-Robbins 31 Ice Cream Stores**  
 7136ArlingtonRd Bethesda ----- 301 652-3142
- Baskin-Robbins 31 Ice Cream Stores**  
 Congress Plaza Rockville ----- 301 881-3031
- Baskin-Robbins 31 Ice Cream Stores**  
 300HamiltonSt Hyattsville ----- 301 559-7979
- Baskin-Robbins 31 Ice Cream Stores**  
 301 423-4300
- Baskin-Robbins 31 Ice Cream Stores**  
 8832Inverchance Silver Spring ----- 301 585-3193
- Baskin-Robbins 31 Ice Cream Stores**  
 32649perforLn Bowie ----- 301 464-3151
- Baskin-Robbins 31 Ice Cream Stores**  
 2233Belair Rd Silver Spring ----- 301 598-5783
- Ben & Jerry's Homemade Ice Cream**  
 4903FairmanAv Bethesda ----- 301 652-2233
- Ben's Famous Ice Cream & Gourmet Express**  
 941 ----- 301 457-2963
- 4708BethesdaAv Bethesda** ----- 301 652-6923
- Brodley's Ice Cream Shoppa**  
 10400OdegeorgetownRd Belts ----- 301 530-7766
- Brestler's 33 Flavors Ice Cream Shop**  
 12303OxmoorCrestRd Gaithersburg ----- 301 869-3393
- Briggs Ice Cream Company**  
 51105ArlingtonSt Hyattsville ----- 301 277-8788
- Brown Ice Cream Co**  
 5111BethesdaSt Hyattsville ----- 301 277-8787
- Cary's Ice Cream & Coffee Company**  
 19204MontgomeryVillageAv Gaithersburg ----- 301 338-6101
- Cono Zone**  
 3241RiverRd Bethesda ----- 301 652-6923
- Cup Cono Cakes**  
 301 424-7904
- Trey Kah Square Rockville** ----- 301 933-4741
- Dairy Queen Of Aspen Manor Shopping Center**  
 33635CoppockBlvd Gaithersburg ----- 301 933-4741
- Dairy Queen Of Germantown**  
 12620WintervilleDr Germantown ----- 301 601-3007
- Dairy Queen Of Rockville**  
 2019Westwood Rockville ----- 301 838-7688
- Dairy Queen Stores of Takoma Park**  
 940 East Westway Takoma Park ----- 301 891-3777
- Davale Food Distributors**  
 9215 Silver College Park ----- 301 345-7300
- Dickey's Frozen Custard**  
 7872FleetsideAv Bethesda ----- 301 652-1100
- Frozen Pastries**  
 6015 Oxon Hill Rd Greenbelt ----- 301 839-7629
- Giffords Ice Cream**  
 7720Masonville Rd Bethesda ----- 301 907-3436
- Great Cookie The**  
 JovianMarketShoppingCtr Marietta ----- 301 899-2688
- Hanger-Davis**  
 7101DunwoodyCt Bethesda ----- 301 469-4767
- Havermaile's Taste Best**  
 903117thStN Greenbelt ----- 301 248-2710
- I Can't Believe It's Yogurt**  
 108 International Blvd Silver Spring ----- 301 578-9807
- I Can't Believe It's Yogurt**  
 10148River Rd Potomac ----- 301 299-8415
- I Can't Believe It's Yogurt**  
 11802-DRockvillePka Rockville ----- 301 881-9582
- Ice Cream Delights**  
 11160Verdant Blvd Wheaton ----- 301 933-3387
- Jimmie Cone**  
 26470Ridge Rd Denox ----- 301 253-2003
- Metro Sub Shoppe**  
 8603RamseyAv Silver Spring ----- 301 587-3187
- Pars Ice Cream Co**  
 7521WiltonWay Landover ----- 301 322-7966
- Rita's Real Italian Ice**  
 21630Delansbury Ct Oxton ----- 301 858-9411
- Scoops II Restaurant & Deli**  
 404SatinBarnesRd Temple Hills ----- 301 899-8620

**ICE CREAM & FROZEN DESSERTS-DEALERS (Cont'd)**

- Soup-R-Scoops**  
 1141Unh Blvd E Langley Pk ----- 301 439-8862
- Sweeter's Ice Cream**  
 IversonMail ----- 301 702-2411
- TCBY Treats-Frozen Yogurt & Ice Cream**  
 TCBY-Treats  
 7314BaltimoreAv College Park ----- 301 277-8229
- 6100AGreenbeltRd Greenbelt** ----- 301 982-2521
- Tastee Freez Store**  
 9407Lanham-SewerRd Seatons ----- 301 577-1349
- Tastee Freez Store**  
 67035WlandRd Nomaingdale ----- 301 736-3333
- Temptations Homemade Ice Cream Yogurt & Sandwich Inc**  
 12-S-N Wash St Rockvi ----- 301 279-0343
- Tony's Ice Cream & Cafe**  
 7600WHamphireAv Hyattsville ----- 301 445-4889
- Uncle Jed's Ice Cream Inc**  
 7824RiverviewDr Carrollton ----- 301 439-0563
- White Mountain Creamery**  
 11530-RockvillePka Rockville ----- 301 468-6810
- Zack's Famous Frozen Yogurt**  
 Lake ForestHill ----- 301 921-9283

**ICE CREAM & FROZEN DESSERTS-MFRS & DISTR**

- BERLINER SPECIALTY DISTRIBUTORS**  
 5100BuckinghamHyattsville ----- 301 927-4444  
 (Please See Our Display Ad This Page)
- BRIGGS ICE CREAM CO**  
 MANUFACTURER & DISTRIBUTOR  
 Fine Ice Cream & Frozen Desserts  
**WHOLESALE**  
 5110 Buchanan St Hyattsville -- 301 277-8787
- Clous Ice Cream Inc**  
 16 Lincoln Dr  
 Waldorf ----- Washington Area Tel No. -- 301 843-8846

**CONFECTIONS INC**  
 Maryland's Own  
 Manufacturer & Distributor Of  
 Home Sweet Home  
 Super Premium Ice Cream & Sorbet  
 All Natural/Always Fresh/Wholesale Only  
 Silver Spring ----- 301 608-8996

- Confections Inc**  
 Silver Spring ----- 301 608-8996
- Eddy's Grand Ice Cream**  
 7820ColesAve Gaithersburg ----- 301 258-0600
- Hershey Creamery Company**  
 7435BarnesRd  
 Elridge ----- Wash Area Tel No. -- 301 421-1595
- Larry's Ice Cream**  
 12147HazelSt Rockville ----- 301 468-1950
- National Ice Cream Mix Association**  
 8488ReservoirRd Fulton ----- 301 369-3050
- Northeast Ice Cream Assoc Inc**  
 8488ReservoirRd Fulton ----- 301 953-9117

**ICE CREAM MANUFACTURERS SUPPLIES**

**PANZA A & SONS LTD**  
**HARD, SOFT & DIET IC MIX • DRY IC MIX**  
**BISON YOGURT • GLOMBO PACKAGING •**  
**BASES • SYRUPS • CONES • SUNDAE**  
**TOPPING • WEAVES • FRUIT PUREES**  
**SLUSH SUPPLIES • SPRINKLES • NUTS**  
**WAFFLE CONE & BLEND-IN SUPP. • COOKIES**  
**• WAFERS • PAPER, PLASTIC & FOAM PROD.**  
**• ICE CREAM CAKE SUPPLIES • EXTRACTS**  
 Toll Free-Dial "1" - Then ----- 800 423-2732

**ICE CREAM PARLORS**

- Ben & Jerry's Homemade Ice Cream**  
 199 E MontgomeryAv Rockville ----- 301 610-0360
- Bob's Famous Ice Cream-**  
 9012Patrol Potomac ----- 301 299-9122
- Cono Zone Merchants Market Square**  
 625CenterPointWay Gaithersburg ----- 301 977-0100
- FOREST ICE CREAM**  
 Sandwiches • Hot Dogs • Hatches •  
 Candy • Pizza Chips • Sides  
 5000MarlboroPke Capital Heights ----- 301 516-5560
- Frozen Fusion**  
 11301RockvillePka North Bethesda ----- 301 881-9166
- Incan Traders Inc**  
 15916Shady GroveRd Gaithersburg ----- 301 208-0126
- Maggie Moo's Ice Creams**  
 552 N FrederickAv Gaithersburg ----- 301 926-4239
- Sweet Tree**  
 5502LandoverRd Hyattsville ----- 301 887-1400

**ICE MAKING EQUIPMENT & MACHINES**

**A-I AIR & ICE SERVICE CO**  
 Authorized Sales & Service  
**SCOTSMAN • CRYSTAL TIP**  
**MAHMOUC • WHIRLPOOL**  
**SUB-ZERO • ULINE • MARVEL**  
 4505 Queensbury Rd  
 AUTHORIZED SALES &  
 SERVICE ----- 301 779-2920

**Alreco Inc**  
 1938Lechway  
 Annapolis ----- Washington Area Tel No. -- 301 850-3040

**Alreco-The Compressor Store**  
 10153BaconDr Bethesda ----- 301 593-5666

**AMERICAN ENERGY RESTAURANT**  
**EQUIPMENT INC**  
 Free Ice With Rental  
 7538RadnorCt Springfield ----- 703 644-6666

**ANACONDA REFRIGERATION INC**  
 Commercial Refrigeration Only  
 2948KawstonRd Forestville ----- 301 735-6992

**Automatic Ice Machine Co**  
 Bethesda ----- 301 491-6383

**Benette Mechanical Services Inc**  
 7566MainSt Sykesville ----- 301 912-3458

**BRAY & SCARFF**  
 8610Cienega ----- 301 470-1335  
 (Please See Our Display Ad Next Page)

**CAREY SALES & SERVICES INC**  
 \* FOR MORE INFORMATION \*  
 Please See Our Display Ad Next Page  
 Toll Free ----- 800 848-7748

**CASSCO REFRIGERATION**  
 4515 14thSt NW ----- 202 462-3600  
 (Please See Our Display Ad Next Page)

**DSM Refrigeration**  
 Rockville ----- 301 348-8850

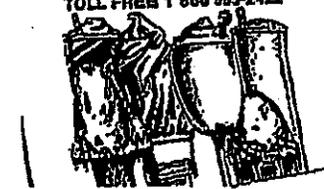
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**Edson Services Inc**  
 10011WesconDr Bethesda ----- 301 594-4700

**GILBERT'S REFRIGERATION INC**  
 Hardware - All Makes & Models - New & Used -  
 Low Prices  
 340 E PatrickSt Frederick ----- 301 662-8345

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 Exclusive Factory Authorized Sales, Service and Parts  
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 • Blended • Italian Ice • Frozen Yogurt  
 • Gourmet Ice Cream and Gelato  
 Financing Available

**TAYLOR EQUIPMENT DISTRIBUTORS INC.**  
 8012 Fernham Ln Forestville  
**301 735-4200**  
 TOLL FREE 1 800 993-2422



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 Concessions • Catering • Delivery  
 • Schools • Restaurants

**Good Humor, Breyers, Klondike, Popalco**  
**SPECIAL EVENTS**  
**FREE LOANER EQUIPMENT**  
**301-927-4444**  
 6101 Buchanan St., Hyattsville, Md

THE ATLANTIC IS NOW VERIZON

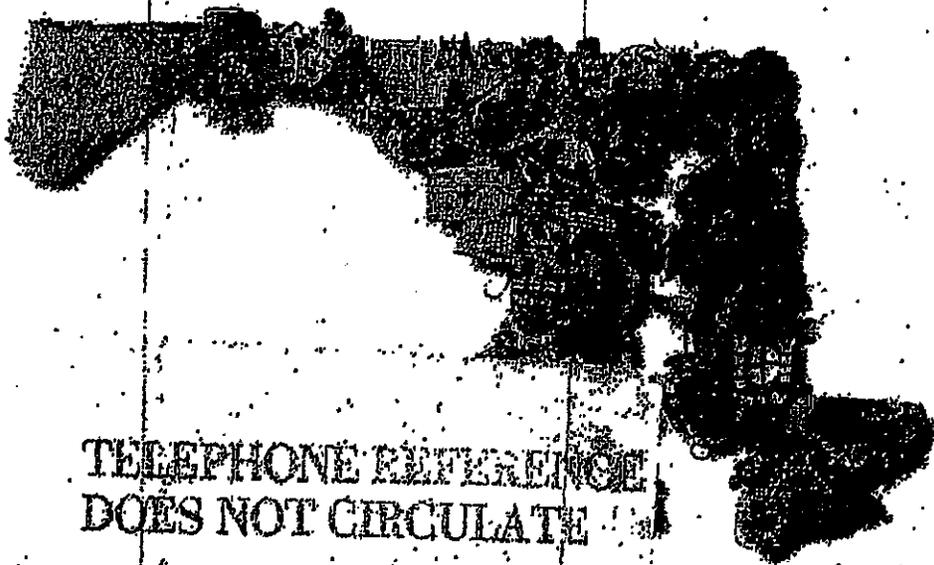
**Verizon**

# White Pages For Montgomery County

Includes White Pages Business Listings  
for All of Maryland Suburban

Area Codes 301/240

October 2000 — September 2001



TELEPHONE REFERENCE  
DOES NOT CIRCULATE

NEW!

Home Listings  
See First White Page

See Advertiser  
Website At [bigo.com](http://bigo.com)

Government Listings  
See Blue Pages

Verizon Supports  
Children's Literacy

Includes customer listings  
of all local telephone  
companies



GET AN IDEA

Listed Alphabetically

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# Yellow Book 2001-2002

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NEWSPAPERS  
The Montgomery Journal  
Home Delivery 1-800-731-1223  
www.jrnl.com

## Suburban Maryland

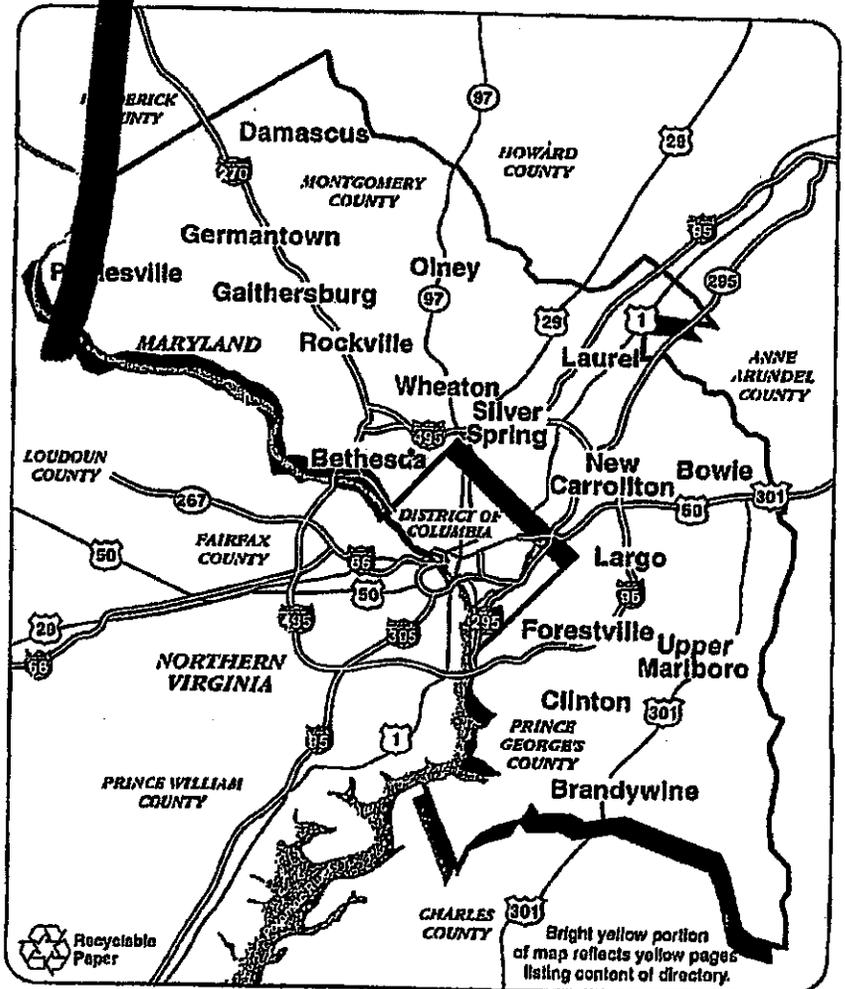
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[www.strathmore.org](http://www.strathmore.org)

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- A** • ANYTIME-
- N** • ANY QUANTITY
- H** • HOMES - HOTELS
- R** • RESTAURANTS

**301-652-3000**  
5234 River Rd Bethesda

## ICE

- Absolutely Baltimore's Best Ice—410 665-3800
- Baltimore-American Ice Co Inc
- 2214 Channing St NE Wash DC—202 529-7462
- O G Guide Snow & Ice Management
- Bethesda—301 229-6900
- Dry Ice Corp
- 1601 Desoto Rd Baltimore—410 644-7800
- Keg City & Ice Co
- 107 E Diamond Ave Gaithersburg—301 926-9090
- Metropolitan Ice & Beverage
- 50 Florida Ave NE Wash DC—202 635-0933
- On The Rocks Ice Company
- 3438 Gough St Waldorf
- Tot Free—800 440-0463
- Penguin Ice Inc
- 4933 Falgout Av Bethesda—301 654-7333
- Reddy-Ice
- Packaged Ice 4515 14th St NW—202 726-7800
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- 4515 14th St NW Wash DC
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- TALBERT'S ICE & BEVERAGE SERVICE**
- 5234 River Rd Bethesda—301 652-3000
- See Our Display Ad This Page
- Watsons Ice And Beverage Co
- 300 East Street Frederick—301 662-8882

## Ice Cream Cakes

SEE Ice Cream & Frozen Desserts-Dealers

## ICE CREAM FREEZERS

- Cliffy JH & Son Refrigeration Co
- 5771 Robb Rd Oak—410 867-0526
- Tastee Freez Of Arlington
- 5221 Wilson Blvd Arlington VA—703 525-9199
- Taylor Equipment Distributors Inc
- 8012 Farnham Lane Forestville—301 735-4200

## ICE CREAM & FROZEN DESSERTS-DEALERS

- Baskin-Robbins
- 11437 Georgia Av Wheaton—301 949-0273
- Baskin-Robbins
- 8845 Greenbelt Rd Greenbelt—301 552-3200
- Baskin & Robbins At Beltway Plaza
- 6000 Greenbelt Rd Greenbelt—301 345-0550
- Baskin-Robbins-Clinton
- Clinton Crossing Woodyard Rd
- Clinton—301 856-0031
- Baskin Robbins Ice Cream
- 10 Bureau Dr Gaithersburg—301 869-3111
- Baskin Robbins Ice Cream
- Cabin John Shopping Center
- Polson—301 983-2300
- Baskin Robbins Ice Cream Store
- 9548 Livingston Rd Ft Washington—301 248-3131
- Baskin-Robbins Silver Spring
- 8639 16th St Silver Spg—301 565-5280
- Baskin-Robbins 31 Ice Cream
- 10592 B Metropolitan Av
- Kensington—301 942-1998

## ICE CREAM & FROZEN DESSERTS-DEALERS

- continued
- Baskin-Robbins 31 Ice Cream & Frozen Yogurt
- Stores
- 1258 Elden St Herndon VA—703 478-0310
- Baskin-Robbins 31 Ice Cream & Frozen Yogurt
- Stores
- Yakovine Shoppin Falls Church VA—703 280-8367
- Baskin-Robbins 31 Ice Cream Stores
- 2233 Bel Pre Rd Silver Spg—301 598-5783
- Carverton Shopping Center
- Bethesda—301 572-5533
- 205 Gorman Ave Rts 1 & 198
- Laurel—301 498-2398
- Baskin Robbins 3448
- 7071 Maria Luther King Jr Hwy
- Landover—301 772-3100
- Baskin Robbins 3450
- Charles County Pk Waldorf—301 870-0310
- Baskin-Robbins 31 Ice Cream Stores
- 7135 Arlington Rd Bethesda—301 652-3142
- 3004 Hamilton Street Hyattsville—301 559-7979
- 3264 Superior Ln Bowie—301 464-3151
- Baskin-Robbins 31 Ice Cream Stores
- Congressional Plaza Rockville—301 881-3831
- Ben & Jerry's Homemade Ice Cream
- 4901 B Farmant Ave Bethesda—301 652-2233
- Bob's Famous Ice Cream
- 9812 Falls Rd Potomac—301 299-9122
- Carmen's Italian Ice
- 1115 Nelson St Rockville—301 545-1154
- Carr's Ice Cream & Coffee Company
- 19206 Montgomery Village Av
- Gaithersburg—301 330-6101
- Carvel Ice Cream
- 691 Rockville Pike Rockville—301 279-5888
- Carvel Ice Cream Bakery
- 8245 Potomac Range Rd Jessup—301 604-9974
- China Express Carryout
- 2422 Powder Mill Rd Bethesda—301 595-3862
- Circus Ice Cream Inc
- 16 Iron Gate Dr Waldorf—301 843-8846
- Corn Zone 5241 River Rd Bethesda—301 652-6823
- Dairy Queen of Aspen Manor Shopping Center
- 13655 Georgia Av Silver Spg—301 933-4741
- Dairy Queen Of Germantown
- 12603 Victoria Dr Germantown—301 601-3007
- Dairy Queen of Herndon
- 779 Station St Herndon VA—703 491-6173
- Dairy Queen Of Rockville
- 2019 Veirs Mill Rd Rockville—301 838-7688
- Dairy Queen Store of Takoma Park
- 940 East West Hwy Takoma Park—301 891-3777
- Dave's Food Distributors
- 9215 91st Av College Park—301 945-7300
- Giffords Ice Cream
- 7720 Wisconsin Av Bethesda—301 907-3436
- Good Humor Breyers Ice Cream
- 1100 Frederick St Hagerstown—301 797-9603
- Haagen-Dazs
- 7101 Democracy Blvd Bethesda—301 469-4767
- Hershey Creamery Company
- 7435 Roosevelt Blvd Edgewater—301 621-1595
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- 7435 Roosevelt Blvd Edgewater—301 621-1595
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- Ice Cream Cafe
- 10323 Old Georgetown Rd
- Bethesda—301 897-8480
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- 552 N Fredrick Ave Gaithersburg—301 926-4239
- Nestle Ice Cream
- 9099 Whiskey Bottom Rd Laurel—410 792-7966
- PG Seafood Carryout
- Penn Mar Shopping Center
- Farmville—301 735-9060
- Pars Ice Cream Co
- 7521 Jefferson Av Landover—301 322-7966
- Soft Service Inc
- 3801 International Dr Silver Spg—301 598-9807
- Summer Delights
- 6939 Laurel Ave Silver Spg—301 891-2880
- Sundaes Ice Cream
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- Gaithersburg—301 869-3333
- TCBY Treats-Frozen Yogurt & Ice Cream
- TCBY Treats
- 7314 Baltimore Ave College Park—301 277-8229
- 6100A Greenbelt Rd Greenbelt—301 982-2521
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- 400 E Pidgeon Blvd Mt Airy—301 831-0157
- Tastee Freez Store
- 6703 Sutherland Rd Morning side—301 736-3933

## ICE CREAM & FROZEN DESSERTS-DEALERS

- continued
- Temptations Homemade Ice Cream Yogurt & Sandwich Inc
- 12 B North Washington St Rockville—301 279-0343
- Tony's Ice Cream & Cafe
- 7690 New Hampshire Av Hyattsville 301 445-4889
- Washington Mini Storage
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- Briggs Ice Cream Co
- 5110 Buchanan St Hyattsville—301 277-8787
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- Capital Ice Cream Wholesalers Inc
- 2307 Bladensburg Rd NE Wash DC—202 832-7300
- Confections Inc Silver Spg—301 608-8996
- East Coast Ice Cream Novelties
- 9885 Washington Blvd Laurel—410 792-7714
- Good Humor Breyers Ice Cream
- Columbia—301 596-6254
- Haagen-Dazs Company The
- 6250 Preston Ct Jessup—301 498-8842
- Protein Group Inc
- 9090 Whiskey Bottom Rd Laurel—301 776-7672
- Slush Puppie Mid-Atlantic
- Clarksville—301 854-1502
- Star Vending Inc 1107 Good Hope Rd SE Wash DC
- Tot Free—800 457-0983
- York Castle Ice Cream Co
- 6771 Mid Cities Av Bethesda—301 672-8183

## ICE CREAM PARLORS

- Baskin Robbins
- 9701 Baltimore Av College Park—301 345-9601
- Baskin Robbins
- 814 1811 Adm AF BS—301 568-0180
- Baskin-Robbins 31 Ice Cream Stores
- 8532 Piney Branch Rd Silver Spg—301 585-3193
- Ben & Jerry's Homemade Ice Cream
- 199 E Montgomery Av Rockville—301 610-0560
- Bob's Famous Ice Cream & Gourmet Express
- DeH 4706 Bethesda Av Bethesda—301 657-2963
- Bradley's Ice Cream Shoppe
- 16400 Old Georgetown Rd
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- 18503 North Frederick Rd
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- 625 Center Point Way Potomac—301 977-0100
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- 7272 Wisconsin Av Bethesda—301 652-1100
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- 9 Potomac Street Boonsboro—301 432-5242
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- 13803 Nagsville Rd
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- 20 Grand Center Av Gaithersburg—301 417-6710
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- 9407 Larch-Severn Rd Seabrook—301 577-1149
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- 2309 Kansas Ave Silver Spg—301 251-9492
- Eaton Services Inc
- 10101 H Bacon Dr Bethesda—301 595-4700
- HOSHIZAKI COMMERCIAL ICE**
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- Nationwide Refrigeration Inc
- Steering VA—301 291-0171
- Interstate Service Co Inc
- 4101 Utah Av Brentwood—301 864-2121
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- EATON SERVICES INC**
- 10101 H Bacon Dr Bethesda—301 595-4700
- Nationwide Refrigeration Inc
- Rockville MD Oic—301 251-0171
- Prada A G Co Inc
- 12122 Conway Rd Bethesda—301 419-2694
- SCOTSMAN COMMERCIAL ICE**
- SYSTEMS**
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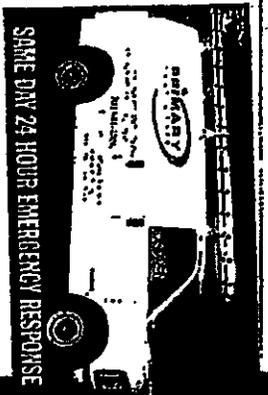
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782 Old World Dr Crofton 301 468-0000

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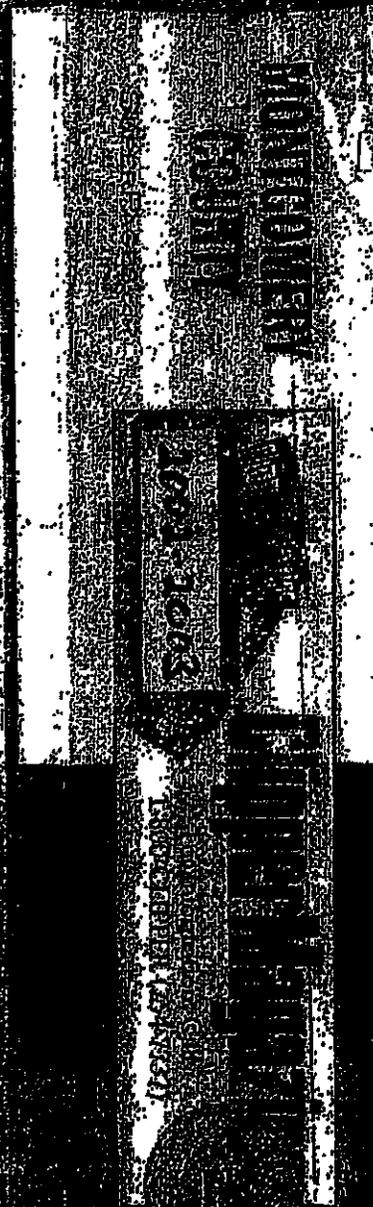
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 Cameron Shopping Center Beltsville 301 572-5533
- Baskin-Robbins 31 Ice Cream Stores**  
 704 Hamilton St Hyattsville 301 559-7979
- Baskin-Robbins 31 Ice Cream Stores**  
 3214 S. Spring Ln Brent 301 464-3151
- Baskin-Robbins**  
 11837 Georgia Ave Vero Beach 301 949-0273
- Baskin-Robbins**  
 4545 Greenbelt Rd Greenbelt 301 552-3200
- Baskin-Robbins 3148**  
 3971 Elvert Ln Luthers King of the Hill 301 772-3100
- Baskin-Robbins 3450**  
 Charles County Pk Woodbridge 301 670-0310
- Baskin & Robbins At Beltway Plaza**  
 6200 Riverdale Rd Greenbelt 301 245-6550
- Baskin-Robbins-Clinton**  
 Clinton Crossing W/Clinton Rd Clinton 301 896-0031
- Baskin-Robbins Ice Cream**  
 Coolin Jct Shopping Center 301 983-2340
- Baskin-Robbins Ice Cream**  
 10 Diamond Square Shopping Center Catonsville 301 869-3112
- Baskin-Robbins Ice Cream Store**  
 Fort Washington 301 248-3131
- Baskin-Robbins Silver Spring**  
 6630 16th St Silver Spring 301 565-6240
- BASKIN-ROBBINS 31 FLAVORS**  
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- Baskin-Robbins 31 Ice Cream Stores**  
 Kalamazoo 301 423-1390
- Baskin-Robbins 31 Ice Cream Stores**  
 8550 Pines Branch Rd Silver Spring 301 585-3193
- Ben & Jerry's Homemade Ice Cream**  
 4701 Falmouth Ave Bethesda 301 452-2233
- Bob's Famous Ice Creams & Gourmet Express**  
 O&B  
 4704 Bethesda Ave Bethesda 301 657-2963
- Bradley's Ice Cream Shoppe**  
 10420 Old Georgetown Rd Bethesda 301 510-7766
- Briggs Ice Cream Company**  
 5119 Rockcase St Hyattsville 301 277-8768
- Original Ice Cream Co**  
 5119 Rockcase St Hyattsville 301 277-8787
- Carr's Ice Cream & Coffee Company**  
 1925 Montgomery Village Ave Gaithersburg 301 330-6101
- Central Cafe & Ice Cream**  
 11839 Old Noctville Pk Rockville 301 881-9582
- Dairy Queen Of Aspen Manor Shopping Center**  
 13613 Georgia Ave Silver Spring MD 301 913-4241
- Dairy Queen Of Germantown**  
 12693 Wilshire Dr Germantown 301 661-3007
- Dairy Queen Of Rockville**  
 5119 Rockcase St Hyattsville 301 638-7688
- Daniels Food Distributors**  
 9015 57th Ave College Park 301 345-7300
- Dickey's Frozen Custard**  
 7272 Wisconsin Ave Bethesda 301 652-1100
- Giant Frozen Ice**  
 5907 Landon Square Rd Gaithersburg 301 577-1149
- Great Cookies Plus**  
 7000 W. Littleton Cir Beltsville 301 899-2658
- Haagen-Dazs**  
 7101 Drexelway Blvd Bethesda 301 469-4767
- Hershey's Ice Cream & Cake**  
 5637 Leesville Rd Gaithersburg 301 363-3331
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- Jimmie Cone**  
 2510 Ridge Rd Damascus 301 253-2063
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 7101 Drexelway Blvd Bethesda MD 301 767-9498
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 402 King Blvd Rockville 301 977-2842
- Maggie Mooms Ice Cream**  
 402 King Farm Blvd Rockville 301 977-2882
- Metro Sub Shoppe**  
 8005 Ramsey Ave Silver Spring 301 587-3187
- Rita's Best Italian Ice**  
 2913 Columbia Hwy Gaithersburg 301 458-9412
- Seeds of Change**  
 4401 Sinal Mantis Rd Temple Hills 301 899-6580
- Soup-R-Scumps**  
 1141 Unity Blvd El Landover Pk 301 437-8862
- Spinnacles**  
 30148 River Rd Potomac 301 297-8415
- Sundae Ice Cream**  
 12103 Darnestown Rd Gaithersburg 301 869-3333
- Svensson's Ice Cream**  
 Gaithersburg 301 792-2411
- Svensson's Ice Cream**  
 20 Grand Center Ave Gaithersburg 301 417-6710
- TCBY Treats-Frozen Yogurt & Ice Cream**  
 7310 Baltimore Ave College Park 301 277-8229
- TCBY-Treats**  
 6100-A Greenbelt Rd Greenbelt 301 982-2521
- Tajicee Treat Store**  
 4783 Sulland Rd Hyattsville 301 734-3133
- Temptations**  
 Homemade Ice Cream Yogurt & Sandwich Inc  
 12-B N. Vain St Parkers 301 279-0343
- Tony's Ice Cream & Cake**  
 7600 Lee Highway Ave Hyattsville 301 445-4869
- Uncle Jeds Ice Cream Ice**  
 7874 White Rd New Carrollton 301 459-0563
- White Mountain Creamery**  
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 3678 Town Center Blvd Beltsville 301 597-6200

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 701 West 18th Ave Childersburg 301 947-8000

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 15903 Foxchick Rd Germantown 301 528-2900

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# **Exhibit 17**



# **Exhibit 18**

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CALENDAR, PAGE 8 ♦ SPORTS, PAGE 14 ♦ CLASSIFIEDS, PAGE 15

PHOTO COURTESY OF SCOTT SELMAN

## Instant Replay

Couple Escapes  
House Fire

Hicks Chases  
His College Dreams

Sprinkles  
Stays

Two-Pronged  
Charity Effort

NEWS, PAGE 3

## Prosecution Date for Invasion Suspect Set

The man suspected in last year's deadly series of home invasions is scheduled to begin trial on Monday, May 11. Jose Garcia-Perlera of Hyattsville is accused of perpetrating six home invasions in Potomac, Bethesda, Chevy Chase, and Northwest Washington, D.C. that targeted the elderly. During one of those invasions Mary Frances Havenstein of Seven Locks Road in Bethesda was killed. Garcia-Perlera has been charged by indictment with 17 counts, including murder, home invasion, burglaries, and robberies. This trial will include evidence related to crimes that began in November 2007 and ran through September 2008. These criminal events, which involved four elderly victims, occurred during September and October 2008. Local officials held several community meetings; more than 700 citizens attended one of the community forums to learn about police efforts to solve these cases. These cases garnered attention partly because of the victims' age, and there was widespread coverage of the fact that each victim was hog-tied and bound during the home invasions. The state anticipates that jury selection will be completed on May 11. The state has summoned nearly 100 witnesses and anticipates a two-week trial. The case is being prosecuted by Montgomery County State's Attorney John McCarthy.

## Canal Pride Starts This Weekend

The second annual C&O Canal Pride Days kick off this weekend. The C&O Canal Trust, in partnership with the C&O Canal National Historical Park, seeks community-minded individuals and organizations to complete over 35 revitalization and stewardship projects throughout the park during the upcoming C&O Canal Pride Days. Locations and dates are as follows: April 18 at Great Falls, April 25 at Brunswick and Lander, and May 2 at Williamsport and Hancock. All interested groups and individuals are asked to pre-register so they can be matched to jobs in advance. Sign up online at <http://www.canaltrust.org/canalpride-app-2009.php> or by calling the C&O Canal Trust at 301-714-2233. For more information about the event go to: <http://www.canaltrust.org/canalpridedays-2009.php>

## Canal Benefit at Old Angler's Inn

After the start to C&O Canal Pride Days on Saturday, April 18, Old Angler's Inn will host a fund-raiser for the C&O Canal Trust. Celebrate warming temperatures, budding trees, and a new season on the C&O Canal with complimentary picnic fare (hot dogs, chips, and sodas), a raffle, and door prizes. A donation of \$30/person or \$75 for the whole family will help the Trust support the C&O Canal National Historical Park. All proceeds will be put towards improvements in the park. Children under 8 are free. Muddy boots and wet river gear are strongly encouraged. Volunteers wearing their t-shirt from the C&O Canal Pride Days 2009 kickoff at Great Falls will receive a free raffle ticket.

Tickets can be purchased at the door, online at [canaltrust.org](http://canaltrust.org) or by calling 301-714-2233.

## 20 Years of Blast

Instant Replay will take place at Winston Churchill High School on April 17-18 and April 24-25 at 7:30 p.m. with Saturday matinees at 2:30 p.m. Visit the Web site: [www.churchillhs.org](http://www.churchillhs.org) for ticket order forms and box office hours.

## Spring House Tour Coming

The inaugural Entertaining You Potomac Spring House Tour sponsored by Potomac's Congregation Har Shalom will take place on Sunday and Monday, May 3 and 4, from 9:30 a.m. to 4 p.m., and tickets are on sale now. Tickets are limited and may be reserved in advance, for \$25 each, by calling the congregation at 301-299-7087, or at the House Tour Web site, [www.PotomacHouseTour.org](http://www.PotomacHouseTour.org), by credit card. Ticket order forms

SEE THE WEEK IN POTOMAC, PAGE 13

## NEWS

# Update: Sprinkles Stays

Ice cream store owner says new lease will keep locally-owned store in present location for years.

BY AARON STERN  
THE ALMANAC



Sprinkles owner Tom Orban, left, says that a new lease agreement with Zuckerman Gravely Management will keep his store in Potomac Village for the next decade. Potomac resident Angela Zier, right, and Orban have teamed up to sell homemade cupcakes individually and in batches by special order.

Many is the night that the phone rings in the Sprinkles ice cream store in Potomac Village shortly before closing time at 9:30 p.m. with a caller on the other end wondering if the store can stay open long enough for them to come in and get their sweet tooth fix. Sprinkles owner Tom Orban doesn't turn down those callers and doesn't mind waiting for such customers to show.

"That's the interactivity I like having with the community," Orban said. "It says 9:30 on the door but that's just because every store's supposed to have a closing time."

That interactivity and those flexible store hours will return for a 20<sup>th</sup> year this year and for several more years to come after Orban reached agreement on a new lease with Zuckerman Gravely Management. The lease, which Orban said he signed and delivered to Zuckerman Gravely officials in the first week of April, ensures his store's presence in its Potomac Village location for the next decade, though Orban declined to discuss the exact terms of the lease. Zuckerman Gravely officials did not return calls from The Almanac seeking confirmation of the new deal.

The apparent agreement is an about face from Zuckerman Gravely after they informed Orban last summer that they would not renew his expiring lease. That set off a backlash from the community which plastered his store with homemade signs of support, wrote letters to the management company, and started up two Facebook support groups with hundreds of members. Zuckerman management officials reversed course in the fall, but the two sides did not reach a formal agreement until this month.

"There's no simple answer," said James Rich, a senior vice president with Zuckerman Gravely, in October. "The owners evaluated a couple of options for the space including other ice cream stores ... and ultimately made a decision."

IT'S FUTURE now assured, Orban is planning a 20<sup>th</sup> anniversary celebration for this summer that will likely feature free ice cream and the return of past store employees like Susan Kiplagat and Joseph Cohen, familiar faces to Sprinkles regulars.

Changes for the store that originally opened as an I Can't Believe It's Yogurt franchise are afoot as well. Those will include interior renovations over the next several months like new counters and a new floor as well as the addition of a few new ice cream and soft serve.

The first big change in Sprinkles has already taken place — last week they started selling homemade cupcakes, courtesy of Potomac resident Angela Zier. Cupcakes are all the rage these days, but Zier said she has long made cupcakes for friends and had hoped to one day open a cupcake shop in Potomac.

"Potomac doesn't have a cupcake place," Zier said. "We put our heads together and decided this was the way to go." It's an added local twist to a store that Orban said prides itself on being part of the local community, and in recent days as he has told his customers about the new lease, and Orban said that their reaction and continuing support has been heartwarming.

"People who are coming in here are so delighted with the news," Orban said.

## No Charges for Neighborhood Pranksters

Seven teenagers stopped by police in two separate incidents on April 4 for conducting pranks around Potomac were not charged with crimes. Though several of the teens were stopped near residences of the River Falls neighborhood, police do not believe that they are connected to a series of car break-ins that have taken place in the neighborhood over the last year.

The pranks by the teens gained public attention after police were called to a home on Rock Run Drive last month to investigate reports of masked men hiding in bushes and ringing the home's

doorbell.

The occupants called police and feared they were being targeted for a home invasion.

In an email to The Almanac last week Capt. Darryl McSwain, First District Commander of the Montgomery County Police Department, said that none of the teens involved in the April 4 pranks were charged with crimes and police have not linked them to the string of car break-ins that have taken place in the River Falls neighborhood over the last year.

"Please note that no one should assume matters like this are not taken seriously by the police due

to the fear they can generate in a community," McSwain wrote. "It is for that reason that we have made it a point to ensure all of the affected parents are made aware of the juveniles' actions with the hope that this extra level of accountability will deter similar behavior in the future."

In a letter to the Potomac community last week McSwain urged community members to continue common home safety practices and to contact police regarding any suspicious activity in their neighborhoods.

— AARON STERN

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# **Exhibit 19**



service mark in connection with baked goods and retail stores for selling same. Said use has been and remains valid and continuous and has not been abandoned. Said trade name and mark of Petitioner is symbolic of extensive good will and consumer recognition built up by Petitioner through substantial amounts of time and effort in advertising and promotion. In view of the similarity of Petitioner's trade name and mark on the one hand and the mark shown in Respondent's registration on the other, and in view of the identical nature of the goods and services of the respective parties, it is alleged that Respondent's registered mark so resembles Petitioner's trade name and mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive.

2. Petitioner Sprinkles, has been, and is now, operating under the designation SPRINKLES as a retail establishment selling baked goods. Said use has been valid and continuous since said date of first use and the relevant class of the public has come to associate Petitioner with said designation. In view of Petitioner's prior use of SPINKLES as a trade name and as a mark and in view of the similarity of Respondent's registered mark with Petitioner's trade name and mark, and in view of the related nature of the uses therefor, it is alleged that Respondent's registered mark consists of and comprises matter which may disparage and falsely suggest a connection with Petitioner.

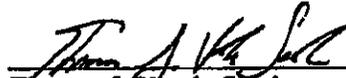
WHEREFORE, Opposer prays that said U.S. Trademark Registration No. 3,306,772 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully submitted,

HALL & VANDE SANDE, LLC

Date: \_\_\_\_\_

9/29/10

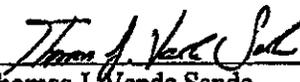
  
\_\_\_\_\_  
Thomas J. Vande Sande  
Attorneys for Petitioner  
10220 River Road, Suite 200  
Potomac, Maryland 20854  
(301) 983-2500

CERTIFICATE OF SERVICE

The undersigned, Thomas J. Vande Sande, attorney for Petitioner hereby certifies that one (1) copy of the foregoing "PETITION FOR CANCELLATION" was this day served on Respondent by mailing same, first class mail, to:

Hollis Beth Hire  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304-1050

Date: 9/29/10

  
\_\_\_\_\_  
Thomas J. Vande Sande  
HALL & VANDE SANDE, LLC  
Attorneys for Petitioner  
10220 River Road, Suite 200  
Potomac, Maryland 20854  
(301) 983-2500

# **Exhibit 20**



its responses to these Interrogatories in the event that its continuing investigation of the facts and/or discovery bring to light any additional information responsive to these Interrogatories.

**GENERAL OBJECTION NO. 2:**

Opposer Sprinkles objects to the Interrogatories, and to each and every individual interrogatory, to the extent they seek information protected by the attorney-client privilege, work product doctrine, and/or any other applicable privilege or protection. Without prejudice to this objection, Opposer Sprinkles will provide responses to the Interrogatories to the extent that such responses do not waive such privileges or protections.

**GENERAL OBJECTION NO. 3:**

Opposer Sprinkles objects to these Interrogatories, including, but not limited to, the "Definitions" therein, and to each and every individual interrogatory, to the extent they purport to impose duties on Opposer Sprinkles that are greater than those imposed by the Federal Rules of Civil Procedure and/or the TBMP.

**GENERAL OBJECTION NO. 4:**

Opposer Sprinkles objects to the Interrogatories, and to each and every individual interrogatory, to the extent they seek information outside of Opposer Sprinkles' possession, custody, or control, on the grounds that any such interrogatory is overbroad and unduly burdensome, seeks to impose discovery obligations in excess of those imposed by the Federal Rules of Civil Procedure and/or the TBMP, and would subject Opposer Sprinkles to unreasonable annoyance, burden, and expense.

**GENERAL OBJECTION NO. 5:**

Opposer Sprinkles objects to the Interrogatories, and to each and every individual interrogatory, as unduly burdensome, oppressive and in violation of the Federal Rules of Civil Procedure and/or the TBMP to the extent they purport to require Opposer Sprinkles to respond on behalf of, or conduct any inquiry or investigation with respect to, any party other than Opposer Sprinkles. Opposer Sprinkles will only answer Interrogatories on its own behalf.

**GENERAL OBJECTION NO. 6:**

Opposer Sprinkles objects to the Interrogatories, and to each and every individual interrogatory, to the extent they seek information that is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

**GENERAL OBJECTION NO. 7:**

Opposer Sprinkles objects to the Interrogatories, and to each and every individual interrogatory, as overbroad and unduly burdensome to the extent they do not include a limitation or proposed definition of a relevant time period.

**GENERAL OBJECTION NO. 8:**

Opposer Sprinkles objects to the Interrogatories, and to each and every individual interrogatory, to the extent they are not consistent with or do not meet the requirements of Federal Rule of Civil Procedure 33 or the TBMP.

**GENERAL OBJECTION NO. 9:**

Opposer Sprinkles specifically reserves all objections as to the competence, relevancy, materiality, and admissibility of its documents and interrogatory answers or the subject matter thereof, and all rights to object on any ground to the use of any document or interrogatory answer, or the subject matter thereof, in any subsequent proceeding, including without limitation to the trial of this or any action.

**GENERAL OBJECTION NO. 10:**

Opposer Sprinkles objects to the Interrogatories and to each and every individual interrogatory contained therein, to the extent they seek confidential or proprietary information pertaining to Opposer Sprinkles' business, trade secrets and/or economic relationships ("Trade Secret Information"). To the extent such information is responsive to these Interrogatories and within the proper scope of discovery in this action, Opposer Sprinkles will provide such information subject to the terms of the Protective Order signed by the parties in this matter and approved by the Trademark Trial and Appeal Board.

**GENERAL OBJECTION NO. 11:**

Opposer Sprinkles objects to the "Definitions" contained in the Interrogatories insofar as they contain instructions rather than definitions for terms and are thus ambiguous.

Opposer Sprinkles expressly incorporates the above General Objections as though set forth fully in response to each of the following individual interrogatories, and, to the extent they are not raised in any particular response, Opposer Sprinkles does not waive those objections. An answer to an interrogatory shall not be deemed a waiver of any applicable specific or general

objections to an interrogatory. Likewise, an answer to an interrogatory shall not be deemed an admission of any assertions contained in that interrogatory.

**SUPPLEMENTAL ANSWERS**

**INTERROGATORY NO. 13**

Identify the time period (including day, month, and year) that you offered frozen desserts under the mark SPRINKLES.

**SUPPLEMENTAL ANSWER**

Opposer's first use of Sprinkles in connection with the offering of frozen desserts occurred at least as early as April 24, 2002 and has continued uninterrupted to the present.

**INTERROGATORY NO. 14**

Identify the time period (including day, month, and year) that you offered baked goods under the mark SPRINKLES.

**SUPPLEMENTAL ANSWER**

Opposer's first use of Sprinkles in connection with the offering of baked goods occurred at least as early as April 24, 2002 and has continued uninterrupted to the present.

**INTERROGATORY NO. 15**

Identify the time period (including day, month, and year) that you offered cupcakes under the mark SPRINKLES.

**SUPPLEMENTAL ANSWER**

As noted in Opposer's Supplemental Answer to Interrogatory 14, Opposer has used SPRINKLES in connection with the offering of various baked goods since at least as early as April 24, 2002.

**INTERROGATORY NO. 16**

Identify the time period (including day, month, and year) that you offered sweets and candies under the mark SPRINKLES.

**SUPPLEMENTAL ANSWER**

Opposer's first use of Sprinkles in connection with the offering of sweets and candies occurred at least as early as April 24, 2002 and has continued uninterrupted to the present.

**INTERROGATORY NO. 17**

Explain the basis for your claim that "Opposer Sprinkles has used the mark, [sic] 'SPRINKLES' in the United States in connection with its various goods and services since at least as early as November 2002" as pleaded in ¶ 2 of your Notice of Opposition.

**SUPPLEMENTAL ANSWER**

Opposer's ongoing investigation has revealed that Opposer has used SPRINKLES since at least as early as April 24, 2002.

**INTERROGATORY NO. 39**

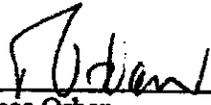
Identify each person who provided information on which your responses to these Interrogatories are based, specifying the interrogatory or interrogatories for which each person provided information.

**SUPPLEMENTAL ANSWER**

In addition to Mr. Orban, Saira Haider and Aaron Yoches, more specifically identified in Opposer's Supplemental Disclosures, have knowledge as to Opposer's date of first use and thus the supplementation of Interrogatory Answers 13-17 herein.

Soft Serve, Inc. d/b/a Sprinkles

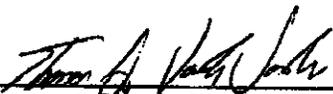
Date: November 5, 2010

  
\_\_\_\_\_  
Thomas Orban

As to objections:

Hall & Vande Sande, LLC

Date: 11/5/10

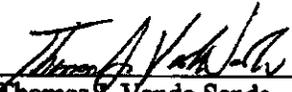
  
\_\_\_\_\_  
Thomas J. Vande Sande  
Attorney for Opposer  
10220 River Road, Suite 200  
Potomac, Maryland 20854  
Phone: (301) 983-2500

CERTIFICATE OF SERVICE

The undersigned, Thomas J. Vande Sande, attorney for Opposer hereby certifies that one (1) copy of the foregoing "OPPOSER'S SUPPLEMENTAL ANSWERS AND OBJECTIONS TO APPLICANT'S FIRST SET OF INTERROGATORIES" was this day served on Applicant by mailing same, first class mail, to:

John L. Slafsky, Esquire  
Matthew J. Kuykendall, Esquire  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304-1050

Date: 4/5/10

  
\_\_\_\_\_  
Thomas J. Vande Sande  
HALL & VANDE SANDE, LLC  
Attorneys for Opposer  
10220 River Road, Suite 200  
Potomac, Maryland 20854  
(301) 983-2500

# **Exhibit 21**

**HALL & VANDE SANDE, LLC**

ATTORNEYS AT LAW

THOMAS J. VANDE SANDE  
DENNIS A. FOSTER  
JOHN GIBSON SEMMES

10220 RIVER ROAD, SUITE 200  
POTOMAC, MARYLAND 20854  
TELEPHONE: (301) 983-2500  
FACSIMILE: (301) 983-2100

Patent, Trademark  
and Copyright Law  
and Litigation

OF COUNSEL  
WILLIAM D. HALL  
ROBERT R. PRIDDY

April 26, 2011

Mr. Aaron Yoches  
1801 Wynkoop Street, # 315  
Denver, Colorado 80202

Sent Via Federal Express

Re: SPRINKLES/Sprinkles Cupcakes Dispute

Dear Mr. Yoches:

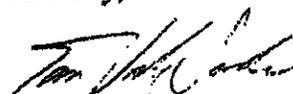
Your former employer, Soft Serve, Inc., is currently involved in a trademark dispute with Sprinkles Cupcakes involving Sprinkles Cupcakes' use and efforts to federally register various SPRINKLES trademarks. Because you were employed at a critical time your input may well be of substantial importance in this dispute.

Enclosed you will find for your review a Declaration that we would like to submit on behalf of Soft Serve in support of a Motion for Summary Judgment we intend to file in one of the proceedings. I ask that you very carefully review the allegations set forth in the Declaration. In the event that you note any inaccuracies or are in any way uncomfortable with the allegations set forth in the Declaration, please contact me at your earliest convenience. I may be reached by email at [tv@hvsllc.com](mailto:tv@hvsllc.com). Or you should feel free to call if you prefer.

In the event that you conclude that the allegations set forth in the Declaration are accurate I ask that you promptly sign and date the Declaration as return it to us as soon as possible utilizing the Federal Express envelope we have enclosed herewith.

I thank you in advance for your timely consideration and action in connection with this important matter.

Sincerely,

  
Thomas J. Vande Sande

TVS:dn  
Enclosures – Declaration and Federal Express Package

OP 5376



at the time of my departure to return to school, the business was known as  
SPRINKLES.

4. In addition, during the entire time I worked at SPRINKLES, SPRINKLES was used not only as the name of the store but also in connection with various related materials and activities such as product stickers, coupons, signage, advertisements, catering menus and community activities.
5. During the summer of 2002 I was charged with the responsibility of handing out SPRINKLES coupons to potential customers.
6. Bakery goods were already being offered for sale at SPRINKLES at the time I applied for employment and were still being offered for sale when I left my job at the end of the summer of 2002. Included in the array of bakery goods offered by SPRINKLES during that time were at least donuts, bagels, pastries and muffins. While bakery goods and various ice cream products were offered for sale throughout the day and evening, sales of bakery goods at SPRINKLES during the morning hours substantially outnumbered the sales of ice cream products during the course of my employment.
7. My duties at SPRINKLES included the filling of customers' orders for bakery goods and various ice cream products.

I declare under penalty of perjury that the foregoing is true and correct. Executed in  
\_\_\_\_\_ on \_\_\_\_\_, 2011.

By: \_\_\_\_\_

Aaron Yoches

**Thomas Vande Sande**

---

**From:** Aaron Yoches <aaronyoches@gmail.com>  
**Sent:** Thursday, May 26, 2011 12:10 AM  
**To:** Thomas Vande Sande  
**Subject:** SPRINKLES/Sprinkles Cupcake Dispute

Mr. Vande Sande,

I have recently received a letter from you regarding my former employer, Soft Serve Inc. In regards to the declaration there are a few changes I would like to make.

On number 5) "During the summer of 2002 I was charged with the responsibility of handing out SPRINKLES coupons to potential customers." I do not recall handing out coupons. However I do recall seeing them in local news letters.

On number 4) "In addition, during the entire time I worked at SPRINKLES, SPRINKLES was used not only as the name of the store but also in connection with various related materials and activities such as product stickers, coupons, signage, advertisements, catering menus and community activities" I cannot recall using the name SPRINKLES when I started working, however I do recall that SPRINKLES was used by the time I ceased working.

Sincerely,  
Aaron Yoches

**Thomas Vande Sande**

---

**From:** Tom Orban <tomorban@msn.com>  
**Sent:** Friday, May 27, 2011 12:43 AM  
**To:** Thomas Vande Sande  
**Subject:** RE: REVISION OF DECLARATION

Good news.

---

**From:** [tv@hvsllc.com](mailto:tv@hvsllc.com)  
**To:** [aaronvoches@gmail.com](mailto:aaronvoches@gmail.com)  
**CC:** [tomorban@msn.com](mailto:tomorban@msn.com)  
**Subject:** REVISION OF DECLARATION  
**Date:** Thu, 26 May 2011 12:46:20 -0400

Aaron,

I am wondering if your memory of earlier events might also present any difficulties with any of the allegations set forth in Paragraph 3 of the Declaration. As our objective is to capture in your Declaration only what you recall, please consider Paragraph 3.

I am planning to delete Paragraph 4. While Tom recalls your handing our coupons, if you have no memory of doing so, we will look to delete the reference to handing out coupons from your Declaration, regardless of whether Tom's recollection is accurate or not.

So that we might most quickly and easily wind this up, I am wondering if we might be able to discuss this over the phone. I would think that in 5 minutes we could run through the various activities and allegations set forth in the involved paragraphs of the Declaration, and also any other relevant activities you may recall. I could then quickly and accurately revise the Declaration in a manner that reflects exactly what you recall.

Would it be possible for you to provide me with a time and phone number for me to call you at some point tomorrow (Friday) morning your time? If so, am I right in thinking that you are in Mountain Time?

Thanks again,  
Tom Vande Sande

**Thomas Vande Sande**

---

**From:** Aaron Yoches <aaronyoches@gmail.com>  
**Sent:** Friday, June 03, 2011 2:59 PM  
**To:** Thomas Vande Sande  
**Cc:** Tom Orban  
**Subject:** Re: FW:

Tom,  
I could not find an address label with the FedEx envelope.

On Fri, Jun 3, 2011 at 8:05 AM, Thomas J. Vande Sande <[tv@hvsllc.com](mailto:tv@hvsllc.com)> wrote:

Aaron,

Attached you will find the revised Declaration. I think that you will find that as revised it accurately reflects your recollections.

Please let me know if you are not comfortable with language, otherwise we would very much appreciate your signing and dating the Declaration and your returning it to us in the Fed Ex envelope previously provided.

Best regards, and thanks again for your help.

Tom Vande Sande

**From:** Denise Nappi [<mailto:dnappi@hvsllc.com>]  
**Sent:** Friday, June 03, 2011 9:49 AM  
**To:** [tv@hvsllc.com](mailto:tv@hvsllc.com)  
**Subject:**

Denise Nappi, Paralegal

Hall & Vande Sande, LLC

10220 River Road, Suite 200

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Soft Serve, Inc. d/b/a Sprinkles	)	
	)	
Petitioner,	)	Consolidated Proceeding No. 91194188
	)	
v.	)	Cancellation No. 92053109
	)	
Sprinkles Cupcakes, Inc.	)	
	)	
Registrant.	)	

---

DECLARATION OF AARON YOCHES

I, Aaron Yoches, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, declare as follows:

1. I have personal knowledge of the matters set forth herein and would so testify if called upon to do so.
2. I was previously an employee of Soft Serve, Inc. I applied for employment with Soft Serve in May 2002 and was employed shortly thereafter. I worked for Soft Serve, Inc. throughout the summer of 2002 leaving at the end of the summer to return to school.
3. By the time I left my employment at the end of the summer of 2002, SPRINKLES was used not only as the name of the store, but also increasingly in connection with

various related materials and activities such as coupons, signage, advertisements and community activities.

4. Bakery goods were already being offered for sale at SPRINKLES at the time I applied for employment and were still being offered for sale when I left my job at the end of the summer of 2002. Included in the array of bakery goods offered by SPRINKLES during that time were at least donuts, bagels, pastries and muffins. While bakery goods and various ice cream products were offered for sale throughout the day and evening, sales of bakery goods at SPRINKLES during the morning hours substantially outnumbered the sales of ice cream products during the course of my employment.
5. My duties at SPRINKLES included the filling of customers' orders for bakery goods and various ice cream products.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Danver Colorado on June 3, 2011.

By:

  
\_\_\_\_\_  
Aaron Foches

# **Exhibit 22**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SOFT SERVE, INC. d/b/a SPRINKLES,

Opposer/Petitioner,

v.

SPRINKLES CUPCAKES, INC.,

Applicant/Respondent.

**Opposition No. 91194188**

Opposition No. 91195669

Opposition No. 91195985

Opposition No. 91195986

Opposition No. 91196035

Opposition No. 91196061

Opposition No. 91196087

Cancellation No. 92053109

**EXHIBIT 22 TO THE DECLARATION OF JOHN L. SLAFSKY**

**CONFIDENTIAL — ATTORNEYS' EYES ONLY  
RESTRICTED DOCUMENTS PURSUANT TO 37 CFR § 2.126**

**FILED UNDER SEAL SUBJECT TO PROTECTIVE ORDER**

These materials have been designated confidential, pursuant to a Protective Order, and are not to be disclosed or revealed except to the Trademark Trial and Appeal Board and counsel for the parties, or by order of the Board.

# **Exhibit 23**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SOFT SERVE, INC. d/b/a SPRINKLES,

Opposer/Petitioner,

v.

SPRINKLES CUPCAKES, INC.,

Applicant/Respondent.

Opposition No. 91194188

Opposition No. 91195669

Opposition No. 91195985

Opposition No. 91195986

Opposition No. 91196035

Opposition No. 91196061

Opposition No. 91196087

Cancellation No. 92053109

**EXHIBIT 23 TO THE DECLARATION OF JOHN L. SLAFSKY**

**CONFIDENTIAL — ATTORNEYS' EYES ONLY  
RESTRICTED DOCUMENTS PURSUANT TO 37 CFR § 2.126**

**FILED UNDER SEAL SUBJECT TO PROTECTIVE ORDER**

These materials have been designated confidential, pursuant to a Protective Order, and are not to be disclosed or revealed except to the Trademark Trial and Appeal Board and counsel for the parties, or by order of the Board.

# **Exhibit 24**

SOFT SERVE, INC.  
10148 RIVER ROAD  
POTOMAC, MD 20854  
(301) 299-8415

15-3-540 1386

date Sept 22, 2003

Pay to the order of Whataburger \$ 1336.00  
one thousand three hundred thirty-six / 100 dollars



for 7002 Order

⑆054000030⑆ 50081802⑈ 1386 ⑆0000133600⑆

1318

15-3-540

date June 9/03

Pay to the order of Whataburger \$ 1466.90  
one thousand four hundred sixty-six / 100 dollars



for 7002 763 Order

SOFT SERVE, INC.  
3338 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-540 1295

date July 9, 2003

Pay to the order of Whataburger \$ 1238.78  
twelve hundred thirty-eight / 100 dollars

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for 7002 Order

⑆054000030⑆ 50081802⑈ 1295 ⑆0000123878⑆

SOFT SERVE, INC.  
10148 RIVER ROAD  
POTOMAC, MD 20854  
(301) 299-8415

SOFT SERVE, INC.  
10148 RIVER ROAD  
POTOMAC, MD 20854  
(301) 299-8415

15-3-540 1379

date Aug 28, 2003

Pay to the order of Whataburger \$ 1191.44  
eleven hundred ninety-one / 100 dollars



for 4002 / > JUL 31 Order

⑆054000030⑆ 50081802⑈ 1379 ⑆0000119144⑆

SOFT SERVE, INC.  
10148 RIVER ROAD  
POTOMAC, MD 20854  
(301) 299-8415

15-3-540 1343

date July 8, 2003

Pay to the order of Whataburger \$ 1176.92  
eleven hundred seventy-six / 100 dollars



for 7002 Order

⑆054000030⑆ 50081802⑈ 1343 ⑆0000117692⑆

SOFT SERVE, INC.  
3136 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-840

1119

08/8/02  
Date

Pay to the order of Betrasda Bagels \$ 1166<sup>20</sup>/<sub>100</sub>  
one thousand one hundred sixty six <sup>20</sup>/<sub>100</sub> dollars

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for 4002

Jordan

⑆054000030⑆ 50081802⑈ 1119 ⑈0000116620⑈

1342

15-3-840

JUL 8, 2003  
Date

Pay to the order of Cherry Hill Donuts \$ 2459<sup>34</sup>/<sub>100</sub>  
two thousand four hundred fifty nine <sup>34</sup>/<sub>100</sub> dollars

Jordan

SOFT SERVE, INC.  
3136 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-840

1093

Sept 2/02  
Date

Pay to the order of Betrasda Bagels \$ 1121<sup>78</sup>/<sub>100</sub>  
eleven hundred twenty-one <sup>78</sup>/<sub>100</sub> dollars

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for 4002

Jordan

⑆054000030⑆ 50081802⑈ 1093 ⑈0000112178⑈

SOFT SERVE, INC.  
10148 RIVER ROAD  
POTOMAC, MD 20854  
(301) 299-8415



SOFT SERVE, INC.  
3136 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-840

1073

Aug 19/02  
Date

Pay to the order of Betrasda Bagels \$ 1126<sup>94</sup>/<sub>100</sub>  
eleven hundred twenty-six <sup>94</sup>/<sub>100</sub> dollars

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for 4002

Jordan

⑆054000030⑆ 50081802⑈ 1073 ⑈0000112694⑈

SOFT SERVE, INC.  
3136 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-840

1032

JUL 3, 2002  
Date

Pay to the order of Betrasda Bagels \$ 2353<sup>54</sup>/<sub>100</sub>  
two thousand three hundred fifty-three <sup>54</sup>/<sub>100</sub> dollars

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

credits \$14.52  
for HRV JUL 1

Jordan

⑆054000030⑆ 50081802⑈ 1032 ⑈0000235354⑈

SOFT SERVE, INC.  
10148 RIVER ROAD  
POTOMAC, MD 20854  
(301) 299-8415

15-3-540

1382

Sept 16, 2003  
date

Pay to the order of Charitilly Donuts \$ 1916<sup>04/100</sup>  
one thousand nine hundred ninety-six<sup>04/100</sup> dollars



Potomac Office  
Potomac, MD 20854-4903

for 8/2 thru 8/29

Order

⑆054000030⑆ 50081802⑆ 1382 ⑆0000199604⑆

1397

15-3-540

Nov 10, 2003  
date

\$1542<sup>16/100</sup>

Pay to the order of Whataburger  
fifty two<sup>16/100</sup> dollars



Potomac Office  
Potomac, MD 20854-4903

for 7002

SOFT SERVE, INC.  
3138 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-540

1134

Oct 8, 2003  
date

Pay to the order of Charitilly Donuts \$ 2608<sup>12/100</sup>  
two thousand six hundred sixty-eight<sup>12/100</sup> dollars

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for 8/30 - 10/03

Order

⑆054000030⑆ 50081802⑆ 1134 ⑆0000266812⑆

SPRINKLES  
SOFT SERVE, INC.  
10148 RIVER ROAD  
POTOMAC, MD 20854  
(301) 299-8415

15-3-540

1363

Aug 5/03  
date

Pay to the order of Charitilly Donuts \$ 2195<sup>58/100</sup>  
two thousand one hundred ninety-five<sup>58/100</sup> dollars



Potomac Office  
Potomac, MD 20854-4903

for 7/5 - 8/1

Order

⑆054000030⑆ 50081802⑆ 1363 ⑆0000219558⑆

SOFT SERVE, INC.  
3138 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-540

1150

Nov 5, 2003  
date

Pay to the order of Charitilly Donuts \$ 2332<sup>02/100</sup>  
two thousand three hundred thirty-two<sup>02/100</sup> dollars

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for 10/4 > 10/31

Order

⑆054000030⑆ 50081802⑆ 1150 ⑆0000233202⑆

447867  
SOFT SERVE, INC.  
3136 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-540 1167

*Nov 7, 2002*  
date

Pay to the order of *Sara Lee* \$ 1976 <sup>64</sup>/<sub>100</sub>  
*one thousand nine hundred seventy six <sup>64</sup>/<sub>100</sub> dollars*

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for 3451437 3451033  
3451699 3446035

*Order*

⑆054000030⑆ 50081802⑈ 1167 ⑈0000197664⑈

~~0421-3451233~~

SOFT SERVE, INC.  
3136 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-540 1094

*Sept 2/02*  
date

Pay to the order of *Sara Lee* \$ 1676 <sup>95</sup>/<sub>100</sub>  
*sixteen hundred seventy-six <sup>95</sup>/<sub>100</sub> dollars*

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for

*Order*

⑆054000030⑆ 50081802⑈ 1094 ⑈0000167695⑈

SOFT SERVE, INC.  
3136 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-540 1166

*Nov 7, 2002*  
date

Pay to the order of *Sara Lee* \$ 557 <sup>29</sup>/<sub>100</sub>  
*five hundred fifty seven <sup>29</sup>/<sub>100</sub> dollars*

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for 7891273

*Order*

⑆054000030⑆ 50081802⑈ 1166 ⑈0000055729⑈

4002  
SOFT SERVE, INC.  
3136 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-540 1192

*Dec 20, 2002*  
date

Pay to the order of *Bethesda Bagels* \$ 1113 <sup>35</sup>/<sub>100</sub>  
*eleven hundred thirteen dollars <sup>35</sup>/<sub>100</sub> dollars*

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for *Nov 30*

*Order*

⑆054000030⑆ 50081802⑈ 1192 ⑈0000111335⑈

1195

15-3-540

*Dec 20 2002*  
date

SOFT SERVE, INC.  
3136 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

*Pay to the order of Sara Lee*  
*fourteen hundred and one dollar <sup>64</sup>/<sub>100</sub> dollars*  
\$ 1401 <sup>64</sup>/<sub>100</sub>

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

7162438641  
for 8870016

*Order*

SOFT SERVE, INC.  
10148 RIVER ROAD  
POTOMAC, MD 20854  
(301) 299-8415

15-3-540

1416

Date Dec 18, 2003

Pay to the order of Whitson Bagel \$1250<sup>98/100</sup>  
twelve hundred fifty dollars <sup>98/100</sup> dollars



for 7002

Order

⑆054000030⑆ 50081802⑆ 1416 ⑆0000125098⑆

1406

15-3-540

Date Nov 13, 2003

SOFT SERVE, INC.  
3136 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-540

1133

Date Oct 3, 03

Pay to the order of Whitson Bagel \$1208<sup>36/100</sup>  
twelve hundred eight dollars <sup>36/100</sup> dollars

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for 7002

Order

⑆054000030⑆ 50081802⑆ 1133 ⑆0000120836⑆

SOFT SERVE, INC.  
10148 RIVER ROAD  
POTOMAC, MD 20854  
(301) 299-8415

Pay to the order of Soft Serve  
one hundred eighty-four dollars <sup>02/100</sup> dollars



for 0234247 R1

SOFT SERVE, INC.  
3136 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-540

1264

Date March 9, 2003

Pay to the order of Whitson Bagel, Inc. \$999<sup>12/100</sup>  
nine hundred ninety-nine dollars <sup>12/100</sup> dollars

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for 7002

Order

⑆054000030⑆ 50081802⑆ 1264 ⑆0000099912⑆  
\$5000. per David

SOFT SERVE, INC.  
3136 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-540

1286

Date April 18/03

Pay to the order of Whitson Bagel \$1333<sup>24/100</sup>  
thirteen hundred thirty-three <sup>24/100</sup> dollars

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for 7002

Order

⑆054000030⑆ 50081802⑆ 1286 ⑆0000133324⑆

SOFT SERVE, INC.  
9136 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-540

1211

Jan 6/03  
Date

Pay to the order of Getresda Bogala \$ 1111 <sup>00</sup>/<sub>100</sub>  
eleven hundred eleven dollars / 100 dollars

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for 7002

*Order*

⑆054000030⑆ 50081802⑈ 1211 ⑈0000111100⑈

1432

15-3-540  
Jan 23, 2004  
Date

Pay to the order of Sara Lee \$ 158 <sup>00</sup>/<sub>100</sub>  
one hundred fifty eight dollars / 100 dollars



*Order*

for 8074574 RI

SOFT SERVE, INC.  
9136 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-540

1235

Feb 6, 2003  
Date

Pay to the order of Whata Bogal \$ 362 <sup>40</sup>/<sub>100</sub>  
Three hundred sixty two / 100 dollars

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for 775.02  
587.38

*Order*

⑆054000030⑆ 50081802⑈ 1235 ⑈0000036240⑈  
less \$1000 cr. bal.

SOFT SERVE, INC.  
10148 RIVER ROAD  
POTOMAC, MD 20854  
(301) 299-8415

SOFT SERVE, INC.  
3136 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-540

1127

PER ENV. Sept 24, 2003  
Date

Pay to the order of Sara Lee \$ 1001.62 <sup>00</sup>/<sub>100</sub>  
one thousand one dollars / 100 dollars

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for 8185945 RI 7478.02 (disc. 215.80 taken)  
8875400 301.80

*Order*

⑆054000030⑆ 50081802⑈ 1127 ⑈0000100162⑈

SOFT SERVE, INC.  
10148 RIVER ROAD  
POTOMAC, MD 20854  
(301) 299-8415

15-3-540

1434

Jan 13, 2004  
Date

Pay to the order of Whata Bogal \$ 1157 <sup>42</sup>/<sub>100</sub>  
eleven hundred fifty seven / 100 dollars



for 1237 Dec 31

*Order*

⑆054000030⑆ 50081802⑈ 1434 ⑈0000115742⑈

SOFT SERVE, INC.  
3136 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-540

1164

Nov 7, 2002  
date

Pay to the order of Betresda Bogels \$ 1101<sup>19/100</sup>  
eleven hundred and one dollars<sup>19/100</sup> dollars

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for THU Oct 31 10<sup>27</sup> credit

Order

⑆054000030⑆ 50081802⑈ 1164 ⑈0000110119⑈

1438

15-3-540

Jan 23, 2004  
date

1438  
SOFT SERVE, INC.  
10148 RIVER ROAD  
POTOMAC, MD 20854  
(301) 299-8415  
acct 345623  
Pay to the order of Sara Lee \$ 1006<sup>91/100</sup>  
Five thousand six dollars<sup>91/100</sup> dollars

Shelley

SOFT SERVE, INC.  
3136 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-540

1043

July 8, 2002  
date

Pay to the order of Sara Lee \$ 407<sup>81/100</sup>  
four hundred seven dollars<sup>81/100</sup> dollars

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for 7843613

Order

⑆054000030⑆ 50081802⑈ 1043 ⑈0000040781⑈

SOFT SERVE, INC.  
3136 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-540

1042

July 8, 2002  
date

Pay to the order of Sara Lee \$ 2092<sup>08/100</sup>  
two thousand ninety-two dollars<sup>08/100</sup> dollars

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for 3449462  
3449252  
3449146  
3448694  
3449024

Order

⑆054000030⑆ 50081802⑈ 1042 ⑈0000209208⑈

SOFT SERVE, INC.  
3136 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-540

1023

June 11, 2002  
date

Pay to the order of Montgomery Baker \$ 2550<sup>71/100</sup>  
two thousand five hundred fifty dollars<sup>71/100</sup> dollars

RIGGS BANK N.A.  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for THU PAY

Order

⑆054000030⑆ 50081802⑈ 1023 ⑈0000255000⑈

**SPRINKLES**  
**SOFT SERVE, INC.**  
10148 RIVER ROAD  
POTOMAC, MD 20854  
(301) 299-8415

15-3-540

1301

Date May 14, 2003

Pay to the order of Chantilly Donuts \$ 3617.46  
Three thousand six hundred sixteen and 46/100 dollars



**RIGGS**  
Potomac Office  
Potomac, MD 20854-4903

for 3/29 to 5/9/03

Order

⑆054000030⑆ 50081802⑆ 1301 ⑆0000361746⑆

1315

Date June 9, 2003

Pay to the order of Sara Lee \$ 2430.03  
two thousand four hundred thirty and 03/100 dollars



**SOFT SERVE, INC.**  
10148 RIVER ROAD  
POTOMAC, MD 20854  
(301) 299-8415

for 447867

**SOFT SERVE, INC.**  
3138 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-540

1285

Date April 18/03

Pay to the order of Sara Lee \$ 2967.46  
two thousand nine hundred sixty-seven and 46/100 dollars

**RIGGS BANK N.A.**  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for 8/7/00 - 8/1/01  
8/7/01 - 3/1/02  
8/7/02 - 7/29/02  
8/7/02 - 7/29/02  
8/7/02 - 7/29/02  
8/7/02 - 7/29/02

Order

⑆054000030⑆ 50081802⑆ 1285 ⑆0000296746⑆

**SOFT SERVE, INC.**  
3138 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-540

1277

Date March 29/03

Pay to the order of Chantilly Donuts \$ 2430.76  
two thousand four hundred thirty and 76/100 dollars

**RIGGS BANK N.A.**  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for 3/1 to 3/28/03

Order

⑆054000030⑆ 50081802⑆ 1277 ⑆0000243076⑆

**SPRINKLES**  
**SOFT SERVE, INC.**  
3138 ST. FLORENCE TERRACE  
OLNEY, MD 20832  
(301) 299-8415

15-3-540

1263

Date March 9, 2003

Pay to the order of Chantilly Donuts \$ 494.94  
four hundred ninety four and 94/100 dollars

**RIGGS BANK N.A.**  
POTOMAC OFFICE  
POTOMAC, MD 20854-4903

for 2/22 - 2/28

Order

OP 5181

SOFT SERVE, INC.  
10148 RIVER ROAD  
POTOMAC, MD 20854  
(301) 299-8415

15-3-540

1433

Jan 13, 2004  
date

Pay to the order of Chantilly Donuts \$2534<sup>86</sup>/<sub>100</sub>  
Two thousand five hundred thirty four <sup>86</sup>/<sub>100</sub> dollars



for 11/29 - 1/2

Order

⑆054000030⑆ 50081802⑈ 1433 ⑈0000253486⑈

SOFT SERVE, INC.  
10148 RIVER ROAD  
POTOMAC, MD 20854  
(301) 299-8415

15-3-540

1403

Nov 11/03  
date

Pay to the order of Sara Lee \$435<sup>94</sup>/<sub>100</sub>  
Four hundred thirty five dollars <sup>94</sup>/<sub>100</sub>



for 98996

Order

⑆054000030⑆ 50081802⑈ 1403 ⑈0000043594⑈

345623  
SOFT SERVE, INC.  
10148 RIVER ROAD  
POTOMAC, MD 20854  
(301) 299-8415

15-3-540

1400

Nov 10, 2003  
date

Pay to the order of Sara Lee \$934<sup>80</sup>/<sub>100</sub>  
Nine hundred thirty four <sup>80</sup>/<sub>100</sub> dollars



for 1336724

Order

⑆054000030⑆ 50081802⑈ 1400 ⑈0000093480⑈

SPRINKLES  
SOFT SERVE, INC.  
10148 RIVER ROAD  
POTOMAC, MD 20854  
(301) 299-8415

15-3-540

1321

June 9/03  
date

Pay to the order of Chantilly Donuts \$2471<sup>68</sup>/<sub>100</sub>  
Two thousand four hundred seventy one <sup>68</sup>/<sub>100</sub> dollars



for 5/10 to 6/6

Order

⑆054000030⑆ 50081802⑈ 1321 ⑈0000247168⑈

MEMO *thru April 1*

*Order*

⑈00002736⑈ ⑆054000030⑆ 50081802⑈ ⑆0000118366⑆

MEMO *thru Apr. 30*

*Order*

⑈00002749⑈ ⑆054000030⑆ 50081802⑈ ⑆0000107732⑆

DOLLARS

MEMO

*8421-3456233*

*Order*

⑈00002733⑈ ⑆054000030⑆ 50081802⑈ ⑆000027750⑆

DOLLARS

# **Exhibit 25**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SOFT SERVE, INC. d/b/a SPRINKLES,

Opposer/Petitioner,

v.

SPRINKLES CUPCAKES, INC.,

Applicant/Respondent.

Opposition No. 91194188

Opposition No. 91195669

Opposition No. 91195985

Opposition No. 91195986

Opposition No. 91196035

Opposition No. 91196061

Opposition No. 91196087

Cancellation No. 92053109

**EXHIBIT 25 TO THE DECLARATION OF JOHN L. SLAFSKY**

**CONFIDENTIAL — ATTORNEYS' EYES ONLY  
RESTRICTED DOCUMENTS PURSUANT TO 37 CFR § 2.126**

**FILED UNDER SEAL SUBJECT TO PROTECTIVE ORDER**

These materials have been designated confidential, pursuant to a Protective Order, and are not to be disclosed or revealed except to the Trademark Trial and Appeal Board and counsel for the parties, or by order of the Board.

# **Exhibit 26**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SOFT SERVE, INC. d/b/a SPRINKLES,	)	
	)	
Opposer/Petitioner,	)	<b>Opposition No. 91194188</b>
	)	Opposition No. 91195669
v.	)	Opposition No. 91195985
	)	Opposition No. 91195986
SPRINKLES CUPCAKES, INC.,	)	Opposition No. 91196035
	)	Opposition No. 91196061
Applicant/Respondent.	)	Opposition No. 91196087
	)	Cancellation No. 92053109

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**EXHIBIT 26 TO THE DECLARATION OF JOHN L. SLAFSKY**

**CONFIDENTIAL — ATTORNEYS' EYES ONLY  
RESTRICTED DOCUMENTS PURSUANT TO 37 CFR § 2.126**

**FILED UNDER SEAL SUBJECT TO PROTECTIVE ORDER**

These materials have been designated confidential, pursuant to a Protective Order, and are not to be disclosed or revealed except to the Trademark Trial and Appeal Board and counsel for the parties, or by order of the Board.

# **Exhibit 27**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SOFT SERVE, INC. d/b/a SPRINKLES,	)	
	)	
Opposer/Petitioner,	)	
	)	
v.	)	
	)	
SPRINKLES CUPCAKES, INC.,	)	
	)	
Applicant/Respondent.	)	
<hr/>		

**Opposition No. 91194188**  
Opposition No. 91195669  
Opposition No. 91195985  
Opposition No. 91195986  
Opposition No. 91196035  
Opposition No. 91196061  
Opposition No. 91196087  
Cancellation No. 92053109

**EXHIBIT 27 TO THE DECLARATION OF JOHN L. SLAFSKY**

**CONFIDENTIAL — ATTORNEYS' EYES ONLY**  
**RESTRICTED DOCUMENTS PURSUANT TO 37 CFR § 2.126**

**FILED UNDER SEAL SUBJECT TO PROTECTIVE ORDER**

These materials have been designated confidential, pursuant to a Protective Order, and are not to be disclosed or revealed except to the Trademark Trial and Appeal Board and counsel for the parties, or by order of the Board.

# **Exhibit 28**



**CERTIFICATE OF SERVICE**

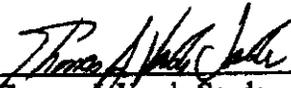
The undersigned, Thomas J. Vande Sande, attorney for Opposer, hereby certifies that one (1) copy of the foregoing "OPPOSER'S SUPPLEMENTAL DISCLOSURES" was this day served on Applicant by mailing same, first class mail, to:

Hollis Beth Hire, Esquire  
Wilson, Sonsini, Goodrich and Rosati  
650 Page Mill Road  
Palo Alto, CA 94304-1050

HALL & VANDE SANDE, LLC

Date: \_\_\_\_\_

10/4/10

  
\_\_\_\_\_

Thomas J. Vande Sande  
Attorneys for Opposer  
10220 River Road, Suite 200  
Potomac, Maryland 20854  
(301) 983-2500

# **Exhibit 29**

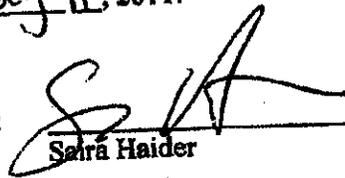


ensuing summer, and at the time of my departure to return to school, the business was known as SPRINKLES.

4. In addition, during the entire time I worked at SPRINKLES and at the time I applied to work at SPRINKLES, SPRINKLES was in use not only as the name of the store, but also in connection with various related materials such as product stickers, coupons, signage, advertisements, catering menus and various community activities.
5. Bakery goods were already being offered for sale at SPRINKLES at the time I applied for employment, and were still being offered for sale when I left my job at the end of the summer of 2002. Included in the array of bakery goods offered by SPRINKLES during that time were at least donuts, bagels, pastries and muffins. While bakery goods and various ice cream products were offered for sale throughout the day and evening, sales of bakery goods at SPRINKLES during the morning hours substantially outnumbered the sales of ice cream products during the course of my employment.
6. My duties at SPRINKLES included the filling of customers' orders for bakery goods and various ice cream products.

I declare under penalty of perjury that the foregoing is true and correct. Executed in London United Kingdom on May 11, 2011.

By:

  
Sara Haider

# **Exhibit 30**

# HALL & VANDE SANDE, LLC

ATTORNEYS AT LAW

THOMAS J. VANDE SANDE  
DENNIS A. FOSTER  
JOHN GIBSON SEMMES

10220 RIVER ROAD, SUITE 200  
POTOMAC, MARYLAND 20854  
TELEPHONE: (301) 983-2500  
FACSIMILE: (301) 983-2100

Patent, Trademark  
and Copyright Law  
and Litigation

OF COUNSEL  
WILLIAM D. HALL  
ROBERT R. FRIDDY

April 25, 2012

Richard Ben-Veniste, Esquire  
Mayer Brown LLP  
1999 K Street, N.W.  
Washington, D.C. 20006-1101

Re: Cancellation Proceeding No. 92053109

Dear Richard:

Enclosed you will find documents and Responses to the Requests which accompanied Mr. Orban's Notice of Deposition. As you will see, the documents bear production Nos. OP 5374 – 5686. Please note that those documents bearing numbers 5442 – 5686 are produced pursuant the terms of the Protective Order.

Sincerely,



Thomas J. Vande Sande

TVS:dn  
Enclosures

cc: Thomas Orban, Soft Serve, Inc. d/b/a Sprinkles

# **Exhibit 31**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Soft Serve, Inc. d/b/a/ Sprinkles,

Opposer,

v.

Sprinkles Cupcakes, Inc.,

Applicant.

Opposition No.: 91194188

**APPLICANT'S FIRST SET OF  
REQUESTS FOR PRODUCTION TO  
OPPOSER**

Serial No. 77770541

---

Pursuant to Trademark Rule of Practice 2.120 (37 C.F.R. § 2.120), Trademark Trial and Appeal Board Manual of Procedure § 406, and Federal Rule of Civil Procedure 34, Applicant Sprinkles Cupcakes, Inc. requests that Opposer Soft Serve, Inc. d/b/a Sprinkles produce for inspection and copying the documents and things listed below within thirty (30) days of the date of service hereof, at the offices of counsel for Sprinkles Cupcakes, Inc. or at another mutually agreeable location.

For the purpose of this request for production, the following definitions and instructions shall apply:

**DEFINITIONS**

1. The terms "Soft Serve," "Opposer," "you," "your," and "yourself" refer to Opposer Soft Serve, Inc. d/b/a Sprinkles, and include any persons controlled by or acting on behalf of that entity, including but not limited to all partners, officers, directors, owners, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.

2. The terms "Sprinkles Cupcakes" and "Applicant" refer to Applicant Sprinkles Cupcakes, Inc. and include any persons controlled by or acting on behalf of that entity, including but not limited to all officers, directors, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.

3. The terms "SPRINKLES" and "the mark SPRINKLES" means any word, name, symbol or device or other designation of origin incorporating the letter string SPRINKLES, or its phonetic equivalent, or any domain name incorporating the letter string SPRINKLES.

4. The terms "Opposer's SPRINKLES product or service" and "Opposer's SPRINKLES products or services" means any product or service offered for sale, offered for distribution, sold, distributed, advertised, marketed, promoted or rendered in the U.S. by you in connection with the mark SPRINKLES.

5. The terms "Applicant's SPRINKLES product or service" and "Applicant's SPRINKLES products or services" means any product or service offered for sale, offered for distribution, sold, distributed, advertised, marketed, promoted or rendered in the U.S. by Applicant in connection with the mark SPRINKLES.

6. The term "frozen desserts" refers to ice cream, frozen yogurt, ice cream sundaes, sherbets, ices, sorbets, milk shakes, or ice cream cakes.

7. The term "person" means any natural person or any business, legal or governmental entity, or association.

8. Unless otherwise stated, the scope of these Requests For Production is the United States.

9. The term "document" as used herein is synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34, any "writings and recordings" and "photographs" as defined by Federal Rule of Evidence 1001, and its interpretation by the courts, and includes, without limitation, all originals, drafts, and non-identical copies of any written, printed, typed, recorded, electronic, magnetic, optical, punched, copied, graphic or other tangible

thing in, upon or from which information may be conveyed, embodied, translated, or stored (including, but not limited to, papers, records, books, correspondence, contracts, minutes of meetings, memoranda, notes on desk calendars and appointment books, intra-office communications, canceled checks, invoices, telegrams, telexes, dictation or other audio tapes, video tapes, studies, electronic mail, information stored in computer readable form, on a compact disc, or any other type of data storage device or medium, computer printouts, microfilm, microfiche, laser disks, diaries, calendars, photographs, charts, viewgraphs, drawings, sketches and all other writings or drafts thereof), as well as all other tangible things subject to production under Federal Rule of Civil Procedure 34.

10. The term "communication" is defined as any transmission or exchange of information between two (2) or more persons, orally or in writing, and includes, without limitation, any conversation or discussion, whether face-to-face or by means of telephone, letter, facsimile, electronic, digital or other media.

11. The terms "relating to" and "related to" mean concerning, containing, evidencing, describing, constituting, referring to, explaining, discussing or reflecting.

12. The terms "and" and "or" and the term "and/or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all documents that might otherwise be construed to be outside its scope.

13. The use of a present tense shall include past tenses.

14. The use of the singular form of any word also includes the plural and vice versa.

15. The terms "all" and "each" shall each be construed to include the other.

### **INSTRUCTIONS**

1. You are requested to produce for inspection and copying all responsive documents and things in your possession, custody or control, including all documents and things in the custody of

your attorneys, consultants, agents, other representatives, and other persons or entities subject to your control.

2. You are to produce the documents and things as they are kept in the ordinary course of business, with appropriate markings or designations so that it may be determined to which request they are responsive.

3. You are to produce the original and all non-identical copies of each requested document or thing, including all copies which bear any additional file stamps, marginal notes or other additional markings or writings that do not appear on the original. The production shall include the file, envelope, folder, binder, or other container in which the responsive documents and things are kept. If, for any reason, the container cannot be produced, you are to produce copies of all labels or other identifying markings.

4. Documents that exist in digital format and constitute or comprise databases or other tabulations or collections of data or information should be produced in their native format. Documents that exist in digital format and constitute or comprise written communications between natural persons (e.g., e-mail messages, internal memos, letters, etc.) should be produced in OCR (optical character recognition) TIFF file format with a Concordance load-file.

5. If you cannot fully respond to any request after a diligent attempt, respond to the request to the extent possible and specify the portion of the request to which you are unable to respond.

6. If you claim that any request, definition or instruction is ambiguous, state the language you claim is ambiguous and the interpretation you have used to respond to the request.

7. If you contend that any document or thing has been lost or destroyed, set forth the contents of the document or thing, the location of any copies, the date of loss or destruction, the name of the person who ordered or authorized the destruction, if any, and the authority and reasons for such destruction.

8. If you decline to produce any information, document, or thing on the basis of the attorney-client, work product, or other privilege, respond to so much of the discovery request as is

not subject to the claimed objection, and for each document or thing, provide the following information:

- a. the type and title of the document or thing;
- b. the general subject matter of the document or description of the thing;
- c. the date of its creation;
- d. the identity of the document's author(s), addressee(s) and recipient(s);
- e. the nature of the privilege being claimed; and
- f. in detail, all facts upon which you base your claim of privilege.

9. Complete production is to be made on the date and at the time indicated above.

10. You have a duty to supplement your responses from now until the time of hearing or trial, as provided by Federal Rule of Procedure 26(e).

### **DOCUMENTS AND THINGS REQUESTED**

Consistent with the foregoing definitions and instructions, please provide the following documents and things:

#### **DOCUMENT REQUEST NO. 1:**

All documents relating to Applicant.

#### **DOCUMENT REQUEST NO. 2:**

Documents sufficient to identify each of Opposer's SPRINKLES products or services.

#### **DOCUMENT REQUEST NO. 3:**

Documents sufficient to show use of the mark SPRINKLES in connection with each of Opposer's SPRINKLES products or services each year that you offered for sale, offered for distribution, sold, distributed, advertised, marketed, promoted or rendered such products or services.

**DOCUMENT REQUEST NO. 4:**

Documents sufficient to show use of the mark SPRINKLES on the earliest date on which you will rely in this Opposition proceeding to establish your rights in the mark SPRINKLES.

**DOCUMENT REQUEST NO. 5:**

Documents sufficient to show use of the mark SPRINKLES on the earliest date on which you will rely in this Opposition proceeding to establish your rights in the mark SPRINKLES for use with frozen desserts.

**DOCUMENT REQUEST NO. 6:**

Documents sufficient to show use of the mark SPRINKLES on the earliest date on which you will rely in this Opposition proceeding to establish your rights in the mark SPRINKLES for use with baked goods.

**DOCUMENT REQUEST NO. 7:**

Documents sufficient to show use of the mark SPRINKLES on the earliest date on which you will rely in this Opposition proceeding to establish your rights in the mark SPRINKLES for use with candy and sweets.

**DOCUMENT REQUEST NO. 8:**

Documents sufficient to show use of the mark SPRINKLES on the earliest date on which you will rely in this Opposition proceeding to establish your rights in the mark SPRINKLES for use with cupcakes.

**DOCUMENT REQUEST NO. 9:**

All documents relating to promotions or advertisements for Opposer's SPRINKLES products or services.

**DOCUMENT REQUEST NO. 10:**

All documents relating to promotions or advertisements for cupcakes offered by you in connection with the mark SPRINKLES.

**DOCUMENT REQUEST NO. 11:**

Representative samples of each advertising, marketing, and promotional material, including but not limited to web pages, catalogs, circulars, leaflets, direct mail pieces, brochures, point of sale pieces, press releases, web-based advertisements (including but not limited to banner ads), newspaper and magazine advertisements and articles, yellow page advertisements, transcripts and audio tapes for radio advertisements, and transcripts and video tapes of television advertisements, showing use of the mark SPRINKLES on any goods or services, including but not limited to cupcakes. Include with each item such document which provides the date(s) of use or publication and a description of where the advertisement or promotion appeared.

**DOCUMENT REQUEST NO. 12:**

All documents relating to your expenditures on advertising and marketing activities related to Opposer's SPRINKLES products or services.

**DOCUMENT REQUEST NO. 13:**

All documents relating to your expenditures on advertising and marketing activities related to cupcakes offered by you in connection with the mark SPRINKLES.

**DOCUMENT REQUEST NO. 14:**

All marketing plans, marketing projections or other marketing, market share, or sales approach documents prepared by or for you relating to the sale, proposed sale, rendering or proposed rendering of Opposer's SPRINKLES products or services.

**DOCUMENT REQUEST NO. 15:**

Documents sufficient to show annual advertising expenditures in connection with Opposer's SPRINKLES products or services.

**DOCUMENT REQUEST NO. 16:**

A complete copy of each version of each website displaying the SPRINKLES mark or offering for sale any of Opposer's SPRINKLES product or service.

**DOCUMENT REQUEST NO. 17:**

All documents relating to your efforts or plans to promote or expand awareness of the mark SPRINKLES.

**DOCUMENT REQUEST NO. 18:**

Documents sufficient to show the annual sales (in dollars and in number of units sold) of each product sold by you under the mark SPRINKLES.

**DOCUMENT REQUEST NO. 19:**

Documents sufficient to show the annual sales (in dollars) of each service rendered by you under the mark SPRINKLES.

**DOCUMENT REQUEST NO. 20:**

Documents sufficient to show the annual sales (in dollars and in number of units sold) of cupcakes sold by you under the SPRINKLES mark.

**DOCUMENT REQUEST NO. 21:**

All documents comprising or relating to classes of dealers, customers, clients, sales representatives, brokers, and/or distributors of Opposer's SPRINKLES products and services.

**DOCUMENT REQUEST NO. 22:**

Documents sufficient to identify each catalog, sales outlet, Internet web site or other electronic means, retail outlet, and wholesale outlet in which products offered in connection with the SPRINKLES mark are, or are intended to be, advertised, promoted, distributed, sold, or offered for sale.

**DOCUMENT REQUEST NO. 23:**

All documents, including but not limited to contracts and license agreements, authorizing any third party to use the mark SPRINKLES.

**DOCUMENT REQUEST NO. 24:**

All documents relating to any license or authorization that you granted to a third party to use the mark SPRINKLES.

**DOCUMENT REQUEST NO. 25:**

All documents relating to your exercise of quality control concerning the use of the mark SPRINKLES by any third party.

**DOCUMENT REQUEST NO. 26:**

All documents relating to agreements with third parties concerning the sale of cupcakes in connection with the mark SPRINKLES.

**DOCUMENT REQUEST NO. 27:**

All documents relating to your adoption of the mark SPRINKLES, including but not limited to all documents identifying when you began using the mark SPRINKLES.

**DOCUMENT REQUEST NO. 28:**

All documents relating to communications with third parties other than your legal counsel concerning the mark SPRINKLES.

**DOCUMENT REQUEST NO. 29:**

All documents relating to communications with third parties other than your legal counsel concerning this trademark dispute.

**DOCUMENT REQUEST NO. 30:**

All documents relating to communications with third parties other than your legal counsel concerning Applicant.

**DOCUMENT REQUEST NO. 31:**

All documents relating to any trademark applications you have filed for the mark SPRINKLES, including but not limited to any correspondence between you or your legal counsel and the U.S. Patent and Trademark Office.

**DOCUMENT REQUEST NO. 32:**

Every investigation conducted by you or on your behalf in connection with the availability, registrability, or use of the mark SPRINKLES.

**DOCUMENT REQUEST NO. 33:**

Every trademark search conducted by you or on your behalf for the mark SPRINKLES.

**DOCUMENT REQUEST NO. 34:**

Every inquiry, other than an investigation or trademark search, conducted by you or on your behalf in connection with the availability, registrability, or use of the mark SPRINKLES.

**DOCUMENT REQUEST NO. 35:**

All documents relating to use of the mark SPRINKLES by any third party.

**DOCUMENT REQUEST NO. 36:**

All documents relating to any confusion as to origin, endorsement, approval or sponsorship of SPRINKLES products or services.

**DOCUMENT REQUEST NO. 37:**

All documents relating to any incident in which a third party has challenged the rights you claim in the mark SPRINKLES, including but not limited to any demand to cease and desist.

**DOCUMENT REQUEST NO. 38:**

All documents relating to any incident in which you have challenged the rights of a third party based on the rights you claim in the mark SPRINKLES, including but not limited to any demand to cease and desist.

**DOCUMENT REQUEST NO. 39:**

All documents relating to actual confusion arising from Applicant's use of the mark SPRINKLES.

**DOCUMENT REQUEST NO. 40:**

All documents relating to communications between you or your legal counsel with experts in this Opposition proceeding.

**DOCUMENT REQUEST NO. 41:**

All documents relating to communications between you or your legal counsel with potential experts in this Opposition proceeding.

**DOCUMENT REQUEST NO. 42:**

All documents comprising or relating to opinions of each expert witness that you will or may call in this Opposition proceeding.

**DOCUMENT REQUEST NO. 43:**

All documents relating to the basis for your claim that "Opposer Sprinkles uses 'SPRINKLES' as part of its trade name" as pleaded in ¶ 3 of your Notice of Opposition.

**DOCUMENT REQUEST NO. 44:**

All documents relating to the basis for your claim that "in the eyes and minds of a large part of the public, the mark 'SPRINKLES' as recited in U.S. Trademark Application Serial No. 77/770,541 is closely associated with the goods and services with which Opposer used and is using 'SPRINKLES'" as pleaded in ¶ 12 of your Notice of Opposition.

**DOCUMENT REQUEST NO. 45:**

All documents relating to the circumstances under which you became aware of application serial no. 77/770541.

**DOCUMENT REQUEST NO. 46:**

Each document reviewed, consulted, or on which you relied, to draft your answers to Opposer's First Set of Interrogatories to Applicant.

**DOCUMENT REQUEST NO. 47:**

Each document requested to be identified in Applicant's First Set of Interrogatories to Opposer.

**DOCUMENT REQUEST NO. 48:**

All documents relating to your policies regarding retention, storage, filing and destruction of documents and things, including but not limited to electronic mail.

Dated: June 11, 2010

Respectfully submitted,

**WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation**

By:   
John L. Slafsky  
Matthew J. Kuykendall

**Attorneys for Applicant  
Sprinkles Cupcakes, Inc.**

**CERTIFICATE OF SERVICE BY MAIL**

I, Jo Ann Hylton, declare:

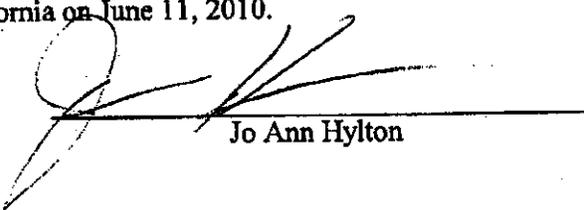
I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence would be deposited with the United States Postal Service on this date.

On this date, I served **APPLICANT'S FIRST SET OF REQUESTS FOR PRODUCTION TO OPPOSER** on each person listed below, by placing the document(s) described above in an envelope addressed as indicated below, which I sealed. I placed the envelope(s) for collection and mailing with the United States Postal Service on this day, following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

Thomas J. Vande Sande  
Hall & Vande Sande, LLC  
10220 River Road, Suite 200  
Potomac, MD 20854

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on June 11, 2010.

  
Jo Ann Hylton

# **Exhibit 32**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Soft Serve, Inc. d/b/a/ Sprinkles,

Petitioner,

v.

Sprinkles Cupcakes, Inc.,

Registrant.

Cancellation No.: 92053109

REGISTRANT'S ANSWER TO  
PETITION FOR CANCELLATION

Registration No. 3306772

---

Re: Mark: SPRINKLES  
Registration No.: 3306772  
International Classes: 30, 35  
Filed: March 3, 2006  
Registered: October 9, 2007

Sprinkles Cupcakes, Inc. ("Registrant"), through its undersigned attorneys, hereby submits this Answer to the Petition for Cancellation filed by Soft Serve, Inc. d/b/a Sprinkles ("Petitioner") in the above-mentioned proceeding. Unless expressly admitted herein, each allegation contained in the Petition for Cancellation is denied.

1. Applicant denies the allegations in paragraph 1.
2. Applicant denies the allegations in paragraph 2.

First Affirmative Defense

3. The Petition for Cancellation fails to set forth facts sufficient to entitle Petitioner to the relief sought.

Second Affirmative Defense

4. The Petition for Cancellation is barred by the doctrine of laches.

Third Affirmative Defense

5. The Petition for Cancellation is barred by the doctrines of waiver, acquiescence, and estoppel.

Fourth Affirmative Defense

6. As between the parties, Registrant has superior rights to the SPRINKLES mark and variations thereof. *See, e.g.*, Reg. Nos. 2938800 and 3004757.

Dated: November 2, 2010

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

By:   
\_\_\_\_\_  
John L. Slafsky  
Hollis Beth Hire

Attorneys for Registrant  
Sprinkles Cupcakes, Inc.

Please address all communications concerning this proceeding to:

John L. Slafsky  
Hollis Beth Hire  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, California 94304-1050  
Telephone: (650) 493-9300  
Fax: (650) 493-6811  
trademarks@wsgr.com

**CERTIFICATE OF SERVICE BY MAIL**

I, Jo Ann Hylton, declare:

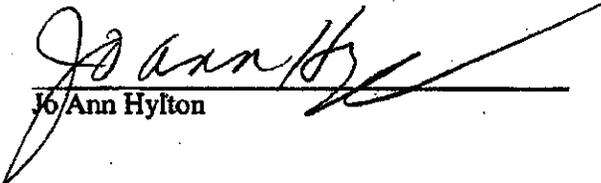
I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence would be deposited with the United States Postal Service on this date.

On this date, I served **REGISTRANT'S ANSWER TO PETITION FOR CANCELLATION** on each person listed below, by placing the document described above in an envelope addressed as indicated below, which I sealed. I placed the envelope for collection and mailing with the United States Postal Service on this day, following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

Thomas J. Vande Sande  
Hall & Vande Sande, LLC  
10220 River Road, Suite 200  
Potomac, Maryland 20854

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on November 2, 2010.

  
Jo Ann Hylton

# **Exhibit 33**

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2012-06-05 18:17:36 ET**

**Serial Number:** 78829040 Assignment Information      Trademark Document Retrieval

**Registration Number:** 3306772

**Mark**

# SPRINKLES

**(words only):** SPRINKLES

**Standard Character claim:** Yes

**Current Status:** A cancellation proceeding is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

**Date of Status:** 2010-10-07

**Filing Date:** 2006-03-03

**Filed as TEAS Plus Application:** Yes

**Currently TEAS Plus Application:** Yes

**Transformed into a National Application:** No

**Registration Date:** 2007-10-09

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 103

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** 650 -Publication And Issue Section

**Date In Location:** 2007-10-09

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

**1. SPRINKLES CUPCAKES, INC.**

**Address:**

SPRINKLES CUPCAKES, INC.  
422 North La Cienega Boulevard  
Los Angeles, CA 90048  
United States

**Legal Entity Type:** Corporation  
**State or Country of Incorporation:** Texas

**GOODS AND/OR SERVICES**

**International Class:** 030

**Class Status:** Active

Bakery goods

**Basis:** 1(a)

**First Use Date:** 2004-02-01

**First Use in Commerce Date:** 2004-02-01

**International Class:** 035

**Class Status:** Active

Retail shops featuring baked goods

**Basis:** 1(a)

**First Use Date:** 2005-04-13

**First Use in Commerce Date:** 2005-04-13

**ADDITIONAL INFORMATION**

(NOT AVAILABLE)

**MADRID PROTOCOL INFORMATION**

(NOT AVAILABLE)

**PROSECUTION HISTORY**

**NOTE:** To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2012-01-11 - Applicant/Correspondence Changes (Non-Responsive) Entered

2012-01-11 - TEAS Change Of Owner Address Received

2011-10-07 - Notice Of Suit  
2010-10-07 - Cancellation Instituted No. 999999  
2010-04-07 - Automatic Update Of Assignment Of Ownership  
2009-11-04 - Automatic Update Of Assignment Of Ownership  
2009-10-28 - Automatic Update Of Assignment Of Ownership  
2009-09-08 - Notice Of Suit  
2007-10-09 - Registered - Principal Register  
2007-07-24 - Published for opposition  
2007-07-04 - Notice of publication  
2007-05-07 - Law Office Publication Review Completed  
2007-05-07 - Approved for Pub - Principal Register (Initial exam)  
2007-03-01 - LIE Checked Susp - To Atty For Action  
2007-03-01 - Assigned To LIE  
2006-08-21 - Letter of suspension e-mailed  
2006-08-21 - Suspension Letter Written  
2006-08-21 - Assigned To Examiner  
2006-03-10 - New Application Entered In Tram

**ATTORNEY/CORRESPONDENT INFORMATION**

**Attorney of Record**

John L. Slafsky

**Correspondent**

JOHN L SLAFSKY  
WILSON SONSINI GOODRICH & ROSATI  
650 PAGE MILL ROAD  
PALO ALTO, CA 94304-1050  
Phone Number: (650) 493-9300  
Fax Number: (650) 493-6811

# **Exhibit 34**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SOFT SERVE, INC. d/b/a SPRINKLES,

Opposer/Petitioner,

v.

SPRINKLES CUPCAKES, INC.,

Applicant/Respondent.

**Opposition No. 91194188**

Opposition No. 91195669

Opposition No. 91195985

Opposition No. 91195986

Opposition No. 91196035

Opposition No. 91196061

Opposition No. 91196087

Cancellation No. 92053109

**EXHIBIT 34 TO THE DECLARATION OF JOHN L. SLAFSKY**

**CONFIDENTIAL — ATTORNEYS' EYES ONLY  
RESTRICTED DOCUMENTS PURSUANT TO 37 CFR § 2.126**

**FILED UNDER SEAL SUBJECT TO PROTECTIVE ORDER**

These materials have been designated confidential, pursuant to a Protective Order, and are not to be disclosed or revealed except to the Trademark Trial and Appeal Board and counsel for the parties, or by order of the Board.

# **Exhibit 35**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SOFT SERVE, INC. d/b/a SPRINKLES,	)	
	)	
Opposer/Petitioner,	)	Opposition No. 91194188
	)	Opposition No. 91195669
v.	)	Opposition No. 91195985
	)	Opposition No. 91195986
SPRINKLES CUPCAKES, INC.,	)	Opposition No. 91196035
	)	Opposition No. 91196061
Applicant/Respondent.	)	Opposition No. 91196087
	)	Cancellation No. 92053109

---

**EXHIBIT 35 TO THE DECLARATION OF JOHN L. SLAFSKY**

**CONFIDENTIAL — ATTORNEYS' EYES ONLY  
RESTRICTED DOCUMENTS PURSUANT TO 37 CFR § 2.126**

**FILED UNDER SEAL SUBJECT TO PROTECTIVE ORDER**

These materials have been designated confidential, pursuant to a Protective Order, and are not to be disclosed or revealed except to the Trademark Trial and Appeal Board and counsel for the parties, or by order of the Board.

# **Exhibit 36**



# Sprinkles

@SprinklesDMV

Baked goods, cappuccinos, frozen yogurts (10 flavors in regular and tart), ice creams (30 flavors), in same location for 23 years.  
Potomac, Maryland

Follow

67 TWEETS

0 FOLLOWING

52 FOLLOWERS

## Follow Sprinkles

Full name

Email

Password

Sign up

Tweets >

Following >

Followers >

Favorites >

Lists >

© 2012 Twitter About Help Terms Privacy  
Blog Status Apps Resources Jobs  
Advertisers Businesses Media Developers

## Tweets



Sprinkles @SprinklesDMV

18 May

cvsonlinepharmacystore.com/products/dipy... Generic Dipyridamole (Dipyridamole)

Collapse Reply Retweet Favorite

1:16 AM - 18 May 12 via web Details



Sprinkles @SprinklesDMV

12 May

Free scoop of ice cream with any cupcake purchase today at Sprinkles. Just ask!

Collapse Reply Retweet Favorite

10:28 AM - 12 May 12 via web Details



Sprinkles @SprinklesDMV

26 Apr

Get tart yogurt at Sprinkles!

Collapse Reply Retweet Favorite

12:00 PM - 26 Apr 12 via web Details



Sprinkles @SprinklesDMV

28 Apr

Sprinkles offers fronana, banana based treats! Do anything with fronana you would do with ice cream!

Collapse Reply Retweet Favorite

12:01 PM - 28 Apr 12 via web Details



Sprinkles @SprinklesDMV

26 Apr

Free espresso or scoop of ice cream with cupcake purchase today at Sprinkles; just ask!

Collapse Reply Retweet Favorite

11:58 AM - 26 Apr 12 via web Details



Sprinkles @SprinklesDMV

28 Apr

Order 12 Sprinkles cupcakes a day ahead and we provide 18 for the same price. That's \$1.59 each!

Collapse Reply Retweet Favorite

11:58 AM - 28 Apr 12 via web Details



Sprinkles @SprinklesDMV

7 Apr

Ask for a free espresso or 4 oz ice cream with your cupcake purchase today at Sprinkles!

Collapse Reply Retweet Favorite

11 12 AM - 7 Apr 12 via web Details



Sprinkles @SprinklesDMV

8 Apr

Order a dozen cupcakes from Sprinkles a day ahead and receive 18 for the same price-works out to \$1.59 a piece - thru April!

Collapse ← Reply ↻ Retweet ★ Favorite

11 14 AM - 3 Apr 12 via web Details



Sprinkles @SprinklesDMV

3 Apr

Ask for your free 4 oz ice cream or espresso when you purchase a cupcake at Sprinkles today!

Collapse ← Reply ↻ Retweet ★ Favorite

11 12 AM - 3 Apr 12 via web Details



Sprinkles @SprinklesDMV

31 Mar

Free espresso or 4 oz ice cream with your cupcake purchase at Sprinkles - just ask!

Collapse ← Reply ↻ Retweet ★ Favorite

9 22 AM - 31 Mar 12 via web Details



Sprinkles @SprinklesDMV

24 Mar

You feel like having a cupcake, so you come to Sprinkles and can have a free espresso or kids ice cream with your purchase, thru March!

Collapse ← Reply ↻ Retweet ★ Favorite

10 36 AM - 24 Mar 12 via web Details



Sprinkles @SprinklesDMV

18 Mar

Reminder when you order ahead a dozen Sprinkles cupcakes we give you 18 for the same price; thru March

Collapse ← Reply ↻ Retweet ★ Favorite

8 35 AM - 18 Mar 12 via web Details



Sprinkles @SprinklesDMV

18 Mar

Accent your palate with an espresso or 4 oz ice cream on us with your Sprinkles cupcake purchase, through March

Collapse ← Reply ↻ Retweet ★ Favorite

8 33 AM - 18 Mar 12 via web Details



Sprinkles @SprinklesDMV

26 Feb

Ice cream & cake? Free kids ice cream or fresh & hot espresso with any cupcake purchase today at Sprinkles!

Collapse ← Reply ↻ Retweet ★ Favorite

9 22 AM - 26 Feb 12 via web Details



Sprinkles @SprinklesDMV

19 Feb

Free espresso when you buy a cupcake, any day in February, at Sprinkles. Just ask.

Collapse ← Reply ↻ Retweet ★ Favorite

10 46 AM - 19 Feb 12 via web Details



Sprinkles @SprinklesDMV

6 Nov

Having a party? Sprinkles cupcakes \$1.59 each when you pre-order. Minimum 18 cupcakes. Thru November.

Collapse ← Reply ↻ Retweet ★ Favorite

10:30 AM - 9 Nov 11 via web Details



Sprinkles @SprinklesDMV

9 Oct

The first nine 9 year olds to state their age this gorgeous 9th of October, can enjoy a free cupcake or ice cream sundae at Sprinkles!

Collapse ← Reply ↻ Retweet ★ Favorite

8:34 AM - 9 Oct 11 via web Details



Sprinkles @SprinklesDMV

9 Oct

If you order ahead 12 cupcakes from Sprinkles any time this month, you receive six extra cupcakes free! That averages out to \$1.59/cupcake.

Collapse ← Reply ↻ Retweet ★ Favorite

8:31 AM - 9 Oct 11 via web Details



Sprinkles @SprinklesDMV

17 Sep

If you order ahead a dozen cupcakes from Sprinkles any time this month, you receive six extra cupcakes free.

Collapse ← Reply ↻ Retweet ★ Favorite

8:44 AM - 17 Sep 11 via web Details



Sprinkles @SprinklesDMV

17 Sep

Be one of the first seventeen 17 year olds to state your age today at Sprinkles and receive a free sundae!

Collapse ← Reply ↻ Retweet ★ Favorite

6:41 AM - 17 Sep 11 via web Details



Sprinkles @SprinklesDMV

18 Jul

July offer to Twitter readers: order 12 cupcakes and receive a second dozen free at Sprinkles.

Collapse ← Reply ↻ Retweet ★ Favorite

9:33 AM - 18 Jul 11 via web Details



Sprinkles @SprinklesDMV

18 Jul

Be one of the first sixteen 16 year olds to state your age today, the 16th, at Sprinkles, for a free sundae!

Collapse ← Reply ↻ Retweet ★ Favorite

9:34 AM - 18 Jul 11 via web Details



Sprinkles @SprinklesDMV

14 Jun

Be one of the first fourteen 14 year olds to state your age today, the 14th, at Sprinkles for a free sundae!

Collapse ← Reply ↻ Retweet ★ Favorite

2:34 PM - 14 Jun 11 via web Details



Sprinkles @SprinklesDMV

13 Jun

Be one of the first thirteen 13 year olds to state your age today. the



13th, at Sprinkles for a free sundae!

[Collapse](#) [← Reply](#) [↻ Retweet](#) [★ Favorite](#)

1 02 PM - 13 Jun 11 via web [Details](#)



Sprinkles @SprinklesDMV

12 Jun

Be one of the first 12 twelve year olds to state you are twelve on Sunday the 12th, at Sprinkles, and receive a free sundae!

[Collapse](#) [← Reply](#) [↻ Retweet](#) [★ Favorite](#)

9:13 AM - 12 Jun 11 via web [Details](#)



Sprinkles @SprinklesDMV

22 May 11

First ten at Sprinkles to ask if Red Velvet is a cupcake or an ice cream receive a free sundae today!

[Collapse](#) [← Reply](#) [↻ Retweet](#) [★ Favorite](#)

9:45 AM - 22 May 11 via web [Details](#)



Sprinkles @SprinklesDMV

15 May 11

Be one of the first ten fifteen year olds to identify yourself for a free sundae today, Sunday the 15th at Sprinkles!

[Collapse](#) [← Reply](#) [↻ Retweet](#) [★ Favorite](#)

11:35 AM - 15 May 11 via web [Details](#)



Sprinkles @SprinklesDMV

13 May 11

Be one of the first five 13 year olds to identify yourselves at Sprinkles for a free sundae, today, Friday the 13th!

[Collapse](#) [← Reply](#) [↻ Retweet](#) [★ Favorite](#)

8:23 AM - 13 May 11 via web [Details](#)



Sprinkles @SprinklesDMV

27 Apr 11

Today at Sprinkles if you ask the blonde lady whether her cat's stripes are fading, she will give you a free donut or cupcake!

[Collapse](#) [← Reply](#) [↻ Retweet](#) [★ Favorite](#)

11:50 AM - 27 Apr 11 via web [Details](#)



Sprinkles @SprinklesDMV

24 Apr 11

Today at Sprinkles say you want the same cupcake the Bunny had, and receive one free while they last!

[Collapse](#) [← Reply](#) [↻ Retweet](#) [★ Favorite](#)

11:54 AM - 24 Apr 11 via web [Details](#)



Sprinkles @SprinklesDMV

21 Apr 11

The first ten people to ask the blonde lady at Sprinkles how many stripes her cat has, receive a free cupcake!

[Collapse](#) [← Reply](#) [↻ Retweet](#) [★ Favorite](#)

10:36 AM - 21 Apr 11 via web [Details](#)



Sprinkles @SprinklesDMV

20 Apr 11

Today at Sprinkles, say you prefer your veggies in a cupcake to

 **Sprinkles** @SprinklesDMV  
Collapse ← Reply ↻ Retweet ★ Favorite  
10:24 AM - 20 Apr 11 via web Details

 **Sprinkles** @SprinklesDMV 15 Apr 11  
The first five at Sprinkles today who find out what Chocolate asked the red velvet cone receive a free sundae!  
Collapse ← Reply ↻ Retweet ★ Favorite  
9:29 AM - 15 Apr 11 via web Details

 **Sprinkles** @SprinklesDMV 9 Apr 11  
The next five people to say "Banana Cocoa Dingdong" at Sprinkles today receive a free Sprinkle-in of their choosing!  
Collapse ← Reply ↻ Retweet ★ Favorite  
11:54 AM - 9 Apr 11 via web Details

 **Sprinkles** @SprinklesDMV 7 Apr 11  
The next five people at Sprinkles who tell the blonde lady they want a sundae for their striped cat, will receive a free sundae!  
Collapse ← Reply ↻ Retweet ★ Favorite  
11:07 AM - 7 Apr 11 via web Details

 **Sprinkles** @SprinklesDMV 6 Apr 11  
First five at Sprinkles today to say "Spouse Like A House" receive a free Sprinkle-in!  
Collapse ← Reply ↻ Retweet ★ Favorite  
11:21 AM - 6 Apr 11 via web Details

 **Sprinkles** @SprinklesDMV 5 Apr 11  
Today the first five at Sprinkles who say "there's nothing wrong with me a little ice cream won't fix" receive a free sundae!  
Collapse ← Reply ↻ Retweet ★ Favorite  
9:27 AM - 5 Apr 11 via web Details

 **Sprinkles** @SprinklesDMV 3 Apr 11  
Today the first ten to say "a balanced diet is a cupcake in each hand" receive one free!  
Collapse ← Reply ↻ Retweet ★ Favorite  
9:43 AM - 3 Apr 11 via web Details

 **Sprinkles** @SprinklesDMV 2 Apr 11  
The lyric sound of laughter fills all the April hills The joy-song of the crows The mirth of daffodils  
Collapse ← Reply ↻ Retweet ★ Favorite  
10:00 AM - 2 Apr 11 via web Details

 **Sprinkles** @SprinklesDMV 1 Apr 11  
The first five to say "April is a promise that May is bound to keep" receive a free sundae!

[Collapse](#) [← Reply](#) [↻ Retweet](#) [★ Favorite](#)

8:31 AM - 1 Apr 11 via web [Details](#)



**Sprinkles** @SprinklesDMV

27 Mar 11

The next five today at Sprinkles to tell the blonde lady at the counter they want a sundae for their striped cat, receive a free sundae!

[Collapse](#) [← Reply](#) [↻ Retweet](#) [★ Favorite](#)

3:17 PM - 27 Mar 11 via web [Details](#)



**Sprinkles** @SprinklesDMV

20 Mar 11

Be one of the first five at Sprinkles today to ask "what day is it?" for a free sundae!

[Collapse](#) [← Reply](#) [↻ Retweet](#) [★ Favorite](#)

11:46 AM - 20 Mar 11 via web [Details](#)



**Sprinkles** @SprinklesDMV

13 Mar 11

Today at Sprinkles be one of the first ten to ask "Do you blend?" to receive a free cupcake and ice cream blend-in!

[Collapse](#) [← Reply](#) [↻ Retweet](#) [★ Favorite](#)

10:08 AM - 16 Mar 11 via web [Details](#)



**Sprinkles** @SprinklesDMV

14 Mar 11

Today, be one of the first ten at Sprinkles to ask "what's a cupcake without ice cream?" and receive one free, a la mode of course!

[Collapse](#) [← Reply](#) [↻ Retweet](#) [★ Favorite](#)

10:00 AM - 14 Mar 11 via web [Details](#)



**Sprinkles** @SprinklesDMV

11 Mar 11

Friday: Come to Sprinkles today and be one of the first ten to say "I would like a Sprinkles cupcake a la mode", to receive one free!

[Collapse](#) [← Reply](#) [↻ Retweet](#) [★ Favorite](#)

10:10 AM - 11 Mar 11 via web [Details](#)



**Sprinkles** @SprinklesDMV

6 Mar 11

Today, be one of the first ten to say "Sprinkles is the scene for cupcakes and cream" to receive a free cupcake and your favorite ice cream!

[Collapse](#) [← Reply](#) [↻ Retweet](#) [★ Favorite](#)

3:21 PM - 6 Mar 11 via web [Details](#)



**Sprinkles** @SprinklesDMV

1 Mar 11

Today: Be one of the first ten visitors at Sprinkles to ask for a Red Velvet Sundae, and receive one free!

[Collapse](#) [← Reply](#) [↻ Retweet](#) [★ Favorite](#)

8:42 AM - 1 Mar 11 via web [Details](#)



**Sprinkles** @SprinklesDMV

28 Feb 11

Today: The next ten visitors who explain the difference between parrot and parrot receive a free Sprinkles cone!

 [Collapse](#) [Reply](#) [Retweet](#) [Favorite](#)

[Collapse](#) [Reply](#) [Retweet](#) [Favorite](#)

2:30 PM - 28 Feb 11 via web Details



[Sprinkles](#) [@SprinklesDMV](#)

28 Feb 11

Today: The first ten visitors to ask "do Met Opera lovers love Sprinkles Red Velvet Cupcake yogurt?" receive a free pint of the same!

[Collapse](#) [Reply](#) [Retweet](#) [Favorite](#)

10:31 AM - 26 Feb 11 via web Details



[Sprinkles](#) [@SprinklesDMV](#)

24 Feb 11

The next ten visitors who say "I'll gladly pay you Tuesday for a cupcake today" receive a free "Sprinkles" cupcake!

[Collapse](#) [Reply](#) [Retweet](#) [Favorite](#)

3:53 PM - 24 Feb 11 via web Details



[Sprinkles](#) [@SprinklesDMV](#)

23 Feb 11

Today: The next ten visitors who say "give me something hot that's really cool" get a free Sprinkles cupcake!

[Collapse](#) [Reply](#) [Retweet](#) [Favorite](#)

8:54 AM - 23 Feb 11 via web Details



[Sprinkles](#) [@SprinklesDMV](#)

21 Feb 11

Be one of today's first ten at Sprinkles to say "cupcake cappuccino" fast, without tripping up, to receive a free cupcake & cappuccino!

[Collapse](#) [Reply](#) [Retweet](#) [Favorite](#)

1:07 PM - 21 Feb 11 via web Details



[Sprinkles](#) [@SprinklesDMV](#)

18 Feb 11

The next ten visitors today who say "Red Velvet is on Sprinkles" receive a free pint of Red Velvet Cupcake froyo!

[Collapse](#) [Reply](#) [Retweet](#) [Favorite](#)

9:13 AM - 18 Feb 11 via web Details



[Sprinkles](#) [@SprinklesDMV](#)

17 Feb 11

If you are 17, come by Sprinkles today (The 17th) and, just for asking, receive any one item priced up to \$5 FREE!

[Collapse](#) [Reply](#) [Retweet](#) [Favorite](#)

10:35 AM - 17 Feb 11 via web Details



[Sprinkles](#) [@SprinklesDMV](#)

15 Feb 11

Wednesday the 16th: If you are 16, come by Sprinkles today and get any one item priced up to \$5, FREE!

[Collapse](#) [Reply](#) [Retweet](#) [Favorite](#)

9:27 PM - 15 Feb 11 via web Details



[Sprinkles](#) [@SprinklesDMV](#)

13 Feb 11

Sunday at Sprinkles: The first five who say "we read it on Twitter" receive a free sundae today!

Collapse ← Reply ↻ Retweet ★ Favorite

6:42 AM - 13 Feb 11 via web Details



**Sprinkles** @SprinklesDMV

13 Feb 11

Be among the next ten to say "have a heart" when ordering a dozen Sprinkles cupcakes for Valentines Day and pay just \$14!

Collapse ← Reply ↻ Retweet ★ Favorite

6:30 AM - 13 Feb 11 via web Details



**Sprinkles** @SprinklesDMV

11 Feb 11

Saturday at Sprinkles: Be one of the first ten to ask "Can I have a sundae on a Saturday?" to receive a free sundae!

Collapse ← Reply ↻ Retweet ★ Favorite

9:50 PM - 11 Feb 11 via web Details



**Sprinkles** @SprinklesDMV

10 Feb 11

Friday at Sprinkles: the first ten visitors who say "I'll try tart for a start" receive a free cone!

Collapse ← Reply ↻ Retweet ★ Favorite

7:14 PM - 10 Feb 11 via web Details



**Sprinkles** @SprinklesDMV

9 Feb 11

Thursday @ Sprinkles: Be one of the first 20 to say "I saw you on Twitter" to receive a free cupcake!

Collapse ← Reply ↻ Retweet ★ Favorite

5:21 PM - 9 Feb 11 via web Details



**Sprinkles** @SprinklesDMV

5 Feb 11

Be among the first five at Sprinkles to ask "do you blend?" to receive a free blend-in!

Collapse ← Reply ↻ Retweet ★ Favorite

9:24 PM - 8 Feb 11 via web Details



**Sprinkles** @SprinklesDMV

5 Feb 11

Say "I tweeted Sprinkles" today to be tweeted to a free ice cream!

Collapse ← Reply ↻ Retweet ★ Favorite

10:38 PM - 5 Feb 11 via web Details



**Sprinkles** @SprinklesDMV

5 Feb 11

Rain or shine, the next ten visitors to Sprinkles who say "I came for a tweet" may have a free ice cream cone!

Collapse ← Reply ↻ Retweet ★ Favorite

6:25 AM - 5 Feb 11 via web Details



**Sprinkles** @SprinklesDMV

3 Feb 11

The next 10 people to say Latte Da get a free latte at Sprinkles in Potomac.

Collapse ← Reply ↻ Retweet ★ Favorite

8:12 PM - 3 Feb 11 via web Details



**Sprinkles** @SprinklesDMV

3 Feb 11

What a day for a latte! The first 10 people at Sprinkles to say "hold the foam" get a free latte!

[Collapse](#) [← Reply](#) [↻ Retweet](#) [★ Favorite](#)

7:21 AM - 3 Feb 11 via web [Details](#)



**Sprinkles** @SprinklesDMV

1 Feb 11

Get warm at Sprinkles! The next 20 visitors who can say "a la mode" get a free scoop of vanilla ice cream with their cupcake order!

[Collapse](#) [← Reply](#) [↻ Retweet](#) [★ Favorite](#)

9:03 PM - 1 Feb 11 via web [Details](#)



**Sprinkles** @SprinklesDMV

1 Feb 11

Dry off at Sprinkles! The next 20 visitors who can say "a la mode" get a free scoop of vanilla ice cream with their cupcake order!

[Collapse](#) [← Reply](#) [↻ Retweet](#) [★ Favorite](#)

5:54 PM - 1 Feb 11 via web [Details](#)

[Back to top ↑](#)

# **Exhibit 37**



## SprinklesDMV

160 likes · 63 were here

Local Business  
10148 River Road, Potomac, MD.  
1 (301) 299-8415  
About

## SprinklesDMV is on Facebook.

To connect with SprinklesDMV, sign up for Facebook today.

Sign Up Log In

Like



160



Photos

Likes

Map

Highlights

Post Photo / Video

Write something...

Recommendations

See All

Mike Cadotte  
The FRONANA's are the Bomb !!  
about 4 months ago

May

Activity  
May

People Who Like This

2

People Talking About This

4

Visits

2

Earlier in 2012

SprinklesDMV  
March 24

A great day for a free espresso or kids ice cream with your Sprinkles cupcake purchase. Shall we see you around tea time (not you, Dirk)?

SprinklesDMV  
March 18

Have an espresso or 4 oz ice cream on us with your Sprinkles cupcake purchase by mentioning this notice, through March!

Like · Comment · Share

Like · Comment · Share

1

 SprinklesDMV  
February 26

Espresso lovers! Free espresso with any cupcake purchase at Sprinkles thru February.

Like · Comment · Share

 SprinklesDMV  
February 19

Free double espresso when you buy a cupcake, any day in February, at Sprinkles. Just ask.

Like · Comment · Share

 SprinklesDMV  
February 26

Cake & ice cream? Free kids ice cream with any cupcake purchase through February!

Like · Comment · Share

 SprinklesDMV  
February 26

Sprinkles cupcakes as low as \$1.59! Call for more information. 301-299-8415.

Like · Comment · Share

Joined Facebook

 SprinklesDMV  
December 31, 2011

Sprinkles cupcake promo extended thru Jan. Order 12 a day ahead and receive 18 for the same price. Works out to \$1.59 each.

Like · Comment · Share

1

 SprinklesDMV  
October 9, 2011

Where do great cupcakes cost \$1.59? Advance order a dozen from Sprinkles and get an extra 6 free. That works out to \$1.59 each. This month only!

Like · Comment · Share

 SprinklesDMV  
October 9, 2011

If you are 9 years old on this beautiful 9th day of October, and among the first 9 to let us know, enjoy a free cupcake or ice cream sundae at Sprinkles!

Like · Comment · Share

 SprinklesDMV  
September 17, 2011

If you phone in an order for one dozen cupcakes from Sprinkles this month, you receive an extra box of six cupcakes free! Call 301-299-8415 to order.

Like · Comment · Share

1

 SprinklesDMV  
July 16, 2011

July offer to Facebook followers: when you order 12 cupcakes from Sprinkles you receive a second dozen free.

Like · Comment · Share

 SprinklesDMV  
June 14, 2011

Today is the 14th, so if you are one of the first 14 fourteen year olds to state your age at Sprinkles, you will receive a free sundae!

Like · Comment · Share

 SprinklesDMV  
May 15, 2011

Be one of the first ten 15 year olds to identify yourself for a free sundae at Sprinkles on this Sunday the 15th!

Like · Comment · Share

 SprinklesDMV  
April 21, 2011

Today at Sprinkles, the first ten to ask the blonde lady at the counter how many stripes her cat has receive a free cupcake!

Like · Comment · Share

 SprinklesDMV  
April 21, 2011

 SprinklesDMV  
April 21, 2011

APRIL 20, 2011

Today at Sprinkles if you tell us you prefer your veggies in a cupcake, you'll receive a free carrot cake cupcake, while they last!

Like · Comment · Share

 SprinklesDMV  
April 3, 2011

On Sunday, the next ten at Sprinkles who say "a balanced diet is a cupcake in each hand" receive one free!

Like · Comment · Share

 SprinklesDMV  
March 19, 2011

Be one of the first ten today to ask of Sprinkles staff "Do you blend?" to receive a free cupcake and ice cream blend-in!

Like · Comment · Share

 SprinklesDMV  
February 23, 2011

Today: The next ten visitors who say "give me something hot that's really cool" get a free Sprinkles cupcake!

Like · Comment · Share

 SprinklesDMV  
February 15, 2011

Wednesday the 16th: If you are 16, come by Sprinkles today and get one thing priced up to \$5, FREE!

Like · Comment · Share

1

 Dirk Hiel Can't afford it  
February 16, 2011 at 10:05am

 SprinklesDMV  
February 10, 2011

Friday at Sprinkles: the first ten visitors who say "I'll try tart, for a start" receive a free cone!

Like · Comment · Share

1

 Dirk Hiel "I'll try tart, for a start"  
February 11, 2011 at 1:18pm

APRIL 9, 2011

The next five people at Sprinkles who say "Banana Cocoa Dingdong" receive a free Sprinkle-in of their choice!

Like · Comment · Share

 SprinklesDMV  
March 27, 2011

The next five people at Sprinkles who tell the blonde lady at the counter they want a sundae for their striped cat, will receive a free sundae!

Like · Comment · Share

1

 SprinklesDMV  
March 11, 2011

Today: Be among the first ten to say "I would like a Sprinkles cupcake a la mode" and you shall be provided one, free"

Like · Comment · Share

 SprinklesDMV  
February 21, 2011

Today: The first ten visitors at Sprinkles who can say "cupcake cappuccino" really fast and without tripping up get a free cupcake and cappuccino!

Like · Comment · Share

 SprinklesDMV  
February 11, 2011

Saturday at Sprinkles: Be one of the first ten visitors to say "can I have a sundae on a Saturday?" for a free sundae at Sprinkles!

Like · Comment · Share

1

 Dirk Hiel "can I have a sundae on a Saturday?"  
February 12, 2011 at 11:01am

 SprinklesDMV  
February 9, 2011

Thursday at Sprinkles: the first ten visitors who say "I saw you on Facebook" receive a free cupcake!

Like · Comment · Share

1

 Dirk Hiel I saw you on Facebook  
February 9, 2011 at 6:11pm



Joined Facebook

February 8, 2011



# **Exhibit 38**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SOFT SERVE, INC. d/b/a SPRINKLES,

Opposer/Petitioner,

v.

SPRINKLES CUPCAKES, INC.,

Applicant/Respondent.

Opposition No. 91194188

Opposition No. 91195669

Opposition No. 91195985

Opposition No. 91195986

Opposition No. 91196035

Opposition No. 91196061

Opposition No. 91196087

Cancellation No. 92053109

**EXHIBIT 38 TO THE DECLARATION OF JOHN L. SLAFSKY**

**CONFIDENTIAL — ATTORNEYS' EYES ONLY**  
**RESTRICTED DOCUMENTS PURSUANT TO 37 CFR § 2.126**

**FILED UNDER SEAL SUBJECT TO PROTECTIVE ORDER**

These materials have been designated confidential, pursuant to a Protective Order, and are not to be disclosed or revealed except to the Trademark Trial and Appeal Board and counsel for the parties, or by order of the Board.