

February 25, 2009

Via U.S. mail

U.S. Patent and Trademark Office
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

#75748967

Re: *Terra Sul Corporation a/k/a Churrascaria Boi Na Brasa v. Boi Na Brasa, Inc.*; In
the United States Patent and Trademark Office before the Trademark Trial and
Appeal Board; Cancellation No. 92047056
Our Ref.: TSUL/0002

Dear Sirs:

Enclosed please find a complete copy of Petitioner's Trial Brief. Exhibits A-10 through
A-13 are marked "**Confidential Pursuant to Protective Order**".

Should you have any questions or concerns, please contact Mr. Wall at (732) 842-8110.

Very truly yours,

PATTERSON & SHERIDAN, LLP


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DLC/gs
Enclosures

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02-27-2009

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

Terra Sul Corporation a/k/a	§	
Churrascaria Boi Na Brasa	§	
	§	
Petitioner	§	
	§	
V.	§	Cancellation No. 92047056
	§	
Boi Na Braza, Inc.,	§	
	§	
Registrant.	§	

PETITIONER'S TRIAL BRIEF

Pursuant to 37 C.F.R. § 1.128 and Rules 801 *et seq.* of the Trademark Trial and Appeal Board Manual of Procedure, Petitioner Terra Sul Corporation, a/k/a Churrascaria Boi Na Brasa (hereinafter "Petitioner" or "Terra Sul") hereby submits its Trial Brief for consideration by the Board. Petitioner maintains its contention that the federal registration of the BOI NA BRAZA mark currently owned by Registrant Boi Na Braza, Inc. (hereinafter "Registrant" or "Boi Na Braza") should be cancelled. Petitioner's factual and legal support for this contention is set forth as follows:

TABLE OF CONTENTS

INDEX OF CASES..... *ii*

DESCRIPTION OF THE RECORD..... *iv*

STATEMENT OF THE ISSUES..... 1

RECITATION OF THE FACTS 2

 A. Churrascaria Boi Na Brasa..... 2

 B. Formation of Terra Sul Corp..... 3

 C. Registrant’s Status as a Junior User 4

LEGAL ARGUMENT & AUTHORITY..... 5

 A. Senior Use and the Associated Rights Thereto 6

 B. Likelihood of Confusion 7

 1. Similarity of the Marks..... 8

 2. Strength of the Marks 9

 3. Factors indicative of the care and attention expected of consumers. 10

 4. Length of time of use of the mark without evidence of actual confusion 11

 5. Intent of the junior user in adopting the mark 11

 6. Any evidence of actual confusion 12

 7. Similar trade channels 13

 8. Extent to which the targets of the parties' sales efforts are the same..... 13

 9. Relationship of the goods in the minds of consumers 13

 C. Registrant’s Mark is Merely Descriptive 14

SUMMARY AND CONCLUSION..... 16

I.

INDEX OF CASES

AB Electrolux v. Bermil Indus. Corp.,
481 F. Supp. 2d 325 (S.D.N.Y. 2007) 6

A&H Sportswear, Inc. v. Victoria's Secret Stores, Inc.,
237 F.3d 198 (3d Cir.2000) 8

Checkpoint System, Inc. v. Check Point Software Tech's, Inc.,
269 F.3d 270 (3d Cir. 2001) 13, 14

Door Sys., Inc. v. Pro-Line Door Sys., Inc.,
83 F.3d 169 (7th Cir. 1996) 14

Fisons Horticulture, Inc. v. Virogo Inds., Inc.,
30 F.3d 466 (3d Cir. 1994) 12

Freedom Card Inc. v. JPMorgan Chase & Co.,
432 F.3d 463 (3d Cir. 2005) 8, 9

Lois Sportswear, U.S.A., Inc. v. Levi Strauss & Co.,
799 F.2d 867 (2d Cir. 1986) 12

MNI Mgmt. Inc. v. Wine King, LLC,
542 F. Supp. 2d 389 (D.N.J. 2008)..... 6

McNeil Nutritionals, LLC v. Heartland Sweetners, LLC,
511 F.3d 350 (3d Cir. 2007) 10

Miller Brewing Co. v. G. Heileman Brewing Co, Inc.,
561 F.2d 75 (7th Cir. 1977) 8, 15

In re Northern Paper Mills,
64 F.2d 998 (CCPA 1933) 9, 15

<i>In re Northland Aluminum Prods., Inc.,</i> 777 F.2d 1556 (Fed. Cir. 1985)	10
<i>Patsy's Italian Rest., Inc. v. Banas,</i> 508 F. Supp. 2d 194 (E.D.N.Y. 2007)	6
<i>Dial-A-Mattress Operating Corp. v. Mattress Madness, Inc.,</i> 841 F. Supp. 1339, 1353-54 (E.D.N.Y. 1994)	6
<i>Pennzoil Co. v. Crown Central Petroleum Corp.,</i> 50 F. Supp. 891 (D.C. Md. 1943)	15
<i>Primepoint, L.L.C. v. PrimePay, Inc.,</i> 545 F. Supp. 2d 426 (D.N.J. 2008)	8, 9, 10, 14
<i>Proxite Prods., Inc. v. Bonnie Brite Prods. Corp.,</i> 206 F. Supp. 511 (S.D.N.Y. 1962)	14
<i>Kern v. WKQX Radio,</i> 529 N.E.2d 1149 (Ill. App. 1988)	15

II.

DESCRIPTION OF THE RECORD

The evidence of record consists of discovery responses of Registrant Boi Na Braza, designated official records of documents produced by Registrant through discovery, and the testimony deposition of Farid Saleh (taken on August 7, 2008, with exhibits 1 through 22).

Petitioner shall rely on the following exhibits properly made of record:

- A. Testimony Deposition of Farid Saleh (with below exhibits thereto):
1. Churrascaria Boi Na Brasa Corp., Certificate of Incorporation, filed March 28, 1996 in the State of New Jersey.
 2. Churrascaria Boi Na Brasa Corp., Certificate of Authority, issued by the State of New Jersey on June 4, 1996 with a tax effective date of April 15, 1996.
 3. Offer to Purchase Real Estate, dated February 28, 1996.
 5. Check to Newark Adams, from account of Churrascaria Boi Na Brasa Corp., dated May 6, 1997, signed by Farid Saleh.
 6. Commercial General Liability Insurance Policy for Churrascaria Boi Na Brasa, with policy period May 9, 1996 through May 9, 1997.
 7. Commercial General Liability Insurance Policy for Churrascaria Boi Na Brasa, with policy period October 6, 1997 through October 6, 1998.
 8. Commercial Lines Insurance Policy for Churrascaria Boi Na Brasa, with policy period May 22, 1998 through May 22, 1999.
 9. Commercial Lines Insurance Policy for Churrascaria Boi Na Brasa, with policy period June 14, 1999 through June 14, 2000.
 10. PNC Bank account statement for Churrascaria Boi Na Brasa Corp., dated April 30, 1997. CONFIDENTIAL AND FILED UNDER SEAL.
 11. PNC Bank account statement for Churrascaria Boi Na Brasa Corp., dated May 31, 1997. CONFIDENTIAL AND FILED UNDER SEAL.
 12. Income Tax Forms – 1996 for Farid Saleh & Tais Mubarak. CONFIDENTIAL AND FILED UNDER SEAL.
 13. Income Tax Forms – 1997 for Farid Saleh & Tais Mubarak. CONFIDENTIAL AND FILED UNDER SEAL.
 14. Check to PSE&G, from account of Churrascaria Boi Na Brasa Corp., dated June 26, 1996, signed by Farid Saleh.

15. Copies of Advertisements for Churrascaria Boi Na Brasa in Brazilian Press, publication dates September 17-23, 1997 and November 17, 1999.
16. Hold Harmless and Indemnity Agreement between The Trump Taj Majal Casino Resort and Churrascaria Boi Na Brasa, dated June 7, 1996.
17. Original drawing of logo for Churrascaria Boi Na Brasa, dated 1995.
18. Terra Sul Corp., Certificate of Incorporation, filed in State of New Jersey on January 19, 1999.
19. Terra Sul Corp., Registration of Alternate Name (Churrascaria Boi Na Brasa), filed in State of New Jersey on February 13, 2007.
20. Terra Sul Corp., Certificate of Authority, issued by State of New Jersey on August 27, 2002 with a tax effective date of April 1, 1999.
21. Cease and desist letter from Thompson & Knight, LLP to Farid Saleh, dated January 11, 2007.
22. Printout from Internet of Article in Village Voice, "Best Choice Churrascaria" printed on January 17, 2007.

- B. Registrant's Objections and Answers to Petitioner Terra Sul's First Set of Interrogatories (Nos. 1-25).
- C. Registrant's Objections and Responses to Petitioner Terra Sul's First Set of Requests for Admissions (Nos. 1-12).
- D. Objections and Answers to Petitioner Terra Sul's Second Set of Interrogatories (Nos. 26-50) and Requests for Admission (Nos. 13-21) to Registrant Boi Na Braza.
- E. Certificate of Incorporation, Boi Na Braza, Inc., issued June 24, 1999 by the State of Texas Secretary of State, effective June 24, 1999.

III.

STATEMENT OF THE ISSUES

Petitioner Terra Sul Corporation seeks cancellation of United States federal trademark registration number 2,534,608 for the word mark BOI NA BRAZA owned by Registrant Boi Na Braza, Inc. Registrant's mark is likely to cause confusion, mistake or deception with regard to Petitioner's prior common law rights in the service mark CHURRASCARIA BOI NA BRASA within the meaning of Section 2(d) of the Trademark Act. Petitioner is the senior user.

Alternatively, Registrant's mark BOI NA BRAZA, when properly translated from Portuguese to English and used in connection with the services set forth in the registration, is merely descriptive of Registrant's goods and services within the meaning of Section 2(e) of the Trademark Act. As such, the mark fails to operate as a trademark and the federal registration should be cancelled.

IV.

RECITATION OF THE FACTS

Registrant Boi Na Braza, Inc. filed for a federal trademark registration for the word mark BOI NA BRAZA on July 1, 1999. Registrant obtained the registration (No. 2,534,608) on January 29, 2002. At this time, Petitioner was wholly unaware of Registrant or the existence of Registrant's mark. *See* Exhibit A at page 58, lines 22–25. On January 11, 2007, Registrant sent Farid Saleh a letter demanding that Petitioner cease all use of its names “Churrascaria Boi Na Brasa” and/or “Boi Na Brasa Bar & Grill” in connection with Petitioner's restaurant business. *Id. See also* Exhibit A-21. Shortly thereafter, on January 29, 2007, Petitioner Terra Sul initiated this Cancellation Proceeding against Boi Na Braza.

A. Churrascaria Boi Na Brasa

Farid Saleh first conceived of a restaurant called “Churrascaria Boi Na Brasa” in 1995, and commissioned the design of a logo through a friend. Exhibit A, at pages 38–40. *See also* Exhibit A-17. Petitioner then purchased the land at 70 Adams Street in Newark, New Jersey, which soon became the location of the restaurant. *See* Exhibit A-3. Petitioner began using the service mark CHURRASCARIA BOI NA BRASA to identify its restaurant services at least as early as 1996 in Newark, New Jersey. Exhibit A, at page 39. In 1996, the original name of the corporate entity that owned the mark was “Churrascaria Boi Na Brasa Corp.” *See* Exhibit A-1. *See also* Exhibit A, at page 6, lines 17–22. Farid Saleh was President and part-owner of Churrascaria Boi Na Brasa. Exhibit A, at pages 6–7. Churrascaria Boi Na Brasa Corp. was incorporated in the State of New Jersey on March 28, 1996 and began doing business at the 70 Adams Street address in Newark shortly thereafter. *See* Exhibits A-1 and A-2. *See also* Exhibit A at pages 5–8.

When Petitioner's restaurant opened in 1996, no one else used the name “Boi Na Brasa”

in the restaurant business. *See* Exhibit A, at page 39–40. Petitioner initially began advertising through flyers and word of mouth and later through newspapers. *Id.* By September 1997, Petitioner was advertising CHURRASCARIA BOI NA BRASA in the Brazilian Press, (a nationally-distributed newspaper), among other publications. *See* Exhibit A-15. Soon after the restaurant opened, Petitioner was given the opportunity to do a catering event in Atlantic City for the Trump Taj Mahal Casino Resort. Exhibit A, at pages 45–46. *See also* Exhibit A-16. Within a short amount of time, Petitioner’s restaurant business and the associated service mark CHURRASCARIA BOI NA BRASA had become well-known to the relevant public, primarily in the Tri-state area of New York, New Jersey and Connecticut. From 1996 to the present day, the restaurant on 70 Adams Street in Newark, New Jersey has been continuously known as “Churrascaria Boi Na Brasa” and the name has never changed. *See* Exhibit A, at page 51, lines 8–15, and pages 97–98.

B. Formation of Terra Sul Corp.

In January 1999, Terra Sul Corporation was formed. Terra Sul was formally incorporated in the State of New Jersey on January 18, 1999. Exhibit A-18. From its inception through the present day, Farid Saleh has been the owner and President of Terra Sul Corporation. *See* Exhibit A, at page 6, lines 23–24, pages 27–28, and page 55, lines 5–7. Soon after its formation, Petitioner Terra Sul acquired ownership of the restaurant “Churrascaria Boi Na Brasa” and the associated service mark CHURRASCARIA BOI NA BRASA. Exhibit A, at page 51, lines 16–25. The restaurant always was and still continues to be known as “Churrascaria Boi Na Brasa” and in 2007, Terra Sul formally filed for a Registration of Alternate Name in New Jersey. *See* Exhibit 19.

Meanwhile, Churrascaria Boi Na Brasa continues to be a popular and well-known restaurant in the New York and New Jersey geographic areas. For example, the Village Voice

recently named it the “Best Choice Churrascaria” restaurant for 2006. *See* Exhibit A-22. Farid Saleh has also registered a domain name for the restaurant, and Petitioner maintains an Internet website presence at www.boinabrasa.com. Exhibit A, at page 58, lines 1–17. The service mark CHURRASCARIA BOI NA BRASA has been continuously used to identify the restaurant at 70 Adams Street in Newark, New Jersey. Exhibit A, at pages 97–99. There has never been an abandonment of the use of this service mark that identifies this restaurant. *Id.*

C. Registrant’s Status as a Junior User

In contrast, Registrant’s alleged “first use” of its BOI NA BRAZA mark is July 1999. Furthermore, according to the trademark registration information, Registrant’s first “use in commerce” was September 11, 2000. Boi Na Braza, Inc. also claims that “in the second half of 1998, the Matheus Brothers researched and chose this name for their restaurant business and purchased land to build their first restaurant.” *See* Exhibit D, Interrogatory No. 26. By its own admission, the earliest that Registrant’s mark was in existence was maybe the “second half of 1998.” *Id.* Moreover, the corporate entity, Boi Na Braza, Inc., was not registered in the State of Texas until June 24, 1999. *See* Exhibit E. Lastly, Registrant Boi Na Braza’s webpage www.boinabraza.com was not online and accessible until June 26, 2000 at the earliest. *See* Exhibit C, Request No. 18. By this time, Petitioner Churrascaria Boi Na Braza had already acquired significant goodwill and established a reputation through its presence in the restaurant industry.

Registrant’s first “Boi Na Braza” restaurant was opened in Grapevine, Texas in 1999. Registrant later opened similar restaurants under the same name in Cincinnati, Ohio and Atlanta, Georgia. *See* Exhibit D, Interrogatory No. 32. The Atlanta, Georgia restaurant is now owned and controlled by a licensee of the mark. *Id.* *See also* Exhibit B, Interrogatory No. 23. Registrant has admitted to never operating a restaurant in New York or New Jersey. Exhibit C,

Request Nos. 2–5.¹

Despite its lack of seniority, Registrant threatened Terra Sul with a trademark infringement lawsuit on January 11, 2007. Exhibit A-21. Registrant claimed that Churrascaria Boi Na Brasa offers “virtually the same style of restaurant services and food as those offered under the Boi Na Braza Marks.” Further, Registrant claims that “the use of the [CHURRASCARIA BOI NA BRASA mark] is likely to result in significant confusion among consumers ... due to the similarities in the appearance and sound of the marks as well as the similarities in the services offered under the marks.” *Id.*

The facts in the record are clear that Petitioner began using in commerce its CHURRASCARIA BOI NA BRASA name and common law service mark prior to Registrant’s creation, development and/or subsequent use of any BOI NA BRAZA mark. The facts are further undisputed that Petitioner and Registrant both operate in the same industry and within the same trade channels. Registrant is not the senior user. In contrast, Petitioner Terra Sul is the senior user and the holder of any rights in the marks for use in the restaurant industry.

V.

LEGAL ARGUMENT & AUTHORITY

Boi Na Braza, Inc.’s federal trademark registration for BOI NA BRAZA should be cancelled for at least the following reasons. First, Petitioner Terra Sul has priority and has senior rights in its CHURRASCARIA BOI NA BRASA mark. Consequently, Registrant’s use of its mark is likely to cause confusion among the relevant public in the marketplace. Secondly, Registrant’s mark is merely descriptive of its goods and services and has not acquired secondary meaning in the marketplace. For at least these reasons, Registrant’s mark fails to operate as a

¹ Registrant, however, has admitted an interest in establishing a presence in New York. *See* Exhibit D, Interrogatory No. 41.

trademark and should not be afforded the rights and protections offered to it under a federal registration.

A. Senior Use and the Associated Rights Thereto

As the first user of the CHURRASCARIA BOI NA BRASA mark in commerce, Petitioner Terra Sul has senior common law rights that supersede Registrant Boi Na Braza's alleged rights. The user who first appropriates the mark obtains an enforceable right to exclude others from using it. *Patsy's Italian Rest., Inc. v. Banas*, 508 F. Supp. 2d 194, 217 (E.D.N.Y. 2007). The prior user of an unregistered mark is also entitled to common law protection for its continued use of the mark in the areas of use that predate registration. *Id.* To prove prior use, Petitioner must show: (1) present rights in the mark, (2) rights acquired prior to the date of Registrant's registration, (3) continual use of the mark since that date, and (4) use prior to the Registrant on the goods or services that are in issue. *Id.* (citing *Dial-A-Mattress Operating Corp. v. Mattress Madness, Inc.*, 841 F. Supp. 1339, 1353-54 (E.D.N.Y. 1994)).

Petitioner used the service mark CHURRASCARIA BOI NA BRASA in commerce prior to Registrant's first use of BOI NA BRAZA. Petitioner's first use in commerce is at least as early as March 1996. *See* Exhibit A-1. Registrant's first use in commerce is sometime in 1999, when its Texas-based restaurant opened. Registrant may claim that it conceived of its mark sometime "in the second half of 1998" but this period is irrelevant. Mere conception of the name is not enough to prove and establish use. In determining ownership of a trademark, the date of creation or invention of the mark is irrelevant. *AB Electrolux v. Bermil Indus. Corp.*, 481 F. Supp. 2d 325, 330 (S.D.N.Y. 2007) (emphasis added). The senior user is the one who is the first to use the mark in the United States – not just conceive of it. *MNI Mgmt. Inc. v. Wine King, LLC*, 542 F. Supp. 2d 389, 405 (D.N.J. 2008). Trademark rights grow out of use, not mere adoption. *Id.*

It is not disputed that by January 1999, Petitioner was already in business, continued to do business, and had acquired goodwill in its name in at least New York and New Jersey. *See* Exhibits A-15, A-16. Registrant has offered *no* evidence to support any claim that it is the senior user in any relevant geographic area. Petitioner has continued to operate its restaurant at the same location in Newark and under the same name since it opened in April 1996. Petitioner is therefore the senior user. The parties are also clearly in the same business and offer similar goods and services to the consuming public. Registrant's January 11, 2007 letter to Petitioner verifies the overlap of trade channels and the likelihood of confusion. Exhibit A-21.

B. Likelihood of Confusion

The existence of Registrant's mark (and subsequent registration) is likely to cause confusion or mistake with regard to Petitioner's pre-existing service mark. There can be no dispute that the terms "boi na brasa" and "boi na braza" are extremely similar. The respective marks are used for nearly identical services – the identification of restaurant goods and services for Brazilian-style churrascarian barbeque foods. Registrant has obtained a federal registration but it is the junior user to Terra Sul's use of its service mark in at least New Jersey and New York. Meanwhile, there is a likelihood of confusion that the average customer will be confused as to the source, affiliation or sponsorship of goods and services associated with these respective marks.

Under the federal Lanham Act, the following are a non-exclusive set of factors to determine "likelihood of confusion" between trademarks:²

- (1) the degree of similarity between the owner's mark and the alleged infringing mark;

² Note that these factors typically arise and are applied in an infringement lawsuit, not an inter-parties proceeding before the Board.

- (2) the strength of the owner's mark;
- (3) the price of the goods and other factors indicative of the care and attention expected of consumers when making a purchase;
- (4) the length of time the defendant has used the mark without evidence of actual confusion arising;
- (5) the intent of the defendant in adopting the mark;
- (6) the evidence of actual confusion;
- (7) whether the goods, though not competing, are marketed through the same channels of trade and advertised through the same media;
- (8) the extent to which the targets of the parties' sales efforts are the same;
- (9) the relationship of the goods in the minds of consumers because of the similarity of function; and
- (10) other factors suggesting that the consuming public might expect the prior owner to manufacture a product in the defendant's market, or that he is likely to expand into that market.

Primepoint, L.L.C. v. PrimePay, Inc., 545 F. Supp. 2d 426, 435 (D.N.J. 2008) (citing *Freedom Card Inc. v. JPMorgan Chase & Co.*, 432 F.3d 463, 471 (3d Cir. 2005)). Each factor must be weighed and balanced one against the other. *Id.*

1. Similarity of the Marks

The single most important factor in determining the likelihood of confusion is mark similarity. *A&H Sportswear, Inc. v. Victoria's Secret Stores, Inc.*, 237 F.3d 198, 210 (3d Cir.2000). As discussed above, there is no dispute that the marks at issue are similar. But for Registrant changing an “s” to a “z” the marks are identical. Misspellings do not make a word more distinctive. *See Miller Brewing Co. v. G. Heileman Brewing Co, Inc.*, 561 F.2d 75, 79 (7th Cir. 1977). Phonetically, the marks are identical. The marks also identify the same goods/services offered to the relevant public. When testing for similarity, the Board should ask “whether the labels create the same overall impression when viewed separately.” *Primepoint*, 545 F. Supp. 2d at 435. Because the words are phonetically identical, are visually similar and

identify the exact same types of goods and services, the marks are virtually indistinguishable. As such, this factor heavily favors cancellation of Registrant's mark.

2. Strength of the Marks

To examine the strength of a mark, the Board is to evaluate (1) the respective marks' distinctiveness or conceptual strength and (2) commercial strength (factual evidence of marketplace recognition). *Primepoint*, 545 F. Supp. 2d at 437 (citing *Freedom Card v. JPMorgan Chase*, 432 F.3d 463, 472 (3d Cir. 2005)).

First the Board must classify the marks into one of the four categories among (1) arbitrary/fanciful, (2) suggestive, (3) descriptive, or (4) generic. Registrant's mark BOI NA BRAZA is at most descriptive and it is not incontestable. Registrant claims that the phrase "boi na braza" when translated from Portuguese to English is "Ox in ember" or "Ox on hot coal." Exhibit B, Interrogatory No. 1. Petitioner's service mark CHURRASCARIA BOI NA BRASA, when translated from Portuguese into English also means "Bar-B-Que ox" or "roasted over embers." Exhibit A, at page 38, lines 17-21.

Registrant, however, has admitted that the term "boi na braza" is well known and is often used in Brazil. Exhibit D, Interrogatory No. 31. It is therefore not a fanciful or arbitrary term. A word taken from a well-known foreign language, which is, itself, descriptive of a product, will be so considered when it is attempted to be registered as a trademark in the United States. *In re Northern Paper Mills*, 64 F.2d 998 (CCPA 1933). Registrant's mark BOI NA BRAZA is merely descriptive and lacks any showing of secondary meaning in the marketplace.

Additionally, Registrant has failed to produced any survey evidence that might support any claim that its mark has acquired distinctiveness through secondary meaning in a particular geographic area. Nor has Registrant offered any proof of the relevant public's understanding of the BOI NA BRAZA mark through dictionaries, newspapers or other publications. *In re*

Northland Aluminum Prods., Inc., 777 F.2d 1556, 1559 (Fed. Cir. 1985) (“Evidence of the public’s understanding of the term may be obtained from any competent source, such as consumer surveys, dictionaries, newspapers and other publications.”) There is nothing in the record to support any claim by Registrant that its mark has achieved distinctiveness among the relevant public. Registrant’s mark is therefore a weak mark.

Conversely, Petitioner has set forth evidence throughout the record that its service mark is well known among the relevant public, at least among customers in New Jersey and New York. For example, Petitioner was specifically asked to cater an event at the Trump Taj Mahal Casino Resort in 1997. Exhibit A-16. More recently, *The Village Voice* (a popular trade publication based in New York) has identified Petitioner’s CHURRASCARIA BOI NA BRASA as the “Best Choice Churrascaria” restaurant in the area for 2006. Petitioner’s common law service mark has attained a level of notoriety within its geographic area.

3. Factors indicative of the care and attention expected of consumers.

Typically, the more sophisticated the consumer and the more care and attention that goes toward purchasing a product, the less it is likely that confusion will result. *Primepoint*, 545 F. Supp. 2d at 439. Professional buyers may be held to a higher standard of care than other buyers. *McNeil Nutritionals, LLC v. Heartland Sweeteners, LLC*, 511 F.3d 350, 363-64 (3d Cir. 2007). In this case, however, the typical purchaser of the respective parties’ goods and services is not a sophisticated customer. The patrons of Petitioner’s restaurant are not professional buyers. It is safe to presume that Registrant would cater to a similar group of customers. There is also no evidence to suggest that a significant portion of the relevant customers would speak Portuguese. Most likely, to the average purchaser, the terms “Boi Na Brasa” and “Boi Na Braza” would be indistinguishable at first glance.

4. Length of time of use of the mark without evidence of actual confusion

Petitioner opened CHURRASCARIA BOI NA BRASA in April 1996 in Newark, New Jersey. Petitioner has subsequently acquired goodwill in this name in New Jersey and New York. Registrant did not open its BOI NA BRAZA restaurants until July 1999. Registrant has since opened identically-named restaurants in Texas, Ohio and Georgia. Petitioner, however, was unaware of the existence of Registrant (or Registrant's trademark registration) until January 2007. Petitioner is unaware of any direct confusion between the two restaurants. Registrant, however, has claimed there is actual confusion (but without providing any evidence of this alleged confusion). There has been over a decade of use by Petitioner of the "Boi Na Brasa" mark before this proceeding arose. The existence of and any allegations of actual confusion is better addressed under the sixth factor, *infra*.

5. Intent of the junior user in adopting the mark

Farid Saleh, the President and owner of Terra Sul, coined the name CHURRASCARIA BOI NA BRASA sometime in 1995 based on memories he had as a child of a butcher shop in Brazil. Exhibit A, at pages 38–39. Registrant claims to have chosen the BOI NA BRAZA name for its restaurant on or around July 1, 1999. Exhibit B, Interrogatory No. 16. Curiously, Registrant claims not to have known about the existence of Petitioner – or Petitioner's service mark – until January 19, 2007, upon receiving notice from Petitioner's counsel. Exhibit B, Interrogatory No. 19. (Even though it was Registrant that initially threatened Petitioner with litigation via a demand letter sent January 11, 2007. Exhibit A-21.) Registrant also claims that "boi na brasa" is well-known in Brazil and that they merely changed the "s" to a "z" to give the name more "distinctiveness." Exhibit B, Interrogatory No. 16.

Petitioner does not claim any malicious intent by Registrant in choosing the BOI NA BRAZA mark. However, the test is not simply "bad faith." The test is whether the junior user

conducted an adequate name search for other companies marketing similar goods and whether it followed through with an investigation if such companies were found. *Fisons Horticulture, Inc. v. Virogo Inds., Inc.*, 30 F.3d 466, 480 (3d Cir. 1994). Petitioner had an established restaurant in New Jersey by the time Registrant opened its restaurant in July 1999. Furthermore, by July 1999, Petitioner had already been advertising in the Brazilian Press (Exhibit A-15) and a simple corporate records search in 1998 would have indicated that “Churrascaria Boi Na Brasa Corp.” was incorporated in New Jersey as of March 28, 1996 (Exhibit A-1). Registrant could have avoided this dispute and any likelihood of confusion with Petitioner by conducting a reasonable investigation and then deciding to adopt a different business name and trademark. Registrant failed to do so. This factor favors Petitioner.

6. Any evidence of actual confusion

Petitioner is unaware of any instances of actual confusion between the marks. Actual confusion need not be shown to prevail. *Lois Sportswear, U.S.A., Inc. v. Levi Strauss & Co.*, 799 F.2d 867 (2d Cir. 1986). Registrant, however, has claimed various instances of actual confusion. In its answers to discovery, Registrant claims that “on several occasions, members of its staff at the Atlanta, Georgia and Dallas, Texas locations were approached by consumers claiming to have dined at Boi Na Braza’s restaurant in New Jersey.” Exhibit D, Interrogatory No. 35. Registrant also claims that the “instances of confusion occurred between the years 2003 and 2006 at the Atlanta, Georgia and Dallas, Texas locations of the Boi Na Braza restaurants.” *Id.*, Interrogatory No. 36. Registrant’s statements regarding the alleged instances of actual confusion are wholly unsupported by the evidence and not corroborated or verified by any evidence in the record. Nevertheless, given the similarity of the marks and the respective goods and services, confusion is almost certain to occur at some point. Petitioner will therefore be perpetually damaged by the continued federal registration of the BOI NA BRAZA mark. This is yet another

factor favoring cancellation.

7. Similar trade channels

As previously noted, the channels of trade for both Petitioner's and Registrant's respective businesses are nearly identical. Both parties operate churrascarian-style restaurants that serve Brazilian barbeque and related foods. Both parties advertise their restaurants in national publications and through the Internet. See Exhibit A-15. See also Exhibit B, Interrogatory No. 23. Registrant also claims to have an interest in opening a restaurant in New York in the future. See Exhibit D, Interrogatory No. 41. Petitioner's long-established restaurant in Newark, New Jersey is approximately five miles from the New York City. Any presence by Registrant in New York using the BOI NA BRAZA mark would confuse customers. Essentially, Registrant's claimed interest in New York would encroach on Petitioner's pre-established territory and physical trade channels.

8. Extent to which the targets of the parties' sales efforts are the same

Registrant contends that the "relevant public" consists of "members of the United States general public" as those who patronize its restaurant. Exhibit D, Interrogatory No. 28. Petitioner targets its advertising to similar individuals. The parties seek to offer their respective goods and services to a nearly identical customer base. The greater the similarity in advertising and marketing campaigns, the greater there is a likelihood of confusion between the marks. *Checkpoint System, Inc. v. Check Point Software Tech's, Inc.*, 269 F.3d 270, 288-89 (3d Cir. 2001). Both parties advertise on the Internet and through nationally-distributed print ads. Once again, because of the near exactitude in the marks and the targeted customers, there is a near certainty that customers would be confused. This factor favors Petitioner.

9. Relationship of the goods in the minds of consumers

The test is whether the goods are similar enough that a customer would assume they were

offered by the same source. *Primepoint*, 545 F. Supp. 2d at 445 (citing *Checkpoint*, 269 F.3d at 286). There is no need to split hairs here. Petitioner's goods and services are nearly identical to Registrant's goods and services. Both parties own and operate Brazilian-style churrascarian restaurants. Which means not only are both parties in the restaurant business, but they feature the same style of food and use nearly identical marks and target the same customer base. Accordingly, the average customer would have sufficient reason to assume the respective goods and services are offered by the same source.

Each of the likelihood of confusion factors favors the cancellation of Registrant's mark.

C. Registrant's Mark is Merely Descriptive

The mark BOI NA BRAZA is at most descriptive and not suggestive once translated from Portuguese into English. If the mark is eligible for protection as a trademark, it must therefore have acquired some level of secondary meaning among the relevant public. Registrant Boi Na Braza has not produced or provided any evidence of secondary meaning (no surveys, tests, polls or other evidence).

Registrant's only evidence of validity is the registration itself, but this is not alone sufficient proof of distinctiveness. Any presumption of validity afforded by a registration evaporates as soon as sufficient evidence of invalidity is presented. *Door Sys., Inc. v. Pro-Line Door Sys., Inc.*, 83 F.3d 169 (7th Cir. 1996). Petitioner has offered substantial evidence to rebut any presumption that Registrant is either the senior user or that Registrant's mark is distinctive and a proper identification of source. Registrant's mark BOI NA BRAZA is incapable of serving as a trademark and the registration should be cancelled.

The primary function of a trademark is to identify and distinguish goods. A merely descriptive mark cannot function as a true trademark without proof of secondary meaning. *See J. Thomas McCarthy on Trademarks and Unfair Competition*, 4th Ed. § 3:6 (citing *Proxite Prods.*,

Inc. v. Bonnie Brite Prods. Corp., 206 F. Supp. 511, 134 U.S.P.Q. 122 (S.D.N.Y. 1962)). Registrant has provided no proof of secondary meaning. When asked to provide the basis for its contention that the mark “boi na brasa” is distinctive to the relevant public, Registrant merely cited to U.S. Reg. No. 2,534,608 (for BOI NA BRAZA). See Exhibit B, Interrogatory No. 15. This is the totality of Registrant’s evidence that its mark is distinctive. On its face, Registrant’s offer of proof is clearly insufficient to maintain any presumptions in its favor.

To the extent Registrant relies on the fact that BOI NA BRAZA is derived from a foreign language, this alone shall not overcome the mark’s status as “merely descriptive.” As noted above, a word taken from a well-known foreign language, which is, itself, descriptive of a product, will be so considered when it is attempted to be registered as a trademark in the United States. *In re Northern Paper Mills*, 64 F.2d 998 (CCPA 1933). Registrant has already admitted that the term “boi na brasa” is a well-known name in Brazil. Exhibit B, Interrogatory No. 16. Combining this admission with the fact that both parties serve Brazilian-style churrascarian food only reinforces the descriptive nature of the mark.

Nevertheless, Registrant believes that simply changing the letter “s” to a “z” transforms the mark into a distinctive mark. See Exhibit B, Interrogatory No. 16 (“The Matheus brothers changed the “s” to a “z” to give the name more distinctiveness”). Registrant is mistaken as to the effectiveness of a trivial change. An intentional misspelling of the term “Boi Na Brasa” does not add distinctiveness. Nor does it rise to the level of being a suggestive mark. It has long been held that mere intentional misspellings do not transform the status and validity of a mark. “Using the phonetic equivalent of a common descriptive word, i.e., misspelling it, is of no avail.” *Miller Brewing Co. v. G. Heileman Brewing Co., Inc.*, 561 F.2d 75, 79 (7th Cir. 1977) (“Lite” beer is not distinctive). See also *Kern v. WKQX Radio*, 529 N.E.2d 1149 (Ill. App. 1988) (“Maid to Order” as compared to “Made to Order”); *Pennzoil Co. v. Crown Central Petroleum Corp.*, 50

F. Supp. 891, 895 (D.C. Md. 1943) (valid trademark cannot be acquired by a misspelling).

The mark BOI NA BRAZA is not arbitrary or fanciful. It is not suggestive of the goods and services offered at Registrant's restaurant. It is a descriptive and, therefore, weak mark. Weak marks are afforded no protection absent evidence of secondary meaning. Given that Registrant is not the senior user and that its mark is at most descriptive of the goods and services it offers, the mark BOI NA BRAZA fails to properly serve as a trademark. This is yet another reason the registration should be cancelled.

VI.

SUMMARY AND CONCLUSION

According to the United States Patent and Trademark Office, a "trademark" comprises "any word, name, symbol, or device, or any combination, used, or intended to be used, in commerce to identify and distinguish the goods of one manufacturer or seller from goods manufactured or sold by others, and to indicate the source of the goods."³

Based on the definition of the word "trademark," it is apparent that the registration for BOI NA BRAZA should be cancelled. The term simply does not act as a trademark in that it fails to distinguish the goods (or services) of Registrant from the goods and services of Petitioner. The mark BOI NA BRAZA does not identify one source. If anything, the mark is more likely to identify Petitioner's goods and services in the minds of the relevant customer.

Registrant is not the senior user of the mark. Registrant's mark is also merely descriptive and lacks any evidence of secondary meaning. Furthermore, Registrant and Petitioner are in the same market, with similar goods and services, and with virtually identical marks. Registrant has also claimed instances of *actual* confusion by customers with Petitioner's goods and services.

³ <http://www.uspto.gov/web/offices/tac/tmfaq.htm#DefineTrademark> (last visited February 18, 2009).

The registration for BOI NA BRAZA is not incontestable and any presumptions afforded by the registration have been rebutted by Petitioner's evidence. In contrast, Registrant has wholly failed to offer any evidence in the record that its mark is distinctive or has acquired secondary meaning. Accordingly, the Board should cancel U.S. Reg. No. 2,534,608.

Date: February 25, 2009

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of "PETITIONER TERRA SUL CORPORATION'S TRIAL BRIEF" was served on the parties listed below, via First Class U.S. Mail on the 25th day of February, 2009.

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Eamon J. Wall

Cancellation No. 92047056

Terra Sul Corporation v. Boi Na Brasa, Inc.

EXHIBIT A

Offered by Terra Sul Corporation

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD</p> <p>-----</p> <p>2 TERRA SUL CORPORATION a/k/a 3 CHURKASCARIA BOI NA BRASA, 4 Petitioner, 5 v. CANCELLATION NO. 1 92047056 6 BOI NA BRASA, INC., 7 Respondent.</p> <p>-----</p> <p>8 9 10 Transcript of the deposition of FARID SALEH, 11 taken in the Law Offices of Simoes & Monteiro, P.C., 12 83 Polk Street, Newark, New Jersey, on August 7, 2008 13 commencing at 10:01 a.m., held pursuant to Notice 14 before a Shorthand Reporter and Notary Public. 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>3</p> <p>1 F. SALEH 2 ZILDA BUZACK, 3 called as the official interpreter in this 4 matter, was duly sworn by a Notary Public 5 of the State of New York to accurately and 6 faithfully translate the questions propounded 7 to the witness from English to Portuguese and 8 answers given from Portuguese to English. 9 FARID SALEH, 10 having been duly sworn by a Notary Public 11 of the State of New York, was examined and 12 testified through an interpreter as follows: 13 DIRECT EXAMINATION 14 BY MR. CLARK: 15 Q State your full name for the record. 16 A Farid Saleh. 17 Q State your current address for 18 the record. 19 A 148 Komorn Street, Apartment 3, 20 Newark, New Jersey 07105. 21 Q We're on the record now. 22 Good morning, Farid. 23 A Good morning. 24 Q Do you understand why you 25 were called here to testify today?</p>
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>2</p> <p>1 APPEARANCES: 2 3 PATTERSON & SHERIDAN, LLP. Attorneys on behalf of the Petitioner 4 3040 Post Oak Boulevard Suite 1500 5 Houston, Texas 77056 (713) 623-4844 6 (713) 623-4846 Fax BY: DAVID L. CLARK, ESQ. 7 E-MAIL: Dclark@pattersonsheridan.com WEB: www.pattersonsheridan.com 8 9 PATTERSON & SHERIDAN, LLP. Attorneys on behalf of the Petitioner 10 595 Shrewsbury Avenue Suite 100 11 Shrewsbury, New Jersey 07702 (732) 530-9404 12 (732) 530-9808 Fax BY: EAMON J. WALL, ESQ. 13 E-MAIL: Ewall@pattersonsheridan.com WEB: www.pattersonsheridan.com 14 15 THOMPSON & KNIGHT, LLP. Attorneys on behalf of the Respondent 16 919 Third Avenue New York, New York 10022 17 (212) 751-3048 (212) 880-3238 Fax 18 BY: IRENE R. DUBOWY, ESQ., E-MAIL: irene.dubowy@tklaw.com 19 20 ALSO PRESENT: 21 Zilda Buzack, Portuguese Interpreter 22 (917) 686-7071 23 24 25 U.S. LEGAL SUPPORT, INC.</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>4</p> <p>1 F. SALEH 2 A Yes. 3 Q What would that reason be? 4 A The reasons that we have a 5 restaurant. There's another restaurant. Our 6 restaurant which has the name, excusing the name, 7 Boi Na Brasa. And a while back, I received a 8 letter that they wanted me to remove the name of 9 my restaurant so I'm here to answer, to say that 10 we've been around before them, to speak the truth. 11 Q And Farid, do you understand that 12 your testimony here today is to be taken as if 13 you were in a courtroom before a judge and jury? 14 A Yes. 15 Q Okay. Farid, have you been 16 deposed before? 17 A That last time that we were here, 18 does that count? 19 Q Are you referring to the deposition 20 in March? 21 A Yes. 22 Q Other than that deposition in March, 23 have you ever been part of a deposition before? 24 A No. 25 Q Have you ever testified in a</p>

5	<p>1 F. SALEH</p> <p>2 courtroom before?</p> <p>3 A No.</p> <p>4 Q Farid, how long have you lived in</p> <p>5 New Jersey?</p> <p>6 A Eighteen years.</p> <p>7 Q How long have you lived at your</p> <p>8 current address?</p> <p>9 A That I bought the house, eight</p> <p>10 years.</p> <p>11 Q Before you lived in New Jersey,</p> <p>12 where did you live?</p> <p>13 A Brazil.</p> <p>14 Q Farid, what is your current</p> <p>15 business or place of employment?</p> <p>16 A Boi Na Brasa on 70 Adams Street,</p> <p>17 Newark.</p> <p>18 Q How long have you been in this</p> <p>19 business?</p> <p>20 MS. DUBOWY: Objection, ambiguous.</p> <p>21 Q How long have you been in the</p> <p>22 restaurant business?</p> <p>23 A Since I arrived here I've worked in</p> <p>24 the restaurant business.</p> <p>25 Q How long have you worked for</p>	7	<p>1 F. SALEH</p> <p>2 Churrascaria Boi Na Brasa Corp?</p> <p>3 A Yes.</p> <p>4 Q What was that role?</p> <p>5 A President.</p> <p>6 Q Did you have any other role</p> <p>7 in Churrascaria Boi Na Brasa Corp?</p> <p>8 A I was a president. Well, the</p> <p>9 beginning is difficult so we work with everything.</p> <p>10 Q Was Churrascaria Boi Na Brasa</p> <p>11 Corp officially incorporated?</p> <p>12 MS. DUBOWY: Objection.</p> <p>13 A Could you repeat the question?</p> <p>14 Q Sure. Was Churrascaria</p> <p>15 Boi Na Brasa Corp ever incorporated?</p> <p>16 A Yes, it was.</p> <p>17 Q In what state was Churrascaria</p> <p>18 Boi Na Brasa Corp incorporated?</p> <p>19 A New Jersey.</p> <p>20 Q Farid, do you know when Churrascaria</p> <p>21 Boi Na Brasa Corp was incorporated in New Jersey?</p> <p>22 A '96.</p> <p>23 MR. CLARK: I'd like to</p> <p>24 introduce Exhibit Number 1.</p> <p>25 (Whereupon, a document was</p>
6	<p>1 F. SALEH</p> <p>2 Boi Na Brasa?</p> <p>3 A Since 1996.</p> <p>4 Q Are you currently involved in any</p> <p>5 other businesses?</p> <p>6 A No.</p> <p>7 Q Who is the owner of Churrascaria</p> <p>8 Boi Na Brasa?</p> <p>9 MS. DUBOWY: Objection, ambiguous.</p> <p>10 A Terra Sul Corp.</p> <p>11 Q What is the address of Churrascaria</p> <p>12 Boi Na Brasa?</p> <p>13 A 70 Adams Street, Newark, New Jersey.</p> <p>14 Q How long has Terra Sul Corp</p> <p>15 owned Churrascaria Boi Na Brasa?</p> <p>16 A Since 1999.</p> <p>17 Q Is Terra Sul Corp the original</p> <p>18 owner of Churrascaria Boi Na Brasa?</p> <p>19 A No.</p> <p>20 Q Who is the original owner</p> <p>21 of Churrascaria Boi Na Brasa?</p> <p>22 A Churrascaria Boi Na Brasa Corp.</p> <p>23 Q What is your role in Terra Sul Corp?</p> <p>24 A President.</p> <p>25 Q Well, did you have a role with</p>	8	<p>1 F. SALEH</p> <p>2 marked as Plaintiff's Exhibit Number 1</p> <p>3 for identification as of this date.)</p> <p>4 Q Farid, have you seen this</p> <p>5 document before?</p> <p>6 A Yes.</p> <p>7 Q What is this document you have</p> <p>8 in front of you?</p> <p>9 A Certificate of Incorporation.</p> <p>10 Q According to this document,</p> <p>11 what is the date this certificate was filed?</p> <p>12 A On March 28, 1996.</p> <p>13 Q What is the name of the corporation</p> <p>14 incorporated by this certificate?</p> <p>15 A Churrascaria Boi Na Brasa Corp.</p> <p>16 Q And who is the registered</p> <p>17 agent on this certificate?</p> <p>18 A My name, Farid Saleh.</p> <p>19 Q Farid, as the registered agent</p> <p>20 for Churrascaria Boi Na Brasa Corp, what is</p> <p>21 the business that Churrascaria Boi Na Brasa</p> <p>22 Corp was in?</p> <p>23 MS. DUBOWY: Objection,</p> <p>24 'unbehoosed', leading.</p> <p>25 Can you rephrase it.</p>

9	<p>1 F. SALEH</p> <p>2 MR. CLARK: I can.</p> <p>3 Q What business was Churrascaria</p> <p>4 Boi Na Brasa Corp involved in?</p> <p>5 A Restaurant.</p> <p>6 MR. CLARK: I'll introduce</p> <p>7 Exhibit Number 2.</p> <p>8 MS. DUBOWY: Is this the</p> <p>9 document that you produced this week?</p> <p>10 MR. CLARK: No.</p> <p>11 MS. DUBOWY: Okay.</p> <p>12 When did you produce it?</p> <p>13 MR. CLARK: I believe we</p> <p>14 produced this document in May.</p> <p>15 (Whereupon, a document was</p> <p>16 marked as Plaintiff's Exhibit Number 2</p> <p>17 for identification as of this date.)</p> <p>18 Q Farid, have you seen this document,</p> <p>19 what's been marked as Exhibit 2 in front of you?</p> <p>20 A Yes, I have.</p> <p>21 Q What is this document?</p> <p>22 A This is an Authorization to Collect</p> <p>23 Taxes in the State of New Jersey, isn't it?</p> <p>24 Q What is the entity authorized</p> <p>25 to collect taxes by this certificate?</p>	11	<p>1 F. SALEH</p> <p>2 A Yes.</p> <p>3 Q What is the date issued?</p> <p>4 A June 4, 1996.</p> <p>5 Q Thank you.</p> <p>6 When did Churrascaria Boi Na Brasa</p> <p>7 first open for business?</p> <p>8 MS. DUBOWY: Objection, ambiguous.</p> <p>9 MR. CLARK: Go ahead, you can</p> <p>10 answer the question.</p> <p>11 MS. DUBOWY: Sorry, I think</p> <p>12 there are two companies and there are</p> <p>13 two Churrascarias, so to speak.</p> <p>14 When you ask the question you</p> <p>15 have to say which one you're referring to.</p> <p>16 Q How many Churrascaria Boi Na Brasa</p> <p>17 are there?</p> <p>18 A Two, Boi Na Brasa. One,</p> <p>19 Churrascaria Boi Na Brasa.</p> <p>20 Q To clarify, there is one</p> <p>21 restaurant called Churrascaria Boi Na Brasa?</p> <p>22 A Yes.</p> <p>23 Q And when did that restaurant</p> <p>24 open for business?</p> <p>25 A April of '96.</p>
10	<p>1 F. SALEH</p> <p>2 A Churrascaria Boi Na Brasa Corp.</p> <p>3 Q What is the effective date</p> <p>4 for collecting taxes by the certificate?</p> <p>5 A April 15, 1996.</p> <p>6 Q When was this certificate issued?</p> <p>7 A Would you repeat the question.</p> <p>8 Q Sure. When was this certificate</p> <p>9 issued?</p> <p>10 A As it's here, it was issued on</p> <p>11 April 15, 1996.</p> <p>12 Q If you could look at the bottom</p> <p>13 right where it says "date issued" on this</p> <p>14 document.</p> <p>15 MS. DUBOWY: Objection, leading.</p> <p>16 MR. CLARK: I haven't asked</p> <p>17 a question yet.</p> <p>18 MS. DUBOWY: I know where</p> <p>19 you're going.</p> <p>20 MR. CLARK: I'm asking him</p> <p>21 to look at the document.</p> <p>22 MS. DUBOWY: Okay.</p> <p>23 Q This document that you see in</p> <p>24 front of you, is there a column that states</p> <p>25 "date issued?"</p>	12	<p>1 F. SALEH</p> <p>2 MR. CLARK: Thank you.</p> <p>3 I'd like to introduce</p> <p>4 Exhibit Number 3.</p> <p>5 (Whereupon, a multi-paged</p> <p>6 document was marked as Plaintiff's</p> <p>7 Exhibit Number 3 for identification</p> <p>8 as of this date.)</p> <p>9 Q Farid, have you seen this</p> <p>10 document before?</p> <p>11 MS. DUBOWY: Objection.</p> <p>12 Can you please lay a</p> <p>13 foundation before you start asking.</p> <p>14 MR. CLARK: I'm asking if</p> <p>15 he's seen the document before.</p> <p>16 MS. DUBOWY: Okay, but you're</p> <p>17 going to establish a foundation?</p> <p>18 MR. CLARK: Sure.</p> <p>19 A Yes, I have.</p> <p>20 Q What is this document?</p> <p>21 A This is an application that</p> <p>22 we fill out to buy real estate.</p> <p>23 Q Why did you fill out an</p> <p>24 application to buy real estate?</p> <p>25 MS. DUBOWY: Objection,</p>

13	<p>1 F. SALEH</p> <p>2 no foundation.</p> <p>3 A Because that time there was another</p> <p>4 restaurant where we have been till this day. The</p> <p>5 gentleman wanted to sell it so we went to fill</p> <p>6 out on the real estate application to buy the</p> <p>7 restaurant.</p> <p>8 Q Farid, when did you first decide</p> <p>9 to open a restaurant?</p> <p>10 A When we came to the U.S. we came</p> <p>11 to work and that was a dream we had, and we had</p> <p>12 worked for many years. I have worked as an</p> <p>13 employee for others and I saved some money and</p> <p>14 in '95, I started to put together documentation,</p> <p>15 and think about the type of business that I would</p> <p>16 like to have, and thank goodness in '96 was able</p> <p>17 to open it.</p> <p>18 Q Farid, this restaurant that you</p> <p>19 were thinking about putting together and getting</p> <p>20 documentation for in 1995, was this what later</p> <p>21 became Churrascaria Boi Na Brasa?</p> <p>22 MS. DUBOWY: Objection, leading.</p> <p>23 A Actually, the name Churrascaria</p> <p>24 Boi Na Brasa I came up with in '95 when I designed</p> <p>25 a logo for it.</p>	15
14	<p>1 F. SALEH</p> <p>2 MS. DUBOWY: Off the record.</p> <p>3 (Whereupon, an off-the-record</p> <p>4 discussion was held.)</p> <p>5 Q What is the first restaurant</p> <p>6 that you opened?</p> <p>7 A Churrascaria Boi Na Brasa.</p> <p>8 Q Now this document you see before</p> <p>9 you here, where is this real estate located?</p> <p>10 A On 70 Adams Street where we</p> <p>11 have been till this day.</p> <p>12 MR. CLARK: I'm going to</p> <p>13 introduce Exhibit Number 4.</p> <p>14 MS. DUBOWY: Counsel, are you</p> <p>15 going to lay a foundation for the next</p> <p>16 documents because you didn't lay a</p> <p>17 foundation for this one, for Exhibit</p> <p>18 Number 3.</p> <p>19 MR. CLARK: Off the record.</p> <p>20 (Whereupon, an off-the-record</p> <p>21 discussion was held.)</p> <p>22 Q Now if we can go back to Exhibit</p> <p>23 Number 3, Farid, when you decided to try to open</p> <p>24 a restaurant, what steps did you take?</p> <p>25 A First of all, we needed to have</p>	16
13	<p>1 F. SALEH</p> <p>2 a place so we started to search for a place in</p> <p>3 Newark because we wanted to have an establishment</p> <p>4 in Newark, because we knew a lot of people around</p> <p>5 here, and then we found this restaurant that</p> <p>6 was located on 70 Adams Street. This gentleman</p> <p>7 wanted to sell it because he was already old and</p> <p>8 he wanted to return to Brazil, and then he asked</p> <p>9 for a price, we made an offer, he accepted --</p> <p>10 they accepted and then we started.</p> <p>11 Q Now Farid, what we've marked as</p> <p>12 Exhibit 3, is that an accurate reflection of</p> <p>13 your offer to purchase the real estate at</p> <p>14 70 Adams Street?</p> <p>15 A Yes.</p> <p>16 Q Did you sign this document</p> <p>17 as the perspective buyer?</p> <p>18 A Yes.</p> <p>19 Q Is your signature on this</p> <p>20 document we've marked as Exhibit 3?</p> <p>21 A Yes.</p> <p>22 Q When did you sign this document?</p> <p>23 A In February of '96.</p> <p>24 Q Farid, did you end up purchasing</p> <p>25 the real estate located at 70 Adams Street?</p>	15
14	<p>1 F. SALEH</p> <p>2 A Yes.</p> <p>3 Q Farid, when you purchased the</p> <p>4 real estate at 70 Adams Street, how did you make</p> <p>5 payments on that property?</p> <p>6 A Could you repeat the question.</p> <p>7 Q Sure. When you purchased the real</p> <p>8 estate at 70 Adams Street, how did you pay for it?</p> <p>9 A We paid with a check.</p> <p>10 Q The property located at 70 Adams</p> <p>11 Street, did you rent it or did you buy it?</p> <p>12 A No, I rented it.</p> <p>13 Q Did you have an agreement</p> <p>14 for this rent?</p> <p>15 A Yes.</p> <p>16 Q Is there a lease agreement?</p> <p>17 A Yes.</p> <p>18 MR. CLARK: I'd like to</p> <p>19 introduce this as Exhibit Number 4.</p> <p>20 (Whereupon, a document was</p> <p>21 marked as Plaintiff's Exhibit Number 4</p> <p>22 for identification as of this date.)</p> <p>23 Q Do you see the document we've</p> <p>24 entered as Exhibit Number 4; have you seen this</p> <p>25 document before?</p>	16

17	<p>1 F. SALEH</p> <p>2 A Yes, I have.</p> <p>3 Q What is this document?</p> <p>4 A This document here is a contract</p> <p>5 for the company that owns the mall which is</p> <p>6 Newark Adams Association and they signed a</p> <p>7 lease with me; I signed it. It's renewable</p> <p>8 every five years.</p> <p>9 Q Did you sign a lease agreement</p> <p>10 with Newark Adams?</p> <p>11 A Yes.</p> <p>12 Q Was this lease for the property</p> <p>13 at 70 Adams Street, Store Number 4?</p> <p>14 MS. DUBOWY: Objection, leading.</p> <p>15 A Yes.</p> <p>16 Q Where was the property that</p> <p>17 you signed this lease agreement?</p> <p>18 A It's located on 70 Adams Street,</p> <p>19 Store Number 4, Newark.</p> <p>20 Q Now this exhibit in front of you,</p> <p>21 we only have the first two pages.</p> <p>22 Is there a lease agreement;</p> <p>23 did you sign a lease agreement?</p> <p>24 A Yes, I did.</p> <p>25 MS. DUBOWY: Objection.</p>	19	<p>1 F. SALEH</p> <p>2 Are we talking here about the</p> <p>3 '96 lease or one of the renewals?</p> <p>4 Can you please rephrase it.</p> <p>5 MR. CLARK: Sure.</p> <p>6 Q The lease agreement that you claim</p> <p>7 to have signed in 1996, have you given a copy of</p> <p>8 that lease to any of the attorneys in this case?</p> <p>9 A In this case my attorney would say</p> <p>10 them.</p> <p>11 Q Have you given a copy of this</p> <p>12 1996 lease either to myself or to any of the</p> <p>13 other attorneys sitting at this table?</p> <p>14 A No.</p> <p>15 MS. DUBOWY: Please ask for this</p> <p>16 document. I believe it was called for.</p> <p>17 MR. CLARK: We've asked for the</p> <p>18 document as well and we haven't seen it,</p> <p>19 that's why I'm asking for it now because</p> <p>20 I'm confused just like you.</p> <p>21 MS. DUBOWY: All right. We</p> <p>22 would like to see this document.</p> <p>23 MR. CLARK: Is it possible we</p> <p>24 can get this document today?</p> <p>25 A I can do it either today, the latest</p>
18	<p>1 F. SALEH</p> <p>2 This document is without</p> <p>3 a signature.</p> <p>4 MR. CLARK: That was my</p> <p>5 follow-up question.</p> <p>6 MS. DUBOWY: It's not</p> <p>7 admissible because it's not complete.</p> <p>8 MR. CLARK: I understand.</p> <p>9 I have a follow-up question</p> <p>10 for that.</p> <p>11 MS. DUBOWY: Okay.</p> <p>12 We'll see what happens.</p> <p>13 Q Is there a signed lease</p> <p>14 agreement in your possession?</p> <p>15 A Yes.</p> <p>16 Q Where is that lease agreement?</p> <p>17 A Okay. Each contractor, each</p> <p>18 agreement is valid for five years. We have at</p> <p>19 least two more agreements because they renewed,</p> <p>20 and we also got the adjacent store which we made</p> <p>21 the whole thing bigger so now we have Store</p> <p>22 Number 3 and Number 4.</p> <p>23 Q Have you given any of the attorneys</p> <p>24 in this case a copy of that lease?</p> <p>25 MS. DUBOWY: Objection, ambiguous.</p>	20	<p>1 F. SALEH</p> <p>2 tomorrow because I have to look for it. All my</p> <p>3 documentation is in the attic in my house and I</p> <p>4 have to look for it.</p> <p>5 May I ask a question?</p> <p>6 MR. CLARK: Yes, go ahead.</p> <p>7 A When I gathered all the papers for</p> <p>8 this it might have gone together in a box that I</p> <p>9 provided. I'm not sure if I put it in or not.</p> <p>10 MR. CLARK: Okay. Off the record.</p> <p>11 (Whereupon, an off-the-record</p> <p>12 discussion was held.)</p> <p>13 MR. CLARK: While we were away,</p> <p>14 counsels had discussion about what was</p> <p>15 initially introduced as Exhibit Number 4.</p> <p>16 Counsel for petitioner is</p> <p>17 going to withdraw that exhibit for</p> <p>18 the moment until we get a more complete</p> <p>19 copy.</p> <p>20 In the meantime, we're going</p> <p>21 to skip ahead to Exhibit Number 5 for</p> <p>22 future documents.</p> <p>23 Q Farid, when you entered into a</p> <p>24 lease agreement with Newark Adams, as you have</p> <p>25 testified to, how did you pay them the rent?</p>

21	<p>1 F. SALEH</p> <p>2 A We used to pay with check.</p> <p>3 We pay with checks till this day.</p> <p>4 Q Did you always pay Newark Adams</p> <p>5 with a check?</p> <p>6 A Yes.</p> <p>7 MR. CLARK: I'd like to</p> <p>8 introduce Exhibit Number 5.</p> <p>9 (Whereupon, a two-page</p> <p>10 document was marked as Plaintiff's</p> <p>11 Exhibit Number 5 for identification</p> <p>12 as of this date.)</p> <p>13 Q Farid, have you seen this</p> <p>14 document before?</p> <p>15 A Yes.</p> <p>16 Q What is this document?</p> <p>17 A It's a check that I used to</p> <p>18 pay my rent.</p> <p>19 Q Who is the payor on this check?</p> <p>20 A Myself.</p> <p>21 Q Who is "myself?"</p> <p>22 A Farid, Churrascaria Boi Na Brasa</p> <p>23 Corp.</p> <p>24 Q Who is the payee on this check?</p> <p>25 A It's Newark Adams Association.</p>	23	<p>1 F. SALEH</p> <p>2 Q Farid, have you seen this</p> <p>3 document before?</p> <p>4 A Yes, I have.</p> <p>5 Q What is this document?</p> <p>6 A It's the insurance policy for</p> <p>7 my restaurant Churrascaria Boi Na Brasa.</p> <p>8 Q Who is the named insured</p> <p>9 on this insurance policy?</p> <p>10 A Churrascaria Boi Na Brasa.</p> <p>11 Q Is this the first insurance</p> <p>12 policy for Churrascaria Boi Na Brasa?</p> <p>13 A Yes.</p> <p>14 Q What is the policy period</p> <p>15 for this insurance agreement?</p> <p>16 A The policy is good for one year.</p> <p>17 Q When did this policy begin?</p> <p>18 A May 9, 1996.</p> <p>19 Q To when?</p> <p>20 A Until May 9, 1997, one year.</p> <p>21 Q Now from May 9, 1996 to May 9, 1997,</p> <p>22 was Churrascaria Boi Na Brasa open for business?</p> <p>23 MS. DUBOWY: Objection.</p> <p>24 Can you repeat the question,</p> <p>25 I didn't get it.</p>
22	<p>1 F. SALEH</p> <p>2 Q When was this check drafted?</p> <p>3 A May of 1997.</p> <p>4 Q And what was the purpose</p> <p>5 of writing this check?</p> <p>6 A Payment for the monthly rent.</p> <p>7 Q Monthly rent for what?</p> <p>8 A For the restaurant Churrascaria</p> <p>9 Boi Na Brasa.</p> <p>10 Q Farid, as a restaurant owner,</p> <p>11 did you have to take out any insurance?</p> <p>12 A Yes.</p> <p>13 Q What kind of insurance policy</p> <p>14 did Churrascaria Boi Na Brasa Corp take out?</p> <p>15 A Liability.</p> <p>16 Q When did Churrascaria Boi Na</p> <p>17 Brasa Corp take out liability insurance?</p> <p>18 A We got the insurance the first</p> <p>19 year that we started to operate.</p> <p>20 MR. CLARK: I would like</p> <p>21 to introduce Exhibit Number 6.</p> <p>22 (Whereupon, a multi-page</p> <p>23 document was marked as Plaintiff's</p> <p>24 Exhibit Number 6 for identification</p> <p>25 as of this date.)</p>	24	<p>1 F. SALEH</p> <p>2 MR. CLARK: That's fine.</p> <p>3 Q From May 9, 1996 to May 9, 1997,</p> <p>4 was Churrascaria Boi Na Brasa open for business?</p> <p>5 A Yes.</p> <p>6 MR. CLARK: I'd like to</p> <p>7 introduce Exhibit Number 7.</p> <p>8 (Whereupon, a one-page</p> <p>9 document was marked as Plaintiff's</p> <p>10 Exhibit Number 7 for identification</p> <p>11 as of this date.)</p> <p>12 Q Farid, have you seen this</p> <p>13 document before?</p> <p>14 A Yes.</p> <p>15 Q What is this document?</p> <p>16 A It's another insurance for a</p> <p>17 different year for the restaurant Churrascaria</p> <p>18 Boi Na Brasa.</p> <p>19 Q And what is the period?</p> <p>20 MS. DUBOWY: Objection.</p> <p>21 Q Was Churrascaria Boi Na Brasa</p> <p>22 open for business in 1997?</p> <p>23 A Yes, it was.</p> <p>24 Q Did Churrascaria Boi Na Brasa have</p> <p>25 to take out an insurance coverage for 1997?</p>

25	<p>1 F. SALEH</p> <p>2 A Yes.</p> <p>3 Q This document in front of you,</p> <p>4 Exhibit Number 7, is this an accurate reflection</p> <p>5 of the insurance agreement for Churrascaria</p> <p>6 Boi Na Brasa in 1997?</p> <p>7 A From '97 to '98.</p> <p>8 Q What is the policy period for</p> <p>9 this insurance agreement?</p> <p>10 A October of '97 until October of '98.</p> <p>11 Q Who is the named insured for</p> <p>12 this policy?</p> <p>13 A Churrascaria Boi Na Brasa.</p> <p>14 Q And what is the address for the</p> <p>15 named insured?</p> <p>16 A 70 Adams Street, Store 4, Newark,</p> <p>17 New Jersey 07105; the location where we are to</p> <p>18 this day.</p> <p>19 MR. CLARK: Thank you.</p> <p>20 I'd like to introduce</p> <p>21 Exhibit Number 8.</p> <p>22 (Whereupon, a multiple-page</p> <p>23 document was marked as Plaintiff's</p> <p>24 Exhibit Number 8 for identification</p> <p>25 as of this date.)</p>	27	<p>1 F. SALEH</p> <p>2 the insurance policy taken out by Churrascaria</p> <p>3 Boi Na Brasa in 1998?</p> <p>4 A Yes, up until '99.</p> <p>5 Q What is the policy period for</p> <p>6 this insurance policy?</p> <p>7 A May 22, 1998 until May 22, 1999.</p> <p>8 Q On May 22, 1998, who was the</p> <p>9 owner of Churrascaria Boi Na Brasa?</p> <p>10 A Churrascaria Boi Na Brasa Corp.</p> <p>11 Q On May 22, 1999, who was the</p> <p>12 owner of Churrascaria Boi Na Brasa?</p> <p>13 A Could you repeat the question.</p> <p>14 Q Sure. On May 22, 1999, who was</p> <p>15 the owner of Churrascaria Boi Na Brasa?</p> <p>16 A Can I explain something?</p> <p>17 Q Please.</p> <p>18 A Okay. From '98 -- actually '99,</p> <p>19 Churrascaria Boi Na Brasa Corp owned Churrascaria</p> <p>20 Boi Na Brasa. I was the president. In '99, we</p> <p>21 changed the corporation and I was the president,</p> <p>22 and then it went to Terra Sul. However, this</p> <p>23 insurance policy -- so the period on this policy</p> <p>24 is until the fifth month. So the next one</p> <p>25 probably -- so to tell you the truth, if I'm</p>
26	<p>1 F. SALEH</p> <p>2 Q Farid, in 1998 did Churrascaria</p> <p>3 Boi Na Brasa take out an insurance policy?</p> <p>4 A Yes.</p> <p>5 Q What kind of insurance policy</p> <p>6 did Churrascaria Boi Na Brasa take out in 1998?</p> <p>7 A Liability.</p> <p>8 Q Now this document we've identified</p> <p>9 as Exhibit Number 8, have you seen this document</p> <p>10 before?</p> <p>11 A Yes, I have.</p> <p>12 Q What is this document?</p> <p>13 A Churrascaria Boi Na Brasa</p> <p>14 restaurant insurance from '98 to '99.</p> <p>15 Q Who is the named insured for</p> <p>16 this insurance policy?</p> <p>17 MS. DUBOWY: Objection, foundation.</p> <p>18 A Churrascaria Boi Na Brasa.</p> <p>19 Q In 1998, was Churrascaria</p> <p>20 Boi Na Brasa open for business?</p> <p>21 A Yes.</p> <p>22 Q In 1998, did Churrascaria</p> <p>23 Boi Na Brasa have an insurance policy?</p> <p>24 A Yes.</p> <p>25 Q Is this an accurate reflection of</p>	28	<p>1 F. SALEH</p> <p>2 going to answer, now I would say that Churrascaria</p> <p>3 Boi Na Brasa Corp was the owner until '99 and as</p> <p>4 of 1999, we've created another corporation that</p> <p>5 became the owner and I was the president.</p> <p>6 Q And what was this corporation</p> <p>7 in 1999 that became the owner?</p> <p>8 A Terra Sul Corp.</p> <p>9 Q Thank you.</p> <p>10 In 1999, was Churrascaria</p> <p>11 Boi Na Brasa open for business?</p> <p>12 A Yes.</p> <p>13 Q Did Churrascaria Boi Na Brasa</p> <p>14 take out insurance in 1999?</p> <p>15 A Yes.</p> <p>16 Q What insurance did Churrascaria</p> <p>17 Boi Na Brasa take out in 1999?</p> <p>18 A Liability.</p> <p>19 MR. CLARK: I'd like to</p> <p>20 introduce Exhibit Number 9.</p> <p>21 (Whereupon, a multi-paged</p> <p>22 document was marked as Plaintiff's</p> <p>23 Exhibit Number 9 for identification</p> <p>24 as of this date.)</p> <p>25 Q Farid, I have placed before</p>

29	<p>1 F. SALEH</p> <p>2 you Exhibit Number 9. Have you seen this</p> <p>3 document before?</p> <p>4 A Yes, I have.</p> <p>5 Q What is this document?</p> <p>6 A It's the Churrascaria Boi Na Brasa</p> <p>7 insurance from the year 1999 until the year 2000.</p> <p>8 Q Who is the named insured on this</p> <p>9 policy?</p> <p>10 A Churrascaria Boi Na Brasa.</p> <p>11 Q Is this an accurate reflection of</p> <p>12 the insurance policy taken out by Churrascaria</p> <p>13 Boi Na Brasa in 1999?</p> <p>14 A Yes.</p> <p>15 Q What is the policy period for</p> <p>16 this insurance policy?</p> <p>17 A June 14th, 1999 to June 14th, 2000.</p> <p>18 Q And from June 14th, 1999</p> <p>19 to June 14th, 2000, who was the owner of</p> <p>20 Churrascaria Boi Na Brasa?</p> <p>21 A Terra Sul Corp, having myself</p> <p>22 as a president.</p> <p>23 Q Thank you.</p> <p>24 Farid, did Churrascaria</p> <p>25 Boi Na Brasa Corp have a bank account?</p>	31	<p>1 F. SALEH</p> <p>2 A Yes.</p> <p>3 Q Who is the owner of the bank</p> <p>4 account reflected on this document?</p> <p>5 A Churrascaria Boi Na Brasa Corp.</p> <p>6 Q What is the date of this document?</p> <p>7 A March 31, 1997.</p> <p>8 MR. CLARK: I'd like to</p> <p>9 introduce Exhibit Number 11.</p> <p>10 (Whereupon, a document</p> <p>11 consisting of two pages was marked</p> <p>12 as Plaintiff's Exhibit Number 11</p> <p>13 for identification as of this date.)</p> <p>14 Q Farid, in May 1997, did</p> <p>15 Churrascaria Boi Na Brasa Corp have a</p> <p>16 bank account?</p> <p>17 A Yes.</p> <p>18 Q Was that bank account a</p> <p>19 checking account?</p> <p>20 A It was a checking account.</p> <p>21 Q Now the document placed before you,</p> <p>22 Exhibit Number 11, have you seen this document</p> <p>23 before?</p> <p>24 A This bank statement here, yes.</p> <p>25 Q Is this document an accurate</p>
30	<p>1 F. SALEH</p> <p>2 A Yes.</p> <p>3 Q When did Churrascaria</p> <p>4 Boi Na Brasa Corp open a bank account?</p> <p>5 A As soon as we opened the restaurant,</p> <p>6 1996, I assume.</p> <p>7 Q Did Churrascaria Boi Na</p> <p>8 Brasa Corp have a bank account in 1997?</p> <p>9 A Yes.</p> <p>10 Q Who did Churrascaria Boi Na Brasa</p> <p>11 Corp have a bank account with in 1997?</p> <p>12 A I'm not exactly sure but I</p> <p>13 think it was PNC Bank and Midlantic.</p> <p>14 MR. CLARK: I'd like to</p> <p>15 introduce Exhibit Number 10.</p> <p>16 (Whereupon, a multi-page</p> <p>17 document was marked as Plaintiff's</p> <p>18 Exhibit Number 10 for identification</p> <p>19 as of this date.)</p> <p>20 Q Farid, have you seen this</p> <p>21 document before?</p> <p>22 A This is a bank statement, isn't it?</p> <p>23 Q Is this an accurate reflection of</p> <p>24 the bank statements for Churrascaria Boi Na Brasa</p> <p>25 Corp?</p>	32	<p>1 F. SALEH</p> <p>2 reflection of the bank statement for Churrascaria</p> <p>3 Boi Na Brasa Corp?</p> <p>4 A Yes.</p> <p>5 Q What is the date of this document?</p> <p>6 A April 30, 1997.</p> <p>7 Q Thank you. Farid, in 1996, who</p> <p>8 did you work for?</p> <p>9 A In 1996, I was working for</p> <p>10 Churrascaria Boi Na Brasa Corp. Actually, let me</p> <p>11 go back.</p> <p>12 First, I was working for a recycling</p> <p>13 company named Fiber Specialist and then when we</p> <p>14 opened Churrascaria Boi Na Brasa Corp. I started</p> <p>15 working for them.</p> <p>16 Q Farid, in 1996 did you pay</p> <p>17 income taxes?</p> <p>18 A Yes, I did.</p> <p>19 MR. CLARK: I'd like to</p> <p>20 introduce Exhibit Number 12.</p> <p>21 (Whereupon, a multiple-page</p> <p>22 document was marked as Plaintiff's</p> <p>23 Exhibit Number 12 for identification</p> <p>24 as of this date.)</p> <p>25 Q Farid, have you seen this</p>

33	<p>1 F. SALEH</p> <p>2 document before?</p> <p>3 A Yes.</p> <p>4 Q What is this document?</p> <p>5 A It's a W2.</p> <p>6 Q What year was this W2?</p> <p>7 MS. DUBOWY: Objection, ambiguous.</p> <p>8 Q For what tax year is this W2?</p> <p>9 A 1996.</p> <p>10 Q Could you please turn to the</p> <p>11 page identified with a Bates label TS000023.</p> <p>12 A (Witness complies.)</p> <p>13 Q Who is the employee reflected</p> <p>14 by this document?</p> <p>15 A Who is the employer?</p> <p>16 Q Employee.</p> <p>17 A Farid Saleh, myself.</p> <p>18 Q Who is the employer?</p> <p>19 A Churrascaria Boi Na Brasa Corp.</p> <p>20 Q Is this an accurate reflection of</p> <p>21 the 1996 W2, Wage and Tax Statement for you?</p> <p>22 A Yes.</p> <p>23 Q Thank you.</p> <p>24 Farid, did you pay income taxes</p> <p>25 in 1997?</p>	35	<p>1 F. SALEH</p> <p>2 A (Witness complies.)</p> <p>3 Q Have you seen this before?</p> <p>4 A Yes.</p> <p>5 Q What is this page?</p> <p>6 A W2 for the year of 1997.</p> <p>7 Q Is this an accurate reflection of</p> <p>8 the 1997 W2 that you filed with your income taxes?</p> <p>9 A Yes.</p> <p>10 Q Who is the employer reflected on</p> <p>11 this W2?</p> <p>12 A Churrascaria Boi Na Brasa Corp.</p> <p>13 Q Who is the employee reflected on</p> <p>14 this W2?</p> <p>15 A Myself, Farid Saleh.</p> <p>16 Q In 1997, was Churrascaria</p> <p>17 Boi Na Brasa open for business?</p> <p>18 A Yes.</p> <p>19 Q What kind of restaurant</p> <p>20 is Churrascaria Boi Na Brasa?</p> <p>21 A Brazilian food.</p> <p>22 Q What do you mean by "Brazilian</p> <p>23 food?"</p> <p>24 A The typical dishes from the state in</p> <p>25 Brazil and our main dish is bar-b-que, rodizio.</p>
34	<p>1 F. SALEH</p> <p>2 A Yes.</p> <p>3 Q Who did you work for in 1997?</p> <p>4 A Churrascaria Boi Na Brasa Corp.</p> <p>5 MR. CLARK: I'd like to</p> <p>6 introduce Exhibit Number 13.</p> <p>7 (Whereupon, a multi-paged</p> <p>8 document was marked as Plaintiff's</p> <p>9 Exhibit Number 13 for identification</p> <p>10 as of this date and a brief recess</p> <p>11 was held.)</p> <p>12 Q Farid, in 1997 did you pay</p> <p>13 income taxes?</p> <p>14 A Yes.</p> <p>15 Q Who was your employer in 1997?</p> <p>16 A Churrascaria Boi Na Brasa Corp.</p> <p>17 Q This document in front of you,</p> <p>18 have you seen it before?</p> <p>19 A Yes.</p> <p>20 Q This would be Exhibit Number 13?</p> <p>21 A Yes.</p> <p>22 Q What is this document?</p> <p>23 A My 1997 income tax.</p> <p>24 Q Could you please turn to the</p> <p>25 page marked TS388.</p>	36	<p>1 F. SALEH</p> <p>2 Q Has Churrascaria Boi Na Brasa always</p> <p>3 been a Brazilian style churrascarian restaurant?</p> <p>4 MS. DUBOWY: Objection, ambiguous.</p> <p>5 Q From 1996, has Churrascaria</p> <p>6 Boi Na Brasa always been a Brazilian</p> <p>7 style churrascarian restaurant?</p> <p>8 A Yes.</p> <p>9 Q In 1996, who operated</p> <p>10 Churrascaria Boi Na Brasa?</p> <p>11 A Could you repeat?</p> <p>12 Q Sure.</p> <p>13 In 1996, who operated</p> <p>14 Churrascaria Boi Na Brasa?</p> <p>15 A Churrascaria Boi Na Brasa Corp</p> <p>16 with myself as president, Farid Saleh.</p> <p>17 Q In 1996, in your role as the</p> <p>18 president, did you control the day-to-day</p> <p>19 operations of Churrascaria Boi Na Brasa?</p> <p>20 A Yes.</p> <p>21 Q Was it your responsibility</p> <p>22 to pay bills and invoices?</p> <p>23 A Yes.</p> <p>24 Q Would that include electric bills?</p> <p>25 A Yes.</p>

37

1 **F. SALEH**
 2 **MR. CLARK:** I'd like to
 3 introduce Exhibit Number 14.
 4 (Whereupon, a document
 5 consisting of two pages was marked
 6 as Plaintiff's Exhibit Number 14
 7 for identification as of this date.)
 8 **Q** Farid, have you seen this
 9 document before?
 10 **A** Yes.
 11 **Q** What is this document?
 12 **A** It's a Churrascaria Boi Na Brasa
 13 Corp check to pay utility bills, expenses.
 14 **Q** Is this document an accurate
 15 reflection of a check to pay electric bills?
 16 **A** Yes.
 17 **Q** Who is the payor on this check?
 18 **A** Churrascaria Boi Na Brasa Corp.
 19 **Q** What is the date of this check?
 20 **A** June 26, 1996.
 21 **Q** Did you sign this check?
 22 **A** Yes.
 23 **Q** That is your signature on
 24 this document?
 25 **MS. DUBOWY:** Objection, being

38

1 **F. SALEH**
 2 that there's two signatures.
 3 **Q** Is your signature on this check?
 4 **A** Yes.
 5 **Q** Who is the check made out to?
 6 **A** PSE&G, the utility company for
 7 the State of New Jersey.
 8 **Q** When this check was written, was
 9 Churrascaria Boi Na Brasa open for business?
 10 **A** Yes.
 11 **Q** Thank you.
 12 What does Churrascaria Boi Na Brasa
 13 mean?
 14 **A** To me, it's my life.
 15 **INTERPRETER:** He wants to
 16 know what the meaning of the name.
 17 **Q** What does the name
 18 Churrascaria Boi Na Brasa mean in English?
 19 **A** Boi Na Brasa means Bar-B-Que ox. I
 20 don't know how you call it, roasted over embers,
 21 burning coal.
 22 **Q** Who created the name Churrascaria
 23 Boi Na Brasa?
 24 **A** I've heard this name Boi Na Brasa
 25 since I was a little kid. In Brazil, in my own

39

1 **F. SALEH**
 2 hometown, there was a butcher house which was
 3 called Boi Na Brasa, and I had that in mind.
 4 **Once, I went with my father to shop**
 5 **there so I associated Bar-B-Que in a Brazilian**
 6 **restaurant in Brazil which is a traditional name**
 7 **so I put the name Boi Na Brasa.**
 8 **Q** When did you decide to name
 9 your restaurant Churrascaria Boi Na Brasa?
 10 **A** We started to think about the
 11 idea in 1995.
 12 **Q** When did you formally decide
 13 on the name Churrascaria Boi Na Brasa?
 14 **A** In the end of 1995, we created
 15 the logo which is still used today but registered
 16 as a company correctly we started in 1996.
 17 **Q** Did anyone assist you in
 18 creating the name Churrascaria Boi Na Brasa?
 19 **A** At that time it was myself, my wife,
 20 two friends and my son's godfather is one of them,
 21 Paulo and his wife Marisveny; and Roberto who
 22 created the logo, he was a designer. So this
 23 was the group at the time but it was my idea.
 24 **Q** In 1996, when you opened
 25 Churrascaria Boi Na Brasa, who else used the

40

1 **F. SALEH**
 2 name Boi Na Brasa in the restaurant business?
 3 **A** No one.
 4 **Q** In 1996, how did you inform people
 5 and customers that your restaurant Churrascaria
 6 Boi Na Brasa was open?
 7 **A** In those days since things were
 8 difficult, there wasn't a lot of money around,
 9 we made flyers to put on cars, things like that,
 10 neighborhood stores and also word of mouth.
 11 **Q** Did you advertise in local
 12 newspapers?
 13 **A** Actually, I think there was an
 14 article as soon as we opened the restaurant but
 15 it wasn't an article. It wasn't paid for but we
 16 started to advertise in newspaper after we had
 17 opened up the restaurant because we had money
 18 and we had a small ad.
 19 **Q** When did you first start
 20 advertising Churrascaria Boi Na Brasa?
 21 **A** In newspapers?
 22 **Q** Anywhere?
 23 **A** Well, in '96 we made the flyers to
 24 circulate around town. Newspapers, we started in
 25 1997, I think. I'm not a hundred percent sure.

41

1 **F. SALEH**

2 Q Did you advertise with the

3 Brazilian Press in 1997?

4 A In 1997 we started with the

5 newspapers, yes.

6 Q You put an advertisement for

7 Churrascaria Boi Na Brasa in the Brazilian Press?

8 MS. DUBOWY: Objection, leading.

9 Q In 1997, did Churrascaria Boi Na

10 Brasa put an advertisement in local newspapers?

11 A Yes.

12 Q In 1997, which newspapers did

13 Churrascaria Boi Na Brasa advertise in?

14 A Brazilian Press. I'm not sure

15 but also maybe Brazilian Voice.

16 MR. CLARK: I'd like to

17 introduce Exhibit Number 15.

18 (Whereupon, a five-page

19 document was marked as Plaintiff's

20 Exhibit Number 15 for identification

21 as of this date.)

22 Now, this doesn't have a Bates

23 number on it but it was produced earlier

24 with a Bates number.

25 Q Farid, have you seen this

42

1 **F. SALEH**

2 document before?

3 A Yes, I have. It's like I go back

4 in time.

5 Q You've seen this document before?

6 A Yes, I have.

7 MS. DUBOWY: Objection, there

8 are two documents, two newspapers.

9 MR. CLARK: Yes.

10 MS. DUBOWY: So when you say

11 "document" like which document?

12 Q The first two pages, have you

13 seen these before?

14 A Yes.

15 Q The first two pages of

16 this document, what is it?

17 A This is the cover page for

18 Brazilian Press which is our community's

19 newspaper.

20 Q Is there an advertisement for

21 Churrascaria Boi Na Brasa on either of these

22 first two pages?

23 A Yes.

24 Q Where is this advertisement?

25 A It's on this second page here,

43

1 **F. SALEH**

2 bottom.

3 Q What is the date of this

4 advertisement?

5 A It's the week of 17 to 23 of

6 September, 1997.

7 Q Is this an accurate reflection

8 of an advertisement you placed with the

9 Brazilian Press in September of 1997?

10 A Yes.

11 Q Pages 3 and 4 of this document,

12 have you seen these before?

13 A Yes.

14 Q Did Churrascaria Boi Na Brasa

15 place an advertisement on either of these

16 two pages?

17 MS. DUBOWY: Objection, foundation.

18 Q Did Churrascaria Boi Na Brasa

19 place an advertisement in the Brazilian Press

20 in 1999?

21 MS. DUBOWY: Objection, leading.

22 MR. CLARK: Let me rephrase.

23 Q In 1999, did Churrascaria

24 Boi Na Brasa advertise in newspapers?

25 A Yes.

44

1 **F. SALEH**

2 Q In 1999, did Churrascaria

3 Boi Na Brasa ever advertise with the

4 Brazilian Press?

5 MS. DUBOWY: Objection, leading.

6 Q What newspapers did Churrascaria

7 Boi Na Brasa advertise with in 1999?

8 A Brazilian Press.

9 Q Are pages 3 and 4 of Exhibit 15

10 an accurate reflection of the advertisements

11 you placed with the Brazilian Press in 1999?

12 MS. DUBOWY: Objection, ambiguous.

13 You didn't establish time.

14 Q On pages 3 and 4 of this document,

15 is this an accurate representation of an

16 advertisement placed by Churrascaria Boi Na Brasa?

17 A Aren't you talking about

18 pages 2 and 4?

19 Q 3 and 4.

20 A Could you repeat the

21 question please.

22 Q Sure.

23 On pages 3 and 4 of this document,

24 is the advertisement for Churrascaria Boi Na Brasa

25 an accurate reflection of the advertisement in the

45	<p>1 F. SALEH</p> <p>2 Brazilian Press?</p> <p>3 A Yes.</p> <p>4 Q When did Churrascaria</p> <p>5 Boi Na Brasa place this ad?</p> <p>6 A This ad was on November 17, 1999.</p> <p>7 Q Was Churrascaria Boi Na Brasa</p> <p>8 open for business in 1999?</p> <p>9 A Yes.</p> <p>10 MS. DUBOWY: Objection, ambiguous.</p> <p>11 Q In 1999, was Churrascaria</p> <p>12 Boi Na Brasa open?</p> <p>13 A It was open, it had operations.</p> <p>14 Q In 1999, was Churrascaria</p> <p>15 Boi Na Brasa still operating as a restaurant?</p> <p>16 A Yes.</p> <p>17 Q Does Churrascaria Boi Na Brasa</p> <p>18 ever cater?</p> <p>19 A We've always done that.</p> <p>20 Q When did Churrascaria</p> <p>21 Boi Na Brasa first start catering?</p> <p>22 A Well, actually in '96 we had a big</p> <p>23 catering event. It was big for us because we</p> <p>24 were small and this opportunity came up. We did</p> <p>25 a catering event in Atlantic City.</p>	47	<p>1 F. SALEH</p> <p>2 for Brazilian food catering.</p> <p>3 Q Is this an accurate reflection of</p> <p>4 the agreement between Churrascaria Boi Na Brasa</p> <p>5 and the Trump Taj Mahal?</p> <p>6 A For this event, yes.</p> <p>7 Q What was the date of this agreement?</p> <p>8 A According to this document in</p> <p>9 front of me, the date is June 7, 1996.</p> <p>10 Q Did Churrascaria Boi Na Brasa</p> <p>11 complete a catering event for the Trump Taj Mahal</p> <p>12 in June of 1996?</p> <p>13 A Yes.</p> <p>14 Q Where else has Churrascaria</p> <p>15 Boi Na Brasa catered events?</p> <p>16 MS. DUBOWY: Objection,</p> <p>17 failed to establish foundation.</p> <p>18 Q Has Churrascaria Boi Na Brasa</p> <p>19 ever catered to other people or entities?</p> <p>20 A Yes.</p> <p>21 Q Was this exclusively in New Jersey?</p> <p>22 A No. We do it in New Jersey.</p> <p>23 I've done it in New York and Connecticut.</p> <p>24 Q When did Churrascaria</p> <p>25 Boi Na Brasa cater an event in New York?</p>
46	<p>1 F. SALEH</p> <p>2 INTERPRETER: The interpreter will</p> <p>3 correct herself on the record literally,</p> <p>4 "we did one in Atlantic City."</p> <p>5 Thank you.</p> <p>6 Q This catering event in</p> <p>7 Atlantic City, when was it?</p> <p>8 A I don't remember the exact date</p> <p>9 right now but it was '96 or into '97. It was</p> <p>10 right in the beginning.</p> <p>11 Q Who was this catering event for?</p> <p>12 A It was for the Taj Mahal Casino,</p> <p>13 Trump Taj Mahal.</p> <p>14 MR. CLARK: I'd like to</p> <p>15 enter Exhibit 16.</p> <p>16 (Whereupon, a one-page</p> <p>17 document was marked as Plaintiff's</p> <p>18 Exhibit Number 16 for identification</p> <p>19 as of this date.)</p> <p>20 Q Farid, have you seen this</p> <p>21 document before?</p> <p>22 A Yes.</p> <p>23 Q What is this document?</p> <p>24 A This is an agreement between</p> <p>25 Churrascaria Boi Na Brasa and Taj Mahal Casino</p>	48	<p>1 F. SALEH</p> <p>2 A I'm not sure but I think</p> <p>3 three years ago.</p> <p>4 Q Do you remember who Churrascaria</p> <p>5 Boi Na Brasa catered to in New York approximately</p> <p>6 three years ago?</p> <p>7 A I'm not really sure but the thing</p> <p>8 is we got this catering event from this female.</p> <p>9 She was a relative of the Madrid Hotel in Wildwood</p> <p>10 in New Jersey and we did catering for her there</p> <p>11 during three years. And then they sold the hotel</p> <p>12 and we continued doing it for their family in</p> <p>13 New York, they had moved to New York.</p> <p>14 Q Thank you.</p> <p>15 From 1996 to the present time,</p> <p>16 has Churrascaria Boi Na Brasa ever shut down?</p> <p>17 A No.</p> <p>18 Q From 1996 to the present time,</p> <p>19 has Churrascaria Boi Na Brasa ever stopped doing</p> <p>20 business at its current location in New Jersey?</p> <p>21 A No.</p> <p>22 Q From 1996 to the present time,</p> <p>23 has Churrascaria Boi Na Brasa ever identified</p> <p>24 itself by a different name to the public?</p> <p>25 A No.</p>

49

1 F. SALEH
 2 MR. CLARK: I'd like to
 3 introduce Exhibit Number 17.
 4 (Whereupon, a three-page
 5 document was marked as Plaintiff's
 6 Exhibit Number 17 for identification
 7 as of this date.)
 8 Q Farid, did Churrascaria Boi Na Brasa
 9 ever create a logo or design for its restaurant?
 10 A Could you repeat please.
 11 Q Sure.
 12 Did Churrascaria Boi Na Brasa
 13 ever create a logo or design for its restaurant?
 14 MS. DUBOWY: Objection, ambiguous.
 15 Q Did Churrascaria Boi Na Brasa
 16 ever create a logo for the restaurant?
 17 MS. DUBOWY: Objection, ambiguous.
 18 Q Is there a logo that identifies
 19 Churrascaria Boi Na Brasa the restaurant?
 20 A Yes, there is a logo.
 21 That's right here, I've created it.
 22 Q Who created the logo
 23 for Churrascaria Boi Na Brasa?
 24 A Roberto, this friend that I spoke
 25 about before. He's the one who made the drawing.

50

1 F. SALEH
 2 He wanted a model. Actually, at the time, this
 3 little guy here looks like me.
 4 Q When did Roberto draw this logo?
 5 A When he made the drawing?
 6 Q When did Roberto draw the logo?
 7 A '95, end of '95.
 8 Q 1995?
 9 A Yes.
 10 Q Now this exhibit I put before you,
 11 Exhibit 17, have you seen this document before?
 12 A This one?
 13 Q Yes.
 14 A Yes.
 15 Q What is this document?
 16 A This is the first drawing for the
 17 logo Churrascaria Boi Na Brasa logo. It's the
 18 one we use to this day.
 19 Q Has Churrascaria Boi Na Brasa
 20 ever changed this logo?
 21 A No.
 22 Q When did Churrascaria Boi Na Brasa
 23 first use this logo in association with its
 24 restaurant?
 25 A Since the day we open. It came out

51

1 F. SALEH
 2 on the menu and after that it came out -- I don't
 3 know how you call that thing in the front of the
 4 restaurant that we put on, canopy.
 5 Q Are you referring to a sign?
 6 A Yes, the sign, a design with a logo
 7 and the name. I have pictures back home.
 8 Q When did Churrascaria Boi Na Brasa
 9 open?
 10 A April of 1996.
 11 Q When Churrascaria Boi Na Brasa
 12 opened in April of 1996, where was it located?
 13 A 70 Adams Street, Store Number 4,
 14 Newark, New Jersey. That's where we have been
 15 until this day.
 16 Q What is Terra Sul Corp?
 17 A The Terra Sul Corp is a
 18 corporation that I have opened and it
 19 owns Churrascaria Boi Na Brasa.
 20 Q When did Terra Sul Corp acquire
 21 ownership of Churrascaria Boi Na Brasa?
 22 A It was in 1999.
 23 Q Is Terra Sul a registered
 24 corporation?
 25 A Yes.

52

1 F. SALEH
 2 Q Where is Terra Sul Corp registered?
 3 A The State of New Jersey.
 4 MR. CLARK: I'd like to
 5 introduce Exhibit Number 18.
 6 (Whereupon, a one-page
 7 document was marked as Plaintiff's
 8 Exhibit Number 18 for identification
 9 as of this date.)
 10 Q Have you seen this document before?
 11 A Yes.
 12 Q What is this document?
 13 A When Terra Sul was filed.
 14 Q What is this document?
 15 A It's the registration for
 16 Terra Sul Corp.
 17 Q And when was this registration
 18 filed?
 19 A January 19, 1999.
 20 Q Now is this page identified as
 21 TS1251, is that an accurate reflection of the
 22 Certificate of Incorporation for Terra Sul Corp?
 23 A Yes.
 24 MS. DUBOWY: Do you want to
 25 offer these separately since they

53	<p>1 F. SALEH</p> <p>2 are three different documents, do</p> <p>3 you mind doing that?</p> <p>4 MR. CLARK: We can do that.</p> <p>5 (Whereupon, an off-the-record</p> <p>6 discussion was held.)</p> <p>7 Q This document, Exhibit 18 which</p> <p>8 is identified as TS1251, is that an accurate</p> <p>9 reflection of the Certificate of Incorporation</p> <p>10 for Terra Sul Corp?</p> <p>11 A Yes.</p> <p>12 Q Who is the registered agent</p> <p>13 for Terra Sul Corp on this certificate?</p> <p>14 A Farid Saleh.</p> <p>15 MR. CLARK: I'm going to</p> <p>16 introduce Exhibit Number 19.</p> <p>17 (Whereupon, a two-page</p> <p>18 document was marked as Plaintiff's</p> <p>19 Exhibit Number 19 for identification</p> <p>20 as of this date.)</p> <p>21 Q Farid, in 2007 did you ever</p> <p>22 file any additional documents with the State</p> <p>23 of New Jersey regarding Terra Sul Corp?</p> <p>24 A Yes.</p> <p>25 Q What were these documents that</p>	55	<p>1 F. SALEH</p> <p>2 actually filed it so he might be</p> <p>3 having a problem with the date</p> <p>4 because of that.</p> <p>5 Q In 2007, who was president of</p> <p>6 Terra Sul Corp?</p> <p>7 A Farid Saleh.</p> <p>8 Q And as president of Terra Sul</p> <p>9 Corp in '97, did you, personally file any</p> <p>10 documents with the State of New Jersey on</p> <p>11 behalf of Terra Sul?</p> <p>12 A Yes.</p> <p>13 Q What would these documents be?</p> <p>14 A It was Alternative Name</p> <p>15 Registration.</p> <p>16 Q When did you file this Alternative</p> <p>17 Name Registration with the State of New Jersey?</p> <p>18 A February 18, 2007.</p> <p>19 Q In February of 2007, why did you</p> <p>20 file a Registration of Alternative Name with the</p> <p>21 State of New Jersey?</p> <p>22 A Well, we received a letter in</p> <p>23 January. We received a letter from the lawyers</p> <p>24 representing this other company. They wanted</p> <p>25 me to close my business, remove the name and</p>
54	<p>1 F. SALEH</p> <p>2 you filed with the State of New Jersey?</p> <p>3 A It was Registration Alternative.</p> <p>4 Q Is there an alternative name for</p> <p>5 Terra Sul Corp?</p> <p>6 A Yes.</p> <p>7 Q What would that alternative name be?</p> <p>8 A Churrascaria Boi Na Brasa.</p> <p>9 Q Did you file a Registration of</p> <p>10 Alternate Name with the State of New Jersey?</p> <p>11 A Yes.</p> <p>12 Q When did you file a Registration of</p> <p>13 Alternate Name with the State of New Jersey for</p> <p>14 the Terra Sul Corp?</p> <p>15 A January 18, 2007.</p> <p>16 Q Can you please repeat that date.</p> <p>17 A Why don't you repeat the</p> <p>18 question then, please.</p> <p>19 Q Sure.</p> <p>20 What day did you, as president of</p> <p>21 Terra Sul Corp, file a Registration of Alternative</p> <p>22 Name with the State of New Jersey?</p> <p>23 MS. DUBOWY: Objection,</p> <p>24 assuming facts not in evidence.</p> <p>25 We don't know he was the one who</p>	56	<p>1 F. SALEH</p> <p>2 my web site. And I was afraid so I came here</p> <p>3 to Fausto, to my attorney, and I started to</p> <p>4 do things, to gather evidence to see what was</p> <p>5 going on. I wanted to show that my company</p> <p>6 was registered, that everything was correct</p> <p>7 because my restaurant is very important to me</p> <p>8 and for my family.</p> <p>9 Q What restaurants does Terra Sul Corp</p> <p>10 presently own?</p> <p>11 A Churrascaria Boi Na Brasa.</p> <p>12 Q Where is that restaurant located?</p> <p>13 A 70 Adams Street, stores number 3</p> <p>14 and 4 in Newark, New Jersey.</p> <p>15 MR. CLARK: I'll introduce</p> <p>16 Exhibit Number 20.</p> <p>17 (Whereupon, a one-page</p> <p>18 document was marked as Plaintiff's</p> <p>19 Exhibit Number 20 for identification</p> <p>20 as of this date.)</p> <p>21 Q Farid, does Terra Sul Corp</p> <p>22 collect taxes in New Jersey?</p> <p>23 A Yes.</p> <p>24 Q Is there any document that</p> <p>25 authorizes Terra Sul Corp to collect taxes</p>

57	<p>1 F. SALEH</p> <p>2 in the State of New Jersey?</p> <p>3 A To collect or to pay?</p> <p>4 Q To collect.</p> <p>5 A I don't understand the question.</p> <p>6 Q Has the State of New Jersey</p> <p>7 certified Terra Sul Corp with authority to</p> <p>8 collect taxes on behalf of the State of</p> <p>9 New Jersey?</p> <p>10 A Yes.</p> <p>11 Q I have placed before you Exhibit</p> <p>12 Number 20. Have you seen this document before?</p> <p>13 A Yes.</p> <p>14 Q What is this document?</p> <p>15 A State of New Jersey Tax</p> <p>16 Authorization.</p> <p>17 Q Is this document an accurate</p> <p>18 reflection of the Certificate of Authority for</p> <p>19 Terra Sul Corp to collect Sales and Use Tax in</p> <p>20 New Jersey?</p> <p>21 A Yes.</p> <p>22 Q When did Terra Sul Corp acquire</p> <p>23 authority to collect taxes in the State of</p> <p>24 New Jersey?</p> <p>25 A April 1, 1999.</p>	59	<p>1 F. SALEH</p> <p>2 Q Do you have any personal connection</p> <p>3 to this Boi Na Braza restaurant, Boi Na Braza with</p> <p>4 a Z?</p> <p>5 A No.</p> <p>6 Q Does Terra Sul Corp have any</p> <p>7 connection to this Braza restaurant, Braza</p> <p>8 with a Z?</p> <p>9 A No.</p> <p>10 Q Do you, personally, have any</p> <p>11 business associations with this Boi Na Braza</p> <p>12 restaurant, Braza with a Z?</p> <p>13 A No.</p> <p>14 Q Do you own or operate any</p> <p>15 restaurants in Texas?</p> <p>16 A No.</p> <p>17 Q Do you own or operate any</p> <p>18 restaurants in Ohio?</p> <p>19 A No.</p> <p>20 Q Do you own or operate any</p> <p>21 restaurants in Georgia?</p> <p>22 A No.</p> <p>23 Q How did you first learn about</p> <p>24 this Boi Na Braza restaurant, Braza with a Z?</p> <p>25 A It was when we received the letter.</p>
58	<p>1 F. SALEH</p> <p>2 Q Does Churrascaria Boi Na Brasa</p> <p>3 have a web site?</p> <p>4 A Yes.</p> <p>5 Q What is the domain name for this web</p> <p>6 site?</p> <p>7 A Www.boinabrasa.com.</p> <p>8 Q Who owns this domain name?</p> <p>9 A I do, Farid Saleh.</p> <p>10 Q How long have you owned this</p> <p>11 domain name?</p> <p>12 A I'm not really sure. Since 2000 or</p> <p>13 2001 when they started with the whole internet</p> <p>14 thing up until this day.</p> <p>15 Q Do you advertise for</p> <p>16 Churrascaria Boi Na Brasa on this web site?</p> <p>17 A Yes.</p> <p>18 Q Who is Boi Na Braza, Braza with a Z?</p> <p>19 A I found out about this other Boi Na</p> <p>20 Brasa that there was a similar one when I got this</p> <p>21 letter in January of 2007.</p> <p>22 Q When is the first time you heard of</p> <p>23 a restaurant called Boi Na Braza, Braza with a Z?</p> <p>24 A When I received the letter from</p> <p>25 their attorneys.</p>	60	<p>1 F. SALEH</p> <p>2 This letter was from some lawyers. I think they</p> <p>3 were from Texas. And as I said before, they</p> <p>4 wanted us to close our business because they</p> <p>5 have rights.</p> <p>6 Q When did you receive this</p> <p>7 letter from these Texas lawyers?</p> <p>8 A It was in the beginning of</p> <p>9 January 2007.</p> <p>10 MR. CLARK: I would like to</p> <p>11 introduce Exhibit Number 21.</p> <p>12 (Whereupon, a four-page</p> <p>13 document was marked as Plaintiff's</p> <p>14 Exhibit Number 21 for identification</p> <p>15 as of this date.)</p> <p>16 A That's a letter.</p> <p>17 Q Farid, have you seen this</p> <p>18 document before?</p> <p>19 A Yes, I have.</p> <p>20 Q What is this document?</p> <p>21 A That's a letter they sent us.</p> <p>22 That's where they said that they wanted us --</p> <p>23 that's why I spoke with my lawyer about this.</p> <p>24 Q What is the date on this document?</p> <p>25 A January 11th, 2007.</p>

61

1 F. SALEH
 2 Q To the best of your recollection,
 3 is this letter a full and complete copy of the
 4 letter you received from Thompson & Knight on
 5 January 11th, 2007?
 6 A Yes.
 7 Q What was your reaction when
 8 you received this letter?
 9 A I was surprised with it, afraid.
 10 That's why I contacted a lawyer that time, for
 11 some guidance.
 12 Q How did you feel when you
 13 received this letter?
 14 A That someone wanted to take
 15 away my whole life's work here.
 16 Q Could you please read for the
 17 record the second sentence of the first
 18 paragraph of this letter.
 19 MS. DUBOWY: Is he
 20 going to read in English?
 21 MR. CLARK: He can read it
 22 back to her and she can translate it.
 23 MS. DUBOWY: Oh.
 24 A Where shall I read?
 25 MR. CLARK: Off the record.

62

1 F. SALEH
 2 (Whereupon, an off-the-record
 3 discussion was held.)
 4 A You talking about the first
 5 paragraph?
 6 Q First paragraph second sentence.
 7 Would it be a correct recitation
 8 of this document to state that in the second
 9 sentence:
 10 "The Boi Na Brasa mark has been in
 11 use at least since July 19, 1999 and the Boi Na
 12 Brasa and design mark has been in use at least
 13 since July 7th, 2000."
 14 Is that a correct recitation of
 15 that sentence?
 16 A But I didn't know anything about
 17 them. I only found out that they existed on
 18 January 11th, '07.
 19 Q Is that a correct recitation of that
 20 sentence?
 21 A In my opinion, for me Boi Na Brasa
 22 is with an S.
 23 Q I understand.
 24 Yes or no, is that a
 25 correct recitation of that sentence?

63

1 F. SALEH
 2 A Would you repeat again, please.
 3 Q Yes or no?
 4 A Repeat the sentence.
 5 MS. DUBOWY: I believe he
 6 wants you to repeat the sentence
 7 so he can follow.
 8 Q On July 19, 1999, was Churrascaria
 9 Boi Na Brasa open for business?
 10 A Yes, it was.
 11 Q Was your restaurant Churrascaria
 12 Boi Na Brasa open for business before July 19,
 13 1999?
 14 A Yes, we started in 1996.
 15 Q Did you advertise through your
 16 restaurant Churrascaria Boi Na Brasa before
 17 July 19, 1999?
 18 A Yes.
 19 Q After you received this letter,
 20 what did you do?
 21 A I brought it to my attorney here
 22 and he referred me to Eamon, and we're here to
 23 this day to try and find a solution to this
 24 problem.
 25 Q Did you take any legal action

64

1 F. SALEH
 2 against the people that drafted this letter?
 3 A The only thing we're doing here
 4 with the attorneys. I don't know who the owner
 5 of the restaurant is. I don't know anything
 6 about that.
 7 MS. DUBOWY: Can I have a
 8 short recess, like ten minutes.
 9 (Whereupon, a brief recess
 10 was taken.)
 11 Q Farid, after you received this
 12 letter in January of 2007, did you take any
 13 legal action?
 14 A As I told you, I contacted the
 15 attorneys and that's what we are here doing.
 16 Q Are you referring to the
 17 cancellation proceeding?
 18 MS. DUBOWY: Objection, leading.
 19 Q What is it that we're doing here
 20 today?
 21 A We're requesting cancellation
 22 for their brand name because we were working
 23 before them. We were around before them.
 24 Q When did you seek to cancel
 25 their brand name, as you say?

65	<p>1 F. SALEH</p> <p>2 A After I got this news, I contacted</p> <p>3 the lawyers and then we started immediately</p> <p>4 after receiving the letter, on the first week</p> <p>5 we started.</p> <p>6 Q Farid, to the best of your</p> <p>7 knowledge, has Boi Na Braza, Braza with a Z,</p> <p>8 ever opened a restaurant in New Jersey?</p> <p>9 A No.</p> <p>10 Q To the best of your knowledge,</p> <p>11 has Boi Na Braza, Braza with a Z, ever opened</p> <p>12 a restaurant in New York?</p> <p>13 A No.</p> <p>14 Q Are you aware of any advertisements</p> <p>15 by Boi Na Braza, Braza with a Z, in New Jersey?</p> <p>16 A No.</p> <p>17 Q Are you aware of any advertisements</p> <p>18 by Boi Na Braza, Braza with a Z, in New York?</p> <p>19 A No.</p> <p>20 Q To the best of your knowledge,</p> <p>21 who was the first to use the term Boi Na Braza</p> <p>22 anywhere in the United States?</p> <p>23 MS. DUBOWY: Objection, ambiguous.</p> <p>24 Q To the best of your knowledge, who</p> <p>25 is the first to use the term Boi Na Braza, Braza</p>	67	<p>1 F. SALEH</p> <p>2 Corp or Gullas Corp use the term Braza with a Z</p> <p>3 or an S, to identify a restaurant located in</p> <p>4 New Jersey?</p> <p>5 A No.</p> <p>6 Q What does the term Boi Na Braza</p> <p>7 mean in English, Braza with an S?</p> <p>8 A Ember.</p> <p>9 Q What does the term Boi Na Braza</p> <p>10 mean in English, Braza with a Z?</p> <p>11 A The correct way to write Braza</p> <p>12 is with an S because S sounds like Z when it's</p> <p>13 between two vowels. So Braza with an S is what</p> <p>14 ember is and Braza with a Z which is used here</p> <p>15 with a Z, is a slang such as I came from Braza.</p> <p>16 I came from Brazil; these slippers come from</p> <p>17 Braza. A lot of things they use the term Braza</p> <p>18 for; where are you from, I'm from Braza.</p> <p>19 Q Has any customer of yours ever</p> <p>20 asked you about a Boi Na Braza restaurant in</p> <p>21 Texas?</p> <p>22 A No.</p> <p>23 Q Has any customer of yours ever</p> <p>24 asked you about a Boi Na Braza restaurant in Ohio?</p> <p>25 A No.</p>
66	<p>1 F. SALEH</p> <p>2 with a Z or an S, anywhere in the United States?</p> <p>3 A Me, Farid.</p> <p>4 Q Does anyone other than Terra Sul</p> <p>5 currently use the term Boi Na Braza, Braza with</p> <p>6 an S or with a Z, to identify a restaurant located</p> <p>7 in New Jersey?</p> <p>8 A Would you repeat the question,</p> <p>9 please.</p> <p>10 Q Sure.</p> <p>11 Does anyone other than Terra Sul</p> <p>12 currently use the term Boi Na Braza with a Z or</p> <p>13 with an S, to identify a restaurant located in</p> <p>14 New Jersey?</p> <p>15 A Yes.</p> <p>16 Q Who else uses the term Boi Na Braza?</p> <p>17 A Gullas Corp uses it who owns Boi Na</p> <p>18 Braza Bar and Grill, and I'm also the president</p> <p>19 for that restaurant.</p> <p>20 MS. DUBOWY: Did he say</p> <p>21 restaurant or corporation?</p> <p>22 A It's a corporation.</p> <p>23 INTERPRETER: It's the</p> <p>24 interpreter's mistake.</p> <p>25 Q Does anyone other than Terra Sul</p>	68	<p>1 F. SALEH</p> <p>2 Q Has any customer of yours ever asked</p> <p>3 you about a Boi Na Braza restaurant in Georgia?</p> <p>4 A No.</p> <p>5 Q Now you've testified earlier today,</p> <p>6 Churrascaria Boi Na Braza has catered to New York,</p> <p>7 is that correct?</p> <p>8 A Yes.</p> <p>9 Q Have you ever considered opening</p> <p>10 up a Boi Na Braza restaurant in New York?</p> <p>11 A Yes, I have.</p> <p>12 Q Does Churrascaria Boi Na Braza</p> <p>13 have customers that reside in New York?</p> <p>14 A Uh-hmm, for sure.</p> <p>15 Q Has any New York publication ever</p> <p>16 written a review of Churrascaria Boi Na Braza?</p> <p>17 A Yes.</p> <p>18 MR. CLARK: I'd like to</p> <p>19 introduce Exhibit Number 22.</p> <p>20 MS. DUBOWY: Was this produced?</p> <p>21 MR. CLARK: That was given</p> <p>22 to your counsel the day that they</p> <p>23 sent the letter.</p> <p>24 MS. DUBOWY: But it</p> <p>25 was not produced.</p>

69

1 F. SALEH
 2 MR. CLARK: It's been produced,
 3 it just didn't have a Bates number on it.
 4 It was produced even before discovery
 5 started. They have an e-mail from
 6 January 2007 attached to that.
 7 MS. DUBOWY: All right.
 8 (Whereupon, a seven-page
 9 document was marked as Plaintiff's
 10 Exhibit Number 22 for identification
 11 as of this date.)
 12 Q Farid, have you seen this
 13 document before?
 14 A Yes, I have.
 15 Q What is the Village Voice?
 16 A It's a small newspaper published
 17 in New York. It's also for the community.
 18 Q What is this document?
 19 A It's information material for
 20 the community and everything, food, you know.
 21 As you can see, there's web sites,
 22 everything here.
 23 Q Does Churrascaria Boi Na Brasa
 24 have a marketing presence in New York?
 25 MS. DUBOWY: Objection, ambiguous.

70

1 F. SALEH
 2 Q Does Churrascaria Boi Na Brasa
 3 advertise in New York?
 4 A Yes.
 5 Q Does Churrascaria Boi Na Brasa
 6 advertise in Connecticut?
 7 A Yes.
 8 MR. CLARK: I have no
 9 further questions.
 10 (Whereupon, at 1:00 p.m. a
 11 brief recess was taken and at 1:53 p.m.
 12 the deposition recommenced.)
 13 CROSS EXAMINATION
 14 BY MS. DUBOWY:
 15 Q Good afternoon, Mr. Farid Saleh.
 16 May I say Farid or Saleh?
 17 A Farid.
 18 Q Farid, did you review any
 19 documents from the time we finished here
 20 today at 1 o'clock to now?
 21 A No.
 22 Q Did you review any documents
 23 from our last meeting in March to now, in
 24 connection to this proceeding?
 25 A Yes.

71

1 F. SALEH
 2 Q What kind of documents were these;
 3 were these the corporate documents that you have?
 4 A Yes.
 5 Q Did you give to your attorneys
 6 all the documents that you reviewed?
 7 A All I did was ask their opinion.
 8 Q The documents that you reviewed in
 9 order to prepare for our meeting today, did you
 10 give them to your attorney for them to review
 11 and comply with their obligations to produce
 12 documents?
 13 INTERPRETER: Could you repeat that.
 14 (Whereupon, the requested
 15 portion of the record was read back
 16 by the reporter, as above recorded.)
 17 A I don't understand your question.
 18 I don't understand this question.
 19 Q My question is:
 20 Did you give all the documents
 21 you reviewed in connection with this proceeding
 22 to your attorneys?
 23 A All documents connected to
 24 these proceedings here, I provided to them.
 25 Q And there is nothing else, right?

72

1 F. SALEH
 2 A For now, no.
 3 Q Okay. You testified earlier
 4 today that you created with a friend, Paulo,
 5 Churrascaria Brasa Corp, right; Boi Na Brasa Corp,
 6 correct?
 7 A Correct.
 8 Q You did, right?
 9 A Yes.
 10 Q And that was in '96?
 11 A We started to think about
 12 the Churrascaria since '95, I started.
 13 Q And then you eventually formed
 14 Churrascaria Boi Na Brasa Corp in '96, correct?
 15 A In '96, correct.
 16 Q And the document that was marked
 17 as Exhibit Number 1, that's the document that
 18 shows the creation of the corporation, right?
 19 MR. CLARK: Objection, form.
 20 MS. DUBOWY: What's your basis?
 21 MR. CLARK: It doesn't show the
 22 creation. The document only indicates
 23 that it has been incorporated.
 24 Q And registered the corporation
 25 in '96, correct?

73	<p>1 F. SALEH</p> <p>2 A Correct.</p> <p>3 Q And this document reflects</p> <p>4 registration of the corporation?</p> <p>5 A Correct.</p> <p>6 Q And the corporation we're talking</p> <p>7 here is Churrascaria Boi Na Brasa Corp?</p> <p>8 A Correct.</p> <p>9 Q And then later on we have Exhibit</p> <p>10 Number 2. And isn't it correct, that according</p> <p>11 to your testimony earlier today, you need this</p> <p>12 document to collect sales tax?</p> <p>13 MR. CLARK: Objection,</p> <p>14 mischaracterizes his testimony.</p> <p>15 MS. DUBOWY: In what way?</p> <p>16 MR. CLARK: This document</p> <p>17 alone doesn't give authority as a</p> <p>18 reflection of that.</p> <p>19 Q And this document here reflects</p> <p>20 your ability or rather Churrascaria Brasa</p> <p>21 Corporation ability to collect sales tax?</p> <p>22 A Correct.</p> <p>23 Q And there is a tax registration</p> <p>24 number that the State of New Jersey gives to</p> <p>25 Churrascaria Boi Na Brasa Corporation in order</p>	75	<p>1 F. SALEH</p> <p>2 is April 15th so he started his</p> <p>3 business then.</p> <p>4 MS. DUBOWY: The date</p> <p>5 issued is June 4, 1996.</p> <p>6 MR. CLARK: This document</p> <p>7 was issued June 4, 1996. The authority</p> <p>8 was issued possibly before then.</p> <p>9 MS. DUBOWY: Please allow me</p> <p>10 to conduct my cross-examination and</p> <p>11 I will ask you to let me do it.</p> <p>12 MR. CLARK: I understand.</p> <p>13 I object to you reading things</p> <p>14 into the document that have not</p> <p>15 been testified to previously.</p> <p>16 Q When you first start Churrascaria</p> <p>17 Boi Na Brasa Corp, you needed to obtain a bunch</p> <p>18 of licenses in order to start your business,</p> <p>19 right?</p> <p>20 A Yes.</p> <p>21 Q You needed to obtain a license</p> <p>22 to serve food, correct?</p> <p>23 A Yes.</p> <p>24 Q And you needed to obtain a license</p> <p>25 in order to employ people?</p>
74	<p>1 F. SALEH</p> <p>2 to be able to collect sales tax, correct?</p> <p>3 A Correct.</p> <p>4 Q Can you read for us the</p> <p>5 tax registration number?</p> <p>6 A 2-2-3-4-3-5-7-0-5.</p> <p>7 Q And it says later on just below</p> <p>8 it tax effective date, right?</p> <p>9 A Yes.</p> <p>10 Q And what is that date?</p> <p>11 A April 15, 1996.</p> <p>12 Q And then the last row in the</p> <p>13 last column of the document it says date issued,</p> <p>14 isn't it?</p> <p>15 A Yes.</p> <p>16 Q And what is the date that shows</p> <p>17 in the document?</p> <p>18 A 6-4-96.</p> <p>19 Q So it's fair to say that you</p> <p>20 incorporated the company in March and by June,</p> <p>21 you had your sales tax so that you could start</p> <p>22 the business, right?</p> <p>23 MR. CLARK: Objection, form.</p> <p>24 MS. DUBOWY: Why, what's your basis?</p> <p>25 MR. CLARK: Effective date</p>	76	<p>1 F. SALEH</p> <p>2 A I don't know.</p> <p>3 Q Do you recall requesting a license</p> <p>4 to get Workers' Compensation for your employees if</p> <p>5 they got sick?</p> <p>6 A I actually don't remember because</p> <p>7 when we started the restaurant, it was just</p> <p>8 myself, my wife, Paulo, his wife, and my wife's</p> <p>9 sister. It was just the family.</p> <p>10 Q Did you ask for tax ID number?</p> <p>11 A We have a tax ID number.</p> <p>12 Q When you were doing your business</p> <p>13 under Churrascaria Boi Na Brasa Corporation, did</p> <p>14 you have a tax ID number?</p> <p>15 A For sure.</p> <p>16 Q And you also needed an authority</p> <p>17 to collect sales tax, right?</p> <p>18 A Yes.</p> <p>19 Q Do you recall having applied for</p> <p>20 such a license?</p> <p>21 A Don't remember.</p> <p>22 Q And you were also shown today</p> <p>23 Exhibit 18?</p> <p>24 A Let me see here, I don't know</p> <p>25 which one is document 18.</p>

77

1 **F. SALEH**
 2 Q Can you explain what this
 3 document is?
 4 A **It's the Certificate of**
 5 **Incorporation.**
 6 Q And what does this document do?
 7 A **This document is for you to register**
 8 **a corporation.**
 9 Q Did you register a corporation?
 10 A **Yes.**
 11 Q What corporation is that in
 12 this document?
 13 A **Terra Sul Corp.**
 14 Q And when did you register
 15 this corporation?
 16 A **January 19, 1999.**
 17 Q Did you dissolve the first
 18 corporation before you started the second
 19 corporation -- let me rephrase it.
 20 Did you dissolve Churrascaria
 21 Boi Na Brasa Corp before you incorporated
 22 Terra Sul Corporation?
 23 A **I don't know. I don't know; no.**
 24 Q You didn't or you don't know?
 25 A **I did not dissolve one company**

78

1 **F. SALEH**
 2 **before opening the other, no. To be sure a**
 3 **hundred percent, I would have to contact my**
 4 **accountant.**
 5 Q Did you dissolve Churrascaria Boi Na
 6 Brasa Corp any time between 25th of March 1996 to
 7 today?
 8 A **No, only after Terra Sul.**
 9 **We did it after Terra Sul.**
 10 Q But you are not sure?
 11 WITNESS: I'm sure.
 12 Q You're sure?
 13 A **Of what?**
 14 Q Have you dissolved Churrascaria
 15 Boi Na Brasa Corp any time between March 25th,
 16 1996 to now?
 17 A **I would like to know the reason**
 18 **for this question. When one was dissolved, the**
 19 **other one started to pay the taxes and everything.**
 20 MS. DUBOWY: So you're saying --
 21 you still haven't responded to my question.
 22 Let's try to break it up.
 23 Q You told me earlier that you
 24 didn't dissolve Churrascaria Boi Na Brasa Corp
 25 up to the point you incorporated Terra Sul

79

1 **F. SALEH**
 2 Corporation. Now my question to you is:
 3 After you registered Terra Sul Corp,
 4 did you dissolve Churrascaria Boi Na Brasa Corp?
 5 A **I don't remember. I think it was**
 6 **dissolved at some point because we continued**
 7 **paying with Terra Sul but I can't give you exact**
 8 **dates because I don't know if I'm going to be**
 9 **saying anything. I'm going to be guessing.**
 10 Q Was there any point where you
 11 were paying income tax for both companies?
 12 A **I could only give you an**
 13 **answer if I ask my accountant.**
 14 Q We would like to know the answer,
 15 if possible.
 16 A **Okay, I'll ask him.**
 17 Q Do you have in your restaurant
 18 a sign that displays the Certificate of Authority
 19 of your company, of your restaurant, to collect
 20 tax?
 21 A **Yes.**
 22 Q And before you received this
 23 Certificate of Authority, you can't collect tax
 24 on behalf of the State of New Jersey, isn't it?
 25 MR. CLARK: Objection, calls

80

1 **F. SALEH**
 2 for a legal conclusion.
 3 MS. DUBOWY: He may know.
 4 He is a business owner. He has
 5 been in the business for ten years.
 6 He knows what he has to do in order
 7 to have a restaurant.
 8 MR. CLARK: You're assuming
 9 he knows the law fully because he is
 10 a business owner.
 11 MS. DUBOWY: You can answer
 12 if you know the question.
 13 A **I did not understand the question.**
 14 Q Do you need the Certificate of
 15 Authority in order to do your business?
 16 A **Yes, I do.**
 17 Q Why you need the Certificate of
 18 Authority?
 19 A **To collect taxes.**
 20 Q So without the Certificate of
 21 Authority, you cannot sell food in your
 22 restaurant?
 23 A **Where does it say?**
 24 Q You just told me that in order
 25 to do your business you need the Certificate of

81	<p>1 F. SALEH</p> <p>2 Authority, and then I asked you why is that and</p> <p>3 you responded.</p> <p>4 A I answered yes.</p> <p>5 Q Why?</p> <p>6 A But then I asked her the</p> <p>7 question where is it written that I can't.</p> <p>8 MS. DUBOWY: You can ask me</p> <p>9 all the questions after we finish here.</p> <p>10 For now, I have priority of asking the</p> <p>11 questions, okay.</p> <p>12 A Okay.</p> <p>13 Q Why do you think you need the</p> <p>14 Certificate of Authority in order to do your</p> <p>15 business which is the business of restaurant?</p> <p>16 A It's ordered by the state that</p> <p>17 you have to pay taxes over what you sell, a</p> <p>18 product you sell.</p> <p>19 Q So it's not sufficient just to get</p> <p>20 the registration of the company. You also need</p> <p>21 to comply with additional bureaucratic hoops, one</p> <p>22 being of getting Certificate of Authority, isn't</p> <p>23 it?</p> <p>24 MR. CLARK: Objection, form.</p> <p>25 MS. DUBOWY: Why?</p>	83	<p>1 F. SALEH</p> <p>2 Q Do you remember when was it filed?</p> <p>3 A January 19, 1999.</p> <p>4 Q And then we have Exhibit 20 which</p> <p>5 is the Certificate of Authority for Terra Sul</p> <p>6 Corp. Can you read for us tax registration number</p> <p>7 on that Certificate of Authority?</p> <p>8 A 2-2-3-6-3-8-6-5-2.</p> <p>9 Q Can you read the effective date?</p> <p>10 A 4-1-99.</p> <p>11 Q Can you also read to us when was the</p> <p>12 Certificate of Authority issued to your company?</p> <p>13 A 8-27-02.</p> <p>14 Q This was the first Certificate of</p> <p>15 Authority that Terra Sul Corporation received?</p> <p>16 A I think so.</p> <p>17 Q So between '99 or rather, between</p> <p>18 January 19, 1999 which is when you incorporated</p> <p>19 your company Terra Sul Corporation and August 27,</p> <p>20 2002, Terra Sul Corporation did not have a</p> <p>21 Certificate of Authority, isn't it?</p> <p>22 MR. CLARK: Objection, form.</p> <p>23 MS. DUBOWY: This question is fine.</p> <p>24 Don't object to form if you don't have</p> <p>25 basis please.</p>
82	<p>1 F. SALEH</p> <p>2 MR. CLARK: What's required,</p> <p>3 to do what?</p> <p>4 MS. DUBOWY: Business.</p> <p>5 MR. CLARK: What business?</p> <p>6 MS. DUBOWY: His business.</p> <p>7 MR. CLARK: Please ask him that.</p> <p>8 MS. DUBOWY: I think I</p> <p>9 asked the question.</p> <p>10 Q So in order to do your business of</p> <p>11 restaurant, Churrascaria Boi Na Brasa, it's not</p> <p>12 only sufficient to file this registration of the</p> <p>13 company. You also need additional permits such</p> <p>14 as the Certificate of Authority, correct?</p> <p>15 A You need various different</p> <p>16 papers in order to operate legally.</p> <p>17 Q This being one of them?</p> <p>18 A This is one of them.</p> <p>19 Q So let's go back to your Exhibit 18</p> <p>20 which is the document that shows the registration</p> <p>21 of Terra Sul Corp, isn't it?</p> <p>22 A Yes.</p> <p>23 Q So what is this document again?</p> <p>24 A Registration for the corporation,</p> <p>25 Terra Sul Corporation.</p>	84	<p>1 F. SALEH</p> <p>2 You can respond.</p> <p>3 MR. CLARK: Objection, form;</p> <p>4 assumes facts not in evidence.</p> <p>5 MS. DUBOWY: We have established</p> <p>6 that the Certificate of Authority for</p> <p>7 Terra Sul Corporation was issued on</p> <p>8 August 27, 2002. The corporation was</p> <p>9 incorporated in January 19, 1999.</p> <p>10 Everything here is a conclusion that's</p> <p>11 already in the record.</p> <p>12 MR. CLARK: You have a paper</p> <p>13 that says it was issued on August 27, 2002.</p> <p>14 There might have been authority issued</p> <p>15 that was not part of this so you're</p> <p>16 assuming facts not in evidence.</p> <p>17 MS. DUBOWY: Let me ask the</p> <p>18 question. I'm asking the question</p> <p>19 to him. You are not the one being</p> <p>20 deposed. Please keep yourself with</p> <p>21 the legal questions.</p> <p>22 MR. CLARK: Please don't</p> <p>23 put words in my client's mouth.</p> <p>24 MS. DUBOWY: I ask you not to</p> <p>25 interrupt me if you're not really --</p>

85	<p>1 F. SALEH</p> <p>2 MR. CLARK: -- I have a fair</p> <p>3 objection I want to get on the record.</p> <p>4 Q You testified here earlier</p> <p>5 today that this was the first time that</p> <p>6 Terra Sul Corporation received this</p> <p>7 Certificate of Authority.</p> <p>8 MR. CLARK: Objection,</p> <p>9 mischaracterizes previous testimony.</p> <p>10 MS. DUBOWY: Read back the question.</p> <p>11 (Whereupon, the requested</p> <p>12 portion of the record was read back</p> <p>13 by the reporter, as above recorded.)</p> <p>14 Q You said earlier today that you</p> <p>15 thought that Exhibit 20 was the first time the</p> <p>16 company was issued a Certificate of Authority,</p> <p>17 your company being Terra Sul Corporation.</p> <p>18 Are there any documents that, if</p> <p>19 I show to you, would refresh your recollection</p> <p>20 as to that was the first time you received</p> <p>21 Certificate of Authority for Terra Sul</p> <p>22 Corporation?</p> <p>23 A You can show it to me.</p> <p>24 Q You don't remember that Terra Sul</p> <p>25 Corporation was issued a Certificate of Authority</p>	87	<p>1 F. SALEH</p> <p>2 signed on your own individual behalf?</p> <p>3 A When I bought the company</p> <p>4 Boi Na Brasa, when I did the business of buying</p> <p>5 it, this Promissory Note was the purchase that we</p> <p>6 made, the real estate purchase. So I owed</p> <p>7 \$13,000. So we made a deal, he and I, that</p> <p>8 I would pay monthly installments without</p> <p>9 any interest.</p> <p>10 Q Who did you have to pay?</p> <p>11 A To the owner of the restaurant</p> <p>12 that we were buying.</p> <p>13 Q You testified earlier today that</p> <p>14 you, Farid, used the term Boi Na Brasa in the</p> <p>15 United States before my client, isn't it?</p> <p>16 A Yes.</p> <p>17 Q You also said that Gullas</p> <p>18 Corporation and Terra Sul Corporation</p> <p>19 currently use the Boi Na Brasa mark?</p> <p>20 A Yes.</p> <p>21 Q Do you have any documents that</p> <p>22 shows that you gave permission for those two</p> <p>23 companies to use the mark, Boi Na Brasa mark?</p> <p>24 A The two companies are my company.</p> <p>25 Q You testified earlier today that --</p>
86	<p>1 F. SALEH</p> <p>2 before August 27, 2002?</p> <p>3 A I don't remember. All I know</p> <p>4 is we paid taxes every month, every month.</p> <p>5 We never stopped paying them.</p> <p>6 MS. DUBOWY: If there are any</p> <p>7 documents that show that you received</p> <p>8 the Certificate of Authority for</p> <p>9 Terra Sul Corporation before August 27,</p> <p>10 2002, we would like to see them.</p> <p>11 Q Now I'm going to show you another</p> <p>12 document that you were shown today. I'm showing</p> <p>13 you Exhibit Number 3. I'm going to direct your</p> <p>14 attention to the second page of the exhibit.</p> <p>15 Can you tell us, this is a</p> <p>16 Promissory Note, right?</p> <p>17 A Yes.</p> <p>18 Q And it's dated March 22nd, 1996?</p> <p>19 A Yes.</p> <p>20 Q And it's for \$13,000?</p> <p>21 A Yes.</p> <p>22 Q And it's signed by you?</p> <p>23 A Yes.</p> <p>24 Q You signed this note on behalf</p> <p>25 of the company, on behalf of a company or you</p>	88	<p>1 F. SALEH</p> <p>2 let's go back here actually.</p> <p>3 MS. DUBOWY: Read back the question.</p> <p>4 (Whereupon, an extensive portion</p> <p>5 of the record was read back by the</p> <p>6 reporter, as above recorded.)</p> <p>7 Q You testified earlier today that</p> <p>8 Boi Na Brasa catered an event for a relative of</p> <p>9 the owner of the Hotel Madrid in New York, yes?</p> <p>10 A Hotel Madrid is located in</p> <p>11 New Jersey, Wildwood.</p> <p>12 Q That was not my question.</p> <p>13 A The person I did the event for,</p> <p>14 she lives in New York. I only mentioned her</p> <p>15 because I met her. She's part of the family</p> <p>16 of the owner of the Hotel Madrid which was</p> <p>17 sold just recently.</p> <p>18 Q So you testified earlier today</p> <p>19 that a relative of Hotel Madrid had a catered</p> <p>20 event by you, by Boi Na Brasa in New York?</p> <p>21 A In New York, yes.</p> <p>22 Q I'm going to direct your attention</p> <p>23 to your deposition from March of this year.</p> <p>24 Do you need a transcript?</p> <p>25 MR. CLARK: I don't have a</p>

89

1 F. SALEH
 2 copy of it.
 3 Q When I asked then whether you had
 4 catered events in New York your answer was no, and
 5 I'm going to give you the opportunity to explain
 6 now why the answer is different. It's on page 34,
 7 line 5 of your deposition.
 8 Reading from his deposition
 9 in March 2008:
 10 "Q. What other activities
 11 have you done in New York, not
 12 necessarily advertising, have
 13 you done any kind of events in
 14 New York, what exactly have
 15 you done in New York, like
 16 catering?
 17 A. The large Brazilian
 18 party that they have on
 19 46th Street in New York.
 20 Q. What did you do there?
 21 A. Gave out flyers and
 22 T-shirts as well.
 23 Q. Since when have you
 24 been doing this?
 25 A. I only did this for

90

1 F. SALEH
 2 two years.
 3 Q. Which years were these?
 4 A. We did it in 2005 or 6,
 5 I think 2005 and 2006.
 6 Q. And you haven't done
 7 it since then?
 8 A. No.
 9 Q. Why not?
 10 A. We just decided to stop it.
 11 It wasn't profitable, it was not
 12 the kind of people -- actually,
 13 because this always happens on
 14 a Sunday which is a busy day for
 15 us here, there is a lot of work
 16 here for us. So I stopped doing
 17 it and I decided instead to just
 18 take care of my restaurant here."
 19 He can go now and explain the
 20 contradictions between the two testimonies.
 21 A Okay. First of all, there's no
 22 contradiction. This 46th Street festival which
 23 is out, and it's going to be out again this year,
 24 this is an opportunity for everyone to see
 25 Brazilian bands. Nobody pays to go there.

91

1 F. SALEH
 2 It's a lot of people, almost one million people.
 3 That time when I said this, I went there to give
 4 out T-shirts and flyers as I said. When I said
 5 that I went to New York, I went to make money on
 6 this catering event, at this party at a house, at
 7 a house in New York. I went there because this
 8 person Linda, her name is Linda, who owned Madrid
 9 Hotel in Wildwood, I had been doing events for
 10 her for three years. She liked Brazil a lot.
 11 She had been to Brazil. So there was a party
 12 with Brazilians and Americans. It was a soccer
 13 game so later when she decided to sell the hotel
 14 and to retire the following year, I received a
 15 call from a member of that family to see if I can
 16 do catering at their house.
 17 Q Yeah, but my question was a little
 18 different. When I asked whether you had done
 19 events like catering in New York before, you
 20 didn't respond; you didn't say that you had done
 21 this event, why is that?
 22 A I might not have remembered
 23 this one.
 24 May I say something?
 25 MS. DUBOWY: Can you read

92

1 F. SALEH
 2 the last question.
 3 (Whereupon, the requested
 4 portion of the record was read back
 5 by the reporter, as above recorded.)
 6 Q Why is that, that's the question
 7 to you.
 8 INTERPRETER: Please let
 9 the reporter repeat.
 10 (Whereupon, the requested
 11 portion of the record was read back
 12 by the reporter, as above recorded.)
 13 A Well, first of all, I don't have
 14 anything to hide. Events, large events that I
 15 held in the Brazilian party --
 16 Q -- that was not my question.
 17 A So what is your question?
 18 MS. DUBOWY: Can you read
 19 the question back to him.
 20 (Whereupon, the requested
 21 portion of the record was read back
 22 by the reporter, as above recorded.)
 23 A I didn't think it was important.
 24 It's the same thing when September 11 happened,
 25 we donated food for people who were assisting

93

1 **F. SALEH**
 2 **there and I don't have to mention that.**
 3 Q Does Terra Sul own
 4 Gullas Corporation?
 5 A **Gullas is one company, Terra Sul**
 6 **is another company and I'm the president for**
 7 **both companies.**
 8 Q But does Gullas Corporation
 9 own Terra Sul Corporation?
 10 A **I said that they are two**
 11 **different companies and that I own both.**
 12 Q Individually, you own the shares?
 13 A **Yes.**
 14 Q Does either of these two
 15 corporations have any other shareholders
 16 besides yourself?
 17 A **My wife but I'm the owner.**
 18 Q So besides you and your wife,
 19 there are no other shareholders?
 20 A **No.**
 21 MS. DUBOWY: No further questions.
 22 REDIRECT EXAMINATION
 23 BY MR. CLARK:
 24 Q Farid, when she asked you about
 25 your previous deposition testimony, her question

94

1 **F. SALEH**
 2 from March was:
 3 "What other activities have you
 4 done in New York, not necessarily advertising,
 5 have you done any kind of events in New York,
 6 what exactly have you done in New York, like
 7 catering?"
 8 Is that correct?
 9 A **Correct.**
 10 **Where is it; okay.**
 11 Q Is that correct?
 12 A **Correct.**
 13 Q What was your answer?
 14 MS. DUBOWY: Are you going
 15 to ask him to read from the transcript?
 16 MR. CLARK: From the transcript.
 17 A **The answer that I gave her for**
 18 **this question that she posed, I mentioned this**
 19 **festival because it's what came to my mind, what**
 20 **I remembered at that time.**
 21 MS. DUBOWY: Objection. I
 22 was under the impression that you
 23 want him to read from the transcript?
 24 MR. CLARK: Right.
 25 Can you read back exactly.

95

1 **F. SALEH**
 2 A **I don't even know what the question**
 3 **is because I can't even read this; where is it?**
 4 **Should I read that in English?**
 5 Q You can translate it back to her
 6 and she can read it in English.
 7 A **She had asked if I had done any**
 8 **catering or advertisements in New York, correct?**
 9 Q Correct. And what was your exact
 10 answer?
 11 A **Yes.**
 12 Q What was your exact answer?
 13 WITNESS: Giving out flyers
 14 and T-shirts as well.
 15 Q The answer before that?
 16 WITNESS: "The large Brazilian party
 17 that they have on 46th Street in New York."
 18 Q After you gave this answer to her,
 19 did she at any time ask you what else did you do
 20 in New York?
 21 A **No.**
 22 Q Did you at any time testify in March
 23 of this year, that that was the only thing you did
 24 in New York?
 25 A **No.**

96

1 **F. SALEH**
 2 Q Farid, do you have accountants?
 3 A **Yes, I do.**
 4 Q Do you have lawyers?
 5 A **Yes.**
 6 Q Do they give you advice on
 7 establishing and opening your business?
 8 A **I don't understand your question.**
 9 Q Do your lawyers or accountants
 10 ever give you advice on establishing or opening
 11 your business?
 12 A **I believe that if I ask them**
 13 **they will give me the information.**
 14 Q Do they give you any advice
 15 on operating your business?
 16 A **No.**
 17 Q Do you follow the advice of
 18 your accountants and lawyers?
 19 A **If I follow their advice?**
 20 Q Do you follow their advice
 21 when they give it?
 22 A **If they provide advice, I follow**
 23 **them.**
 24 Q Are you a lawyer?
 25 A **No.**

97	<p>1 F. SALEH</p> <p>2 Q Are you an accountant?</p> <p>3 A No.</p> <p>4 Q Are you a tax expert?</p> <p>5 A No.</p> <p>6 Q What is the language of</p> <p>7 the corporate documents associated with</p> <p>8 Churrascaria Boi Na Brasa?</p> <p>9 A English.</p> <p>10 Q Is English your primary language?</p> <p>11 A No.</p> <p>12 Q Farid, from April of 1996 to the</p> <p>13 current time, has Churrascaria Boi Na Brasa, the</p> <p>14 restaurant, ever shut down?</p> <p>15 A No.</p> <p>16 Q From 1996 to the current time,</p> <p>17 has Churrascaria Boi Na Brasa ever closed its</p> <p>18 doors to its customers?</p> <p>19 A No, never.</p> <p>20 Q From 1996 to the current time,</p> <p>21 has Churrascaria Boi Na Brasa ever stopped</p> <p>22 doing business to customers in New Jersey?</p> <p>23 MS. DUBOWY: Objection, ambiguous.</p> <p>24 Are you talking about the</p> <p>25 corporation or the restaurant?</p>	99	<p>1 F. SALEH</p> <p>2 MS. DUBOWY: Objection, leading.</p> <p>3 Q Does Churrascaria Boi Na Brasa,</p> <p>4 the restaurant, annually pay taxes?</p> <p>5 A Yes.</p> <p>6 Q Has Churrascaria Boi Na Brasa</p> <p>7 ever stopped paying annual taxes since 1996?</p> <p>8 MS. DUBOWY: Objection, ambiguous.</p> <p>9 Q Since 1996, has Churrascaria</p> <p>10 Boi Na Brasa, the restaurant, ever failed to</p> <p>11 pay its taxes?</p> <p>12 MS. DUBOWY: Objection, ambiguous.</p> <p>13 MR. CLARK: What's ambiguous</p> <p>14 about it?</p> <p>15 MR. EAMON: What's ambiguous</p> <p>16 about it?</p> <p>17 MS. DUBOWY: The restaurant, it's</p> <p>18 the corporation. You can rephrase it.</p> <p>19 Q From 1996 to January 19, 1999,</p> <p>20 did Churrascaria Boi Na Brasa Corp ever fail</p> <p>21 to pay taxes?</p> <p>22 A No.</p> <p>23</p> <p>24 (Continue...)</p> <p>25</p>
98	<p>1 F. SALEH</p> <p>2 Q Has Churrascaria Boi Na Brasa,</p> <p>3 the restaurant, ever stopped doing business to</p> <p>4 customers in New Jersey?</p> <p>5 A No.</p> <p>6 Q Has the State of New Jersey</p> <p>7 ever shut down the restaurant Churrascaria</p> <p>8 Boi Na Brasa?</p> <p>9 A No.</p> <p>10 Q From 1996 to the current time,</p> <p>11 has the State of New Jersey ever demanded that</p> <p>12 you stop doing business?</p> <p>13 A No.</p> <p>14 MS. DUBOWY: Objection, ambiguous.</p> <p>15 Q From 1996 to the current time, has</p> <p>16 the State of New Jersey ever told you, as the</p> <p>17 president of Terra Sul Corporation and earlier,</p> <p>18 the President of Churrascaria Boi Na Brasa Corp,</p> <p>19 that Churrascaria Boi Na Brasa, the restaurant,</p> <p>20 must stop doing business?</p> <p>21 A No.</p> <p>22 Q Farid, did Churrascaria Boi Na Brasa</p> <p>23 Corp begin collecting taxes associated with</p> <p>24 Churrascaria Boi Na Brasa, the restaurant, in</p> <p>25 1996?</p>	100	<p>1 F. SALEH</p> <p>2 Q From January 19, 1999 to the</p> <p>3 present time, has Terra Sul Corp ever failed</p> <p>4 to pay income taxes?</p> <p>5 A No.</p> <p>6 MR. CLARK: I don't have</p> <p>7 any further questions.</p> <p>8 (Whereupon, at 3:18 p.m., the</p> <p>9 deposition was concluded.)</p> <p>10 o0o</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">105</p> <p>1 EXHIBITS</p> <p>2 PLAINTIFF'S EXHIBITS/DESCRIPTION PAGE</p> <p>3</p> <p>4 Ex. 20 - Copy of Certificate of Authority 56 Bates stamp TS001288</p> <p>5</p> <p>6 Ex. 21 - Copy of a four-page letter 60 dated January 11, 2007 from 7 Thompson & Knight, LLP to Farid Saleh regarding 8 Trademark Infringement</p> <p>9 Ex. 22 - Copy of the Village Voice 69 newspaper consisting of 10 seven pages.</p> <p>11 o0o</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 U.S. LEGAL SUPPORT, INC. ONE PENN PLAZA, NEW YORK, N.Y. 10119</p> <p>25</p>	<p style="text-align: right;">107</p> <p>1 CERTIFICATE</p> <p>2 STATE OF NEW YORK)</p> <p>3 COUNTY OF NEW YORK)</p> <p>4</p> <p>5 I, MADELINE RODRIGUEZ, a Shorthand Reporter</p> <p>6 and Notary Public for the State of New York, do</p> <p>7 hereby certify that FARID SALEH, the witness whose</p> <p>8 EXAMINATION BEFORE TRIAL was held on August 7th,</p> <p>9 2008, as hereinbefore set forth, was duly sworn by</p> <p>10 me, and that this transcript of such examination</p> <p>11 is a true and accurate record of the testimony given</p> <p>12 by such witness.</p> <p>13 I further certify that I am not related to</p> <p>14 any of the parties to this action by blood or by</p> <p>15 marriage and that I am in no way interested in</p> <p>16 the outcome of this matter.</p> <p>17 IN WITNESS WHEREOF, I have hereunto set my</p> <p>18 hand this 11th day of August, 2008.</p> <p>19</p> <p>20 _____</p> <p style="text-align: center;">MADELINE RODRIGUEZ</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">106</p> <p>1 U.S. LEGAL SUPPORT, INC. ONE PENN PLAZA, NEW YORK, N.Y. 10119 2 (212)759-6014 (212)759-6155 fax</p> <p>3</p> <p>4 DATE: August 7, 2008 DEPOSITION: Terra Sul Corp vs. Boi Na Brasa, Inc. DEPONENT: Farid Saleh</p> <p>5</p> <p>6 PAGE LINE(S) CHANGE REASON</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14</p> <p>15 _____</p> <p>16 style="text-align: center;">FARID SALEH</p> <p>17</p> <p>18 SUBSCRIBED AND SWORN TO BEFORE ME</p> <p>19 THIS ___ DAY OF _____, 2008.</p> <p>20 _____</p> <p>21 NOTARY PUBLIC</p> <p>22</p> <p>23 MY COMMISSION EXPIRES: _____</p> <p>24</p> <p>25 U.S. LEGAL SUPPORT, INC.</p>	

A			
ability 73:20,21	89:12 94:4	article 40:14,15	aware 65:14,17
able 13:16 74:2	advice 96:6,10,14,17	asked 10:16 15:8	a.m 1:13
accepted 15:9,10	96:19,20,22	19:17 67:20,24 68:2	a/k/a 1:2
account 29:25 30:4,8	afraid 56:2 61:9	81:2,6 82:9 89:3	
30:11 31:4,16,18,19	afternoon 70:15	91:18 93:24 95:7	B
31:20 103:18,21	agent 8:17,19 53:12	101:10	B 3:2 103:1 104:1
accountant 78:4	ago 48:3,6	asking 10:20 12:13	105:1
79:13 97:2	agreement 16:13,16	12:14 19:19 81:10	back 4:7 14:22 32:11
accountants 96:2,9	17:9,17,22,23 18:14	84:18	42:3 51:7 61:22
96:18	18:16,18 19:6 20:24	assist 39:17	71:15 82:19 85:10
accurate 15:12 25:4	23:15 25:5,9 46:24	assisting 92:25	85:12 88:2,3,5 92:4
26:25 29:11 30:23	47:4,7 104:14	associated 39:5 97:7	92:11,19,21 94:25
31:25 33:20 35:7	agreements 18:19	98:23	95:5
37:14 43:7 44:10,15	ahead 11:9 20:6,21	association 17:6	bands 90:25
44:25 47:3 52:21	allow 75:9	21:25 50:23	bank 29:25 30:4,8,11
53:8 57:17 107:11	Alternate 54:10,13	associations 59:11	30:13,22,24 31:3,16
accurately 3:5	104:19	assume 30:6	31:18,24 32:2
acquire 51:20 57:22	alternative 54:3,4,7	assumes 84:4	103:19,22
action 63:25 64:13	54:21 55:14,16,20	assuming 54:24 80:8	Bar 66:18
107:14	ambiguous 5:20 6:9	84:16	bar-b-que 35:25
activities 89:10 94:3	11:8 18:25 33:7	Atlantic 45:25 46:4,7	38:19 39:5
ad 40:18 45:5,6	36:4 44:12 45:10	attached 69:6	basis 72:20 74:24
Adams 5:16 6:13	49:14,17 65:23	attention 86:14 88:22	83:25
14:10 15:6,14,25	69:25 97:23 98:14	attic 20:3	Bates 33:11 41:22,24
16:4,8,10 17:6,10	99:8,12,13,15	attorney 19:9 56:3	69:3 103:5,7,10,12
17:13,18 20:24 21:4	American 103:17	63:21 71:10	103:14,16,17,20,23
21:25 25:16 51:13	Americans 91:12	attorneys 2:3,9,15	104:5,8,10,14 105:4
56:13 103:9	annual 99:7	18:23 19:8,13 58:25	beginning 7:9 46:10
additional 53:22	annually 99:4	64:4,15 71:5,22	60:8
81:21 82:13	answer 4:9 11:10	August 1:12 83:19	behalf 2:3,9,15 55:11
address 3:17 5:8 6:11	28:2 79:13,14 80:11	84:8,13 86:2,9	57:8 79:24 86:24,25
25:14	89:4,6 94:13,17	101:8 102:11 106:3	87:2
adjacent 18:20	95:10,12,15,18	107:8,18	believe 9:13 19:16
admissible 18:7	answered 81:4	authority 57:7,18,23	63:5 96:12
advertise 40:11,16	101:10	73:17 75:7 76:16	best 61:2 65:6,10,20
41:2,13 43:24 44:3	answers 3:8 101:11	79:18,23 80:15,18	65:24
44:7 58:15 63:15	Apartment 3:19	80:21 81:2,14,22	big 45:22,23
70:3,6	APPEAL 1:1	82:14 83:5,7,12,15	bigger 18:21
advertisement 41:6	application 12:21,24	83:21 84:6,14 85:7	bills 36:22,24 37:13
41:10 42:20,24 43:4	13:6	85:16,21,25 86:8	37:15
43:8,15,19 44:16,24	applied 76:19	102:10 103:5 105:4	blood 107:14
44:25	approximately 48:5	Authorization 9:22	BOARD 1:1
advertisements 44:10	April 10:5,11 11:25	57:16	Boi 1:3,6 4:7 5:16 6:2
65:14,17 95:8	32:6 51:10,12 57:25	authorized 9:24	6:8,12,15,18,21,22
advertising 40:20	74:11 75:2 97:12	authorizes 56:25	7:2,7,10,15,18,21
	arrived 5:23	Avenue 2:10,16	8:15,20,21 9:4 10:2

11:6,16,18,19,21 13:21,24 14:7 21:22 22:9,14,16 23:7,10 23:12,22 24:4,18,21 24:24 25:6,13 26:3 26:6,13,18,20,23 27:3,9,10,12,15,19 27:20 28:3,11,13,17 29:6,10,13,20,25 30:4,7,10,24 31:5 31:15 32:3,10,14 33:19 34:4,16 35:12 35:17,20 36:2,6,10 36:14,15,19 37:12 37:18 38:9,12,18,19 38:23,24 39:3,7,9 39:13,18,25 40:2,6 40:20 41:7,9,13 42:21 43:14,18,24 44:3,7,16,24 45:5,7 45:12,15,17,21 46:25 47:4,10,15,18 47:25 48:5,16,19,23 49:8,12,15,19,23 50:17,19,22 51:8,11 51:19,21 54:8 56:11 58:2,16,18,19,23 59:3,3,11,24 62:10 62:11,21 63:9,12,16 65:7,11,15,18,21,25 66:5,12,16,17 67:6 67:9,20,24 68:3,6 68:10,12,16 69:23 70:2,5 72:5,14 73:7 73:25 75:17 76:13 77:21 78:5,15,24 79:4 82:11 87:4,14 87:19,23 88:8,20 97:8,13,17,21 98:2 98:8,18,19,22,24 99:3,6,10,20 103:19 103:22 106:4 bottom 10:12 43:2 bought 5:9 87:3 Boulevard 2:4 box 20:8	brand 64:22,25 Brasa 1:3,6 4:7 5:16 6:2,8,12,15,18,21 6:22 7:2,7,10,15,18 7:21 8:15,20,21 9:4 10:2 11:6,16,18,19 11:21 13:21,24 14:7 21:22 22:9,14,17 23:7,10,12,22 24:4 24:18,21,24 25:6,13 26:3,6,13,18,20,23 27:3,9,10,12,15,19 27:20 28:3,11,13,17 29:6,10,13,20,25 30:4,8,10,24 31:5 31:15 32:3,10,14 33:19 34:4,16 35:12 35:17,20 36:2,6,10 36:14,15,19 37:12 37:18 38:9,12,18,19 38:23,24 39:3,7,9 39:13,18,25 40:2,6 40:20 41:7,9,13 42:21 43:14,18,24 44:3,7,16,24 45:5,7 45:12,15,17,21 46:25 47:4,10,15,18 47:25 48:5,16,19,23 49:8,12,15,19,23 50:17,19,22 51:8,11 51:19,21 54:8 56:11 58:2,16,18,19,23 59:3,3,11,24 62:10 62:11,21 63:9,12,16 65:7,11,15,18,21,25 66:5,12,16,17 67:6 67:9,20,24 68:3,6 68:10,12,16 69:23 70:2,5 72:5,14 73:7 73:25 75:17 76:13 77:21 78:5,15,24 79:4 82:11 87:4,14 87:19,23 88:8,20 97:8,13,17,21 98:2 98:8,18,19,22,24 99:3,6,10,20 103:19 103:22 106:4 bottom 10:12 43:2 bought 5:9 87:3 Boulevard 2:4 box 20:8	Braza 58:18,18,23,23 59:3,3,7,7,11,12,24 59:24 63:12 65:7,7 65:11,11,15,15,18 65:18 67:9,10,14,15 67:17,17,18 Brazil 5:13 15:8 35:25 38:25 39:6 67:16 91:10,11 Brazilian 35:21,22 36:3,6 39:5 41:3,7 41:14,15 42:18 43:9 43:19 44:4,8,11 45:2 47:2 89:17 90:25 92:15 95:16 104:11 Brazilians 91:12 break 78:22 brief 34:10 64:9 70:11 brought 63:21 bunch 75:17 bureaucratic 81:21 burning 38:21 business 5:15,19,22 5:24 8:21 9:3 11:7 11:24 13:15 23:22 24:4,22 26:20 28:11 35:17 38:9 40:2 45:8 48:20 55:25 59:11 60:4 63:9,12 74:22 75:3,18 76:12 80:4,5,10,15,25 81:15,15 82:4,5,6 82:10 87:4 96:7,11 96:15 97:22 98:3,12 98:20 103:18,21 businesses 6:5 busy 90:14 butcher 39:2 buy 12:22,24 13:6 16:11 buyer 15:17 buying 87:4,12 Buzack 2:21	C C 2:1 3:2 101:1 107:1 107:1 call 38:20 51:3 91:15 called 3:3,25 11:21 19:16 39:3 58:23 calls 79:25 cancel 64:24 cancellation 1:5 64:17,21 canopy 51:4 care 90:18 cars 40:9 case 18:24 19:8,9 Casino 46:12,25 cater 45:18 47:25 catered 47:15,19 48:5 68:6 88:8,19 89:4 catering 45:21,23,25 46:6,11 47:2,11 48:8,10 89:16 91:6 91:16,19 94:7 95:8 certificate 8:9,11,14 8:17 9:25 10:4,6,8 52:22 53:9,13 57:18 77:4 79:18,23 80:14 80:17,20,25 81:14 81:22 82:14 83:5,7 83:12,14,21 84:6 85:7,16,21,25 86:8 102:10 103:4,5 104:17 105:4 Certification 104:19 certified 57:7 certify 101:6 107:7 107:13 CHANGE 106:6 changed 27:21 50:20 check 16:9 21:2,5,17 21:19,24 22:2,5 37:13,15,17,19,21 38:3,5,8 103:9 104:9 checking 31:19,20 103:18,21 checks 21:3
---	--	--	--

Churrascaria 1:3 6:7 6:11,15,18,21,22 7:2,7,10,14,17,20 8:15,20,21 9:3 10:2 11:6,16,19,21 13:21 13:23 14:7 21:22 22:8,14,16 23:7,10 23:12,22 24:4,17,21 24:24 25:5,13 26:2 26:6,13,18,19,22 27:2,9,10,12,15,19 27:19 28:2,10,13,16 29:6,10,12,20,24 30:3,7,10,24 31:5 31:15 32:2,10,14 33:19 34:4,16 35:12 35:16,20 36:2,5,10 36:14,15,19 37:12 37:18 38:9,12,18,22 39:9,13,18,25 40:5 40:20 41:7,9,13 42:21 43:14,18,23 44:2,6,16,24 45:4,7 45:11,14,17,20 46:25 47:4,10,14,18 47:24 48:4,16,19,23 49:8,12,15,19,23 50:17,19,22 51:8,11 51:19,21 54:8 56:11 58:2,16 63:8,11,16 68:6,12,16 69:23 70:2,5 72:5,12,14 73:7,20,25 75:16 76:13 77:20 78:5,14 78:24 79:4 82:11 97:8,13,17,21 98:2 98:7,18,19,22,24 99:3,6,9,20 103:19 103:22 churrascarian 36:3,7 Churrascarias 11:13 circulate 40:24 City 45:25 46:4,7 claim 19:6 clarify 11:20 Clark 2:6 3:14 7:23	9:2,6,10,13 10:16 10:20 11:9 12:2,14 12:18 14:12,19 16:18 18:4,8 19:5 19:17,23 20:6,10,13 21:7 22:20 24:2,6 25:19 28:19 30:14 31:8 32:19 34:5 37:2 41:16 42:9 43:22 46:14 49:2 52:4 53:4,15 56:15 60:10 61:21,25 68:18,21 69:2 70:8 72:19,21 73:13,16 74:23,25 75:6,12 79:25 80:8 81:24 82:2,5,7 83:22 84:3 84:12,22 85:2,8 88:25 93:23 94:16 94:24 99:13 100:6 102:5,7 client 87:15 client's 84:23 close 55:25 60:4 closed 97:17 coal 38:21 collect 9:22,25 56:22 56:25 57:3,4,8,19 57:23 73:12,21 74:2 76:17 79:19,23 80:19 collecting 10:4 98:23 Colonial 103:11,13 column 10:24 74:13 come 67:16 commencing 1:13 Commercial 103:11 103:13 COMMISSION 106:23 community 69:17,20 community's 42:18 companies 11:12 79:11 87:23,24 93:7 93:11 company 17:5 32:13	38:6 39:16 55:24 56:5 74:20 77:25 79:19 81:20 82:13 83:12,19 85:16,17 86:25,25 87:3,24 93:5,6 103:11,13,17 Compensation 76:4 complete 18:7 20:18 47:11 61:3 101:9 complies 33:12 35:2 comply 71:11 81:21 concluded 100:9 conclusion 80:2 84:10 conduct 75:10 CONFIDENTIAL 103:20,23 104:5,8 confused 19:20 connected 71:23 Connecticut 47:23 70:6 connection 59:2,7 70:24 71:21 considered 68:9 consisting 31:11 37:5 104:15 105:9 contact 78:3 contacted 61:10 64:14 65:2 Continue 99:24 continued 48:12 79:6 contract 17:4 contractor 18:17 contradiction 90:22 contradictions 90:20 control 36:18 copy 18:24 19:7,11 20:19 61:3 89:2 103:4,5,9 104:11,17 104:18 105:4,5,8 Corp 6:10,14,17,22 6:23 7:2,7,11,15,18 7:21 8:15,20,22 9:4 10:2 21:23 22:14,17 27:10,19 28:3,8 29:21,25 30:4,8,11	30:25 31:5,15 32:3 32:10,14 33:19 34:4 34:16 35:12 36:15 37:13,18 51:16,17 51:20 52:2,16,22 53:10,13,23 54:5,14 54:21 55:6,9 56:9 56:21,25 57:7,19,22 59:6 66:17 67:2,2 72:5,5,14 73:7 75:17 77:13,21 78:6 78:15,24 79:3,4 82:21 83:6 98:18,23 99:20 100:3 103:19 103:22 106:4 corporate 71:3 97:7 corporation 1:2 8:13 27:21 28:4,6 51:18 51:24 66:21,22 72:18,24 73:4,6,21 73:25 76:13 77:8,9 77:11,15,18,19,22 79:2 82:24,25 83:15 83:19,20 84:7,8 85:6,17,22,25 86:9 87:18,18 93:4,8,9 97:25 98:17 99:18 102:11 104:17 corporations 93:15 correct 46:3 56:6 62:7,14,19,25 67:11 68:7 72:6,7,14,15 72:25 73:2,5,8,10 73:22 74:2,3 75:22 82:14 94:8,9,11,12 95:8,9 101:9,12 correctly 39:16 counsel 14:14 20:16 68:22 counsels 20:14 count 4:18 COUNTY 101:4 107:3 courtroom 4:13 5:2 cover 42:17 coverage 24:25
---	---	--	---

<p>create 49:9,13,16 created 28:4 38:22 39:14,22 49:21,22 72:4 creating 39:18 creation 72:18,22 Credit 104:7 Cross 70:13 102:6 cross-examination 75:10 current 3:17 5:8,14 48:20 97:13,16,20 98:10,15 currently 6:4 66:5,12 87:19 customer 67:19,23 68:2 customers 40:5 68:13 97:18,22 98:4</p> <hr/> <p style="text-align: center;">D</p> <p>D 3:2,9 101:1 102:1 date 8:3,11 9:17 10:3 10:13,25 11:3 12:8 16:22 21:12 22:25 24:11 25:25 28:24 30:19 31:6,13 32:5 32:24 34:10 37:7,19 41:21 43:3 46:8,19 47:7,9 49:7 52:9 53:20 54:16 55:3 56:20 60:15,24 69:11 74:8,10,13,16 74:25 75:4 83:9 106:3 dated 86:18 103:9 104:9 105:6 dates 79:8 DAVID 2:6 day 13:4 14:11 21:3 25:18 50:18,25 51:15 54:20 58:14 63:23 68:22 90:14 101:18 106:19 107:18 days 40:7</p>	<p>day-to-day 36:18 Delark@patterson... 2:7 deal 87:7 decide 13:8 39:8,12 decided 14:23 90:10 90:17 91:13 demanded 98:11 DEPONENT 106:4 deposed 4:16 84:20 deposition 1:10 4:19 4:22,23 70:12 88:23 89:7,8 93:25 100:9 101:8,11 106:4 design 49:9,13 51:6 62:12 designed 13:24 designer 39:22 different 24:17 48:24 53:2 82:15 89:6 91:18 93:11 difficult 7:9 40:8 direct 3:13 86:13 88:22 102:5 discovery 69:4 discussion 14:4,21 20:12,14 53:6 62:3 dish 35:25 dishes 35:24 displays 79:18 dissolve 77:17,20,25 78:5,24 79:4 dissolved 78:14,18 79:6 document 7:25 8:5,7 8:10 9:9,14,15,18 9:21 10:14,21,23 12:6,10,15,20 14:8 15:16,20,22 16:20 16:23,25 17:3,4 18:2 19:16,18,22,24 21:10,14,16 22:23 23:3,5 24:9,13,15 25:3,23 26:8,9,12 28:22 29:3,5 30:17 30:21 31:4,6,10,21</p>	<p>31:22,25 32:5,22 33:2,4,14 34:8,17 34:22 37:4,9,11,14 37:24 41:19 42:2,5 42:11,11,16 43:11 44:14,23 46:17,21 46:23 47:8 49:5 50:11,15 52:7,10,12 52:14 53:7,18 56:18 56:24 57:12,14,17 60:13,18,20,24 62:8 69:9,13,18 72:16,17 72:22 73:3,12,16,19 74:13,17 75:6,14 76:25 77:3,6,7,12 82:20,23 86:12 documentation 13:14 13:20 20:3 documents 14:16 20:22 42:8 53:2,22 53:25 55:10,13 70:19,22 71:2,3,6,8 71:12,20,23 85:18 86:7 87:21 97:7 102:10 doing 48:12,19 53:3 64:3,15,19 76:12 89:24 90:16 91:9 97:22 98:3,12,20 domain 58:5,8,11 donated 92:25 doors 97:18 drafted 22:2 64:2 draw 50:4,6 drawing 49:25 50:5 50:16 104:16 dream 13:11 Dubowy 2:18 5:20 6:9 7:12 8:23 9:8,11 10:15,18,22 11:8,11 12:11,16,25 13:22 14:2,14 17:14,25 18:6,11,25 19:15,21 23:23 24:20 26:17 33:7 36:4 37:25 41:8 42:7,10 43:17</p>	<p>43:21 44:5,12 45:10 47:16 49:14,17 52:24 54:23 61:19 61:23 63:5 64:7,18 65:23 66:20 68:20 68:24 69:7,25 70:14 72:20 73:15 74:24 75:4,9 78:20 80:3 80:11 81:8,25 82:4 82:6,8 83:23 84:5 84:17,24 85:10 86:6 88:3 91:25 92:18 93:21 94:14,21 97:23 98:14 99:2,8 99:12,17 102:6 duly 3:4,10 107:9</p> <hr/> <p style="text-align: center;">E</p> <p>E 2:1,1 3:9 101:1,1 102:1 103:1 104:1 105:1 107:1,1 Eamon 2:12 63:22 99:15 earlier 41:23 68:5 72:3 73:11 78:23 85:4,14 87:13,25 88:7,18 98:17 Earned 104:7 effective 10:3 74:8,25 83:9 eight 5:9 Eighteen 5:6 either 19:12,25 42:21 43:15 93:14 electric 36:24 37:15 ember 67:8,14 embers 38:20 employ 75:25 employee 13:13 33:13,16 35:13 employees 76:4 employer 33:15,18 34:15 35:10 employment 5:15 English 3:7,8 38:18 61:20 67:7,10 95:4</p>
---	--	---	---

<p>95:6 97:9,10 enter 46:15 entered 16:24 20:23 entities 47:19 entity 9:24 Equity 103:17 ESQ 2:6,12,18 establish 12:17 44:13 47:17 established 84:5 establishing 96:7,10 establishment 15:3 estate 12:22,24 13:6 14:9 15:13,25 16:4 16:8 87:6 103:6 event 45:23,25 46:6 46:11 47:6,11,25 48:8 88:8,13,20 91:6,21 events 47:15 89:4,13 91:9,19 92:14,14 94:5 eventually 72:13 evidence 54:24 56:4 84:4,16 Ewall@pattersons... 2:13 Ex 103:4,5,6,8,9,11 103:13,15,17,18,21 104:4,6,9,11,13,15 104:17,18 105:4,5,8 exact 46:8 79:7 95:9 95:12 exactly 30:12 89:14 94:6,25 examination 3:13 70:13 93:22 102:5,6 102:7 107:8,10 examined 3:11 exclusively 47:21 excusing 4:6 exhibit 7:24 8:2 9:7 9:16,19 12:4,7 14:13,17,22 15:12 15:20 16:19,21,24 17:20 20:15,17,21</p>	<p>21:8,11 22:21,24 24:7,10 25:4,21,24 26:9 28:20,23 29:2 30:15,18 31:9,12,22 32:20,23 34:6,9,20 37:3,6 41:17,20 44:9 46:15,18 49:3 49:6 50:10,11 52:5 52:8 53:7,16,19 56:16,19 57:11 60:11,14 68:19 69:10 72:17 73:9 76:23 82:19 83:4 85:15 86:13,14 EXHIBITS/DESC... 103:2 104:2 105:2 existed 62:17 expenses 37:13 expert 97:4 EXPIRES 106:23 explain 27:16 77:2 89:5 90:19 extensive 88:4 e-mail 2:7,13,18 69:5</p> <hr/> <p style="text-align: center;">F</p> <p>F 3:1,9 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1</p>	<p>83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 107:1 facts 54:24 84:4,16 fail 99:20 failed 47:17 99:10 100:3 fair 74:19 85:2 faithfully 3:6 family 48:12 56:8 76:9 88:15 91:15 Farid 1:10 3:16,22 4:11,15 5:4,14 7:20 8:4,18,19 9:18 12:9 13:8,18 14:23 15:11 15:24 16:3 20:23 21:13,22 22:10 23:2 24:12 26:2 28:25 29:24 30:20 31:14 32:7,16,25 33:17,24 34:12 35:15 36:16 37:8 41:25 46:20 49:8 53:14,21 55:7 56:21 58:9 60:17 64:11 65:6 66:3 69:12 70:15,16,17 70:18 87:14 93:24 96:2 97:12 98:22 101:6,15 102:4 104:4,7 105:7 106:4 106:16 107:7 father 39:4 Fausto 56:3 fax 2:6,12,17 106:2 February 15:23 55:18,19 feel 61:12 female 48:8 festival 90:22 94:19 Fiber 32:13 fifth 27:24 file 53:22 54:9,12,21 55:9,16,20 82:12 filed 8:11 35:8 52:13</p>	<p>52:18 54:2 55:2 83:2 Filing 104:19 fill 12:22,23 13:5 Financial 103:15 find 63:23 fine 24:2 83:23 finish 81:9 finished 70:19 first 11:7 13:8 14:5 14:25 17:21 22:18 23:11 32:12 40:19 42:12,15,22 45:21 50:16,23 58:22 59:23 61:17 62:4,6 65:4,21,25 75:16 77:17 83:14 85:5,15 85:20 90:21 92:13 five 17:8 18:18 five-page 41:18 104:11 flyers 40:9,23 89:21 91:4 95:13 follow 63:7 96:17,19 96:20,22 following 91:14 follows 3:12 follow-up 18:5,9 food 35:21,23 47:2 69:20 75:22 80:21 92:25 form 72:19 74:23 81:24 83:22,24 84:3 formally 39:12 formed 72:13 forth 107:9 found 15:5 58:19 62:17 foundation 12:13,17 13:2 14:15,17 26:17 43:17 47:17 four-page 60:12 103:18 105:5 friend 49:24 72:4 friends 39:20 front 8:8 9:19 10:24</p>
--	--	--	--

<p>17:20 25:3 34:17 47:9 51:3 full 3:15 61:3 fully 80:9 further 70:9 93:21 100:7 107:13 future 20:22</p>	<p style="text-align: center;">H</p> <p>H 3:9 103:1 104:1 105:1 hand 107:18 happened 92:24 happens 18:12 90:13 Harmless 104:13 heard 38:24 58:22 held 1:13 14:4,21 20:12 34:11 53:6 62:3 92:15 107:8 hereinbefore 107:9 hereunto 107:17 hide 92:14 Hold 104:13 home 51:7 hometown 39:2 hoops 81:21 hotel 48:9,11 88:9,10 88:16,19 91:9,13 house 5:9 20:3 39:2 91:6,7,16 Houston 2:5 hundred 40:25 78:3</p>	<p>100:4 104:4,6,7 incorporated 7:11,15 7:18,21 8:14 72:23 74:20 77:21 78:25 83:18 84:9 Incorporation 8:9 52:22 53:9 77:5 103:4 104:17 Indemnity 104:14 indicates 72:22 individual 87:2 104:6 Individually 93:12 inform 40:4 information 69:19 96:13 102:9 Infringement 105:7 initially 20:15 installments 87:8 insurance 22:11,13 22:17,18 23:6,9,11 23:15 24:16,25 25:5 25:9 26:3,5,14,16 26:23 27:2,6,23 28:14,16 29:7,12,16 103:11,13,15,17 insured 23:8 25:11 25:15 26:15 29:8 interest 87:9 interested 107:15 internet 58:13 interpreter 2:21 3:3 3:12 38:15 46:2,2 66:23 71:13 92:8 interpreter's 66:24 interrupt 84:25 introduce 7:24 9:6 12:3 14:13 16:19 21:8 22:21 24:7 25:20 28:20 30:15 31:9 32:20 34:6 37:3 41:17 49:3 52:5 53:16 56:15 60:11 68:19 introduced 20:15 invoices 36:22 involved 6:4 9:4</p>	<p>IRENE 2:18 Irene.dubowy@tkl... 2:18 issued 10:6,9,10,13 10:25 11:3 74:13 75:5,7,8 83:12 84:7 84:13,14 85:16,25</p>
<p style="text-align: center;">G</p> <p>G 101:1 game 91:13 gather 56:4 gathered 20:7 General 103:11,13 gentleman 13:5 15:6 Georgia 59:21 68:3 getting 13:19 81:22 give 71:5,10,20 73:17 79:7,12 89:5 91:3 96:6,10,13,14,21 given 3:8 18:23 19:7 19:11 68:21 101:12 107:11 gives 73:24 Giving 95:13 go 11:9 14:22 20:6 32:11 42:3 82:19 88:2 90:19,25 godfather 39:20 going 10:19 12:17 14:12,15 20:17,20 28:2 53:15 56:5 61:20 79:8,9 86:11 86:13 88:22 89:5 90:23 94:14 good 3:22,23 23:16 70:15 goodness 13:16 Grill 66:18 group 39:23 guessing 79:9 guidance 61:11 Gullas 66:17 67:2 87:17 93:4,5,8 guy 50:3</p>	<p style="text-align: center;">I</p> <p>ID 76:10,11,14 idea 39:11,23 identification 8:3 9:17 12:7 16:22 21:11 22:24 24:10 25:24 28:23 30:18 31:13 32:23 34:9 37:7 41:20 46:18 49:6 52:8 53:19 56:19 60:14 69:10 identified 26:8 33:11 48:23 52:20 53:8 identifies 49:18 identify 66:6,13 67:3 immediately 65:3 important 56:7 92:23 impression 94:22 include 36:24 income 32:17 33:24 34:13,23 35:8 79:11</p>	<p style="text-align: center;">J</p> <p>J 2:12 January 52:19 54:15 55:23 58:21 60:9,25 61:5 62:18 64:12 69:6 77:16 83:3,18 84:9 99:19 100:2 105:6 Jersey 1:12 2:11 3:20 5:5,11 6:13 7:19,21 9:23 25:17 38:7 47:21,22 48:10,20 51:14 52:3 53:23 54:2,10,13,22 55:10 55:17,21 56:14,22 57:2,6,9,15,20,24 65:8,15 66:7,14 67:4 73:24 79:24 88:11 97:22 98:4,6 98:11,16 103:19,22 judge 4:13 July 62:11,13 63:8,12 63:17 June 11:4 29:17,17 29:18,19 37:20 47:9 47:12 74:20 75:5,7 104:10 jury 4:13</p>	<p style="text-align: center;">K</p> <p>K 3:2 101:1 keep 84:20 kid 38:25 kind 22:13 26:5 35:19 71:2 89:13 90:12 94:5 knew 15:4 Knight 2:15 61:4</p>

<p>105:6 know 7:20 10:18 38:16,20 51:3 54:25 62:16 64:4,5 69:20 76:2,24 77:23,23,24 78:17 79:8,14 80:3 80:12 86:3 95:2 knowledge 65:7,10 65:20,24 knows 80:6,9 Komorn 3:19</p> <hr/> <p style="text-align: center;">L</p> <p>L 2:6 3:2,9 101:1 label 33:11 language 97:6,10 large 89:17 92:14 95:16 latest 19:25 law 1:11 80:9 lawyer 60:23 61:10 96:24 lawyers 55:23 60:2,7 65:3 96:4,9,18 lay 12:12 14:15,16 leading 8:24 10:15 13:22 17:14 41:8 43:21 44:5 64:18 99:2 learn 59:23 lease 16:16 17:7,9,12 17:17,22,23 18:13 18:16,24 19:3,6,8 19:12 20:24 legal 2:25 63:25 64:13 80:2 84:21 101:25 102:24 103:25 104:24 105:24 106:1,25 legally 82:16 letter 4:8 55:22,23 58:21,24 59:25 60:2 60:7,16,21 61:3,4,8 61:13,18 63:19 64:2 64:12 65:4 68:23 105:5</p>	<p>let's 78:22 82:19 88:2 liability 22:15,17 26:7 28:18 103:11 103:13 license 75:21,24 76:3 76:20 licenses 75:18 life 38:14 life's 61:15 liked 91:10 Linda 91:8,8 line 89:7 LINE(S) 106:6 literally 46:3 little 38:25 50:3 91:17 live 5:12 lived 5:4,7,11 lives 88:14 LLP 2:3,9,15 105:6 local 40:11 41:10 located 14:9 15:6,25 16:10 17:18 51:12 56:12 66:6,13 67:3 88:10 location 25:17 48:20 logo 13:25 39:15,22 49:9,13,16,18,20,22 50:4,6,17,17,20,23 51:6 104:16 long 5:4,7,18,21,25 6:14 58:10 look 10:12,21 20:2,4 looks 50:3 lot 15:4 40:8 67:17 90:15 91:2,10</p> <hr/> <p style="text-align: center;">M</p> <p>M 101:1 MADLINE 107:5 107:20 Madrid 48:9 88:9,10 88:16,19 91:8 Mahal 46:12,13,25 47:5,11 main 35:25</p>	<p>mall 17:5 March 4:20,22 8:12 31:7 70:23 74:20 78:6,15 86:18 88:23 89:9 94:2 95:22 Marisveny 39:21 mark 62:10,12 87:19 87:23,23 marked 8:2 9:16,19 12:6 15:11,20 16:21 21:10 22:23 24:9 25:23 28:22 30:17 31:11 32:22 34:8,25 37:5 41:19 46:17 49:5 52:7 53:18 56:18 60:13 69:9 72:16 103:20,23 104:5,8 marketing 69:24 marriage 107:15 material 69:19 matter 3:4 107:16 mean 35:22 38:13,18 67:7,10 meaning 38:16 means 38:19 meeting 70:23 71:9 member 91:15 mention 93:2 mentioned 88:14 94:18 menu 51:2 met 88:15 Midlantic 30:13 million 91:2 mind 39:3 53:3 94:19 minutes 64:8 mischaracterizes 73:14 85:9 mistake 66:24 model 50:2 moment 20:18 money 13:13 40:8,17 91:5 Monteiro 1:11 month 27:24 86:4,4</p>	<p>monthly 22:6,7 87:8 morning 3:22,23 mouth 40:10 84:23 moved 48:13 Mubarak 104:4 multiple-page 25:22 32:21 multi-page 22:22 30:16 multi-paged 12:5 28:21 34:7</p> <hr/> <p style="text-align: center;">N</p> <p>N 2:1 101:1,1 102:1 name 3:15 4:6,6,8 8:13,18 13:23 38:16 38:17,22,24 39:6,7 39:8,13,18 40:2 48:24 51:7 54:4,7 54:10,13,22 55:14 55:17,20,25 58:5,8 58:11 64:22,25 91:8 104:19 named 23:8 25:11,15 26:15 29:8 32:13 necessarily 89:12 94:4 need 73:11 80:14,17 80:25 81:13,20 82:13,15 88:24 needed 14:25 75:17 75:21,24 76:16 neighborhood 40:10 never 86:5 97:19 New 1:12 2:11,16,16 3:5,11,20 5:5,11 6:13 7:19,21 9:23 25:17 38:7 47:21,22 47:23,25 48:5,10,13 48:13,20 51:14 52:3 53:23 54:2,10,13,22 55:10,17,21 56:14 56:22 57:2,6,9,15 57:20,24 65:8,12,15 65:18 66:7,14 67:4 68:6,10,13,15 69:17</p>
---	---	--	--

69:24 70:3 73:24 79:24 88:9,11,14,20 88:21 89:4,11,14,15 89:19 91:5,7,19 94:4,5,6 95:8,17,20 95:24 97:22 98:4,6 98:11,16 101:3,4 102:25 103:19,22 104:25 105:25 106:1 107:2,3,6 Newark 1:12 3:20 5:17 6:13 15:3,4 17:6,10,19 20:24 21:4,25 25:16 51:14 56:14 103:9 news 65:2 newspaper 40:16 42:19 69:16 104:12 105:9 newspapers 40:12,21 40:24 41:5,10,12 42:8 43:24 44:6 Notary 1:14 3:4,10 101:20 106:21 107:6 note 86:16,24 87:5 Notice 1:13 November 45:6 number 7:24 8:2 9:7 9:16 12:4,7 14:13 14:18,23 16:19,21 16:24 17:13,19 18:22,22 20:15,21 21:8,11 22:21,24 24:7,10 25:4,21,24 26:9 28:20,23 29:2 30:15,18 31:9,12,22 32:20,23 34:6,9,20 37:3,6 41:17,20,23 41:24 46:18 49:3,6 51:13 52:5,8 53:16 53:19 56:13,16,19 57:12 60:11,14 68:19 69:3,10 72:17 73:10,24 74:5 76:10 76:11,14 83:6 86:13	N.Y 102:25 104:25 105:25 106:1 <hr/> O <hr/> O 101:1 Oak 2:4 oath 101:7 object 75:13 83:24 objection 5:20 6:9 7:12 8:23 10:15 11:8 12:11,25 13:22 17:14,25 18:25 23:23 24:20 26:17 33:7 36:4 37:25 41:8 42:7 43:17,21 44:5,12 45:10 47:16 49:14,17 54:23 64:18 65:23 69:25 72:19 73:13 74:23 79:25 81:24 83:22 84:3 85:3,8 94:21 97:23 98:14 99:2,8 99:12 obligations 71:11 obtain 75:17,21,24 October 25:10,10 offer 15:9,13 52:25 103:6 OFFICE 1:1 Offices 1:11 official 3:3 officially 7:11 off-the-record 14:3 14:20 20:11 53:5 62:2 Oh 61:23 Ohio 59:18 67:24 okay 4:15 9:11 10:22 12:16 18:11,17 20:10 27:18 72:3 79:16 81:11,12 90:21 94:10 old 15:7 Once 39:4 one-page 24:8 46:16 52:6 56:17	open 11:7,24 13:9,17 14:23 23:22 24:4,22 26:20 28:11 30:4 35:17 38:9 40:6 45:8,12,13 50:25 51:9 63:9,12 opened 14:6 30:5 32:14 39:24 40:14 40:17 51:12,18 65:8 65:11 opening 68:9 78:2 96:7,10 operate 22:19 59:14 59:17,20 82:16 operated 36:9,13 operating 45:15 96:15 operations 36:19 45:13 opinion 62:21 71:7 opportunity 45:24 89:5 90:24 order 71:9 73:25 75:18,25 80:6,15,24 81:14 82:10,16 ordered 81:16 original 6:17,20 outcome 107:16 owed 87:6 owned 6:15 27:19 58:10 91:8 owner 6:7,18,20 22:10 27:9,12,15 28:3,5,7 29:19 31:3 64:4 80:4,10 87:11 88:9,16 93:17 ownership 51:21 owns 17:5 51:19 58:8 66:17 ox 38:19 o'clock 70:20 oOo 100:10 101:22 102:13 105:11 <hr/> P <hr/> P 2:1,1	page 33:11 34:25 35:5 42:17,25 52:20 86:14 89:6 102:5,6 102:7,9 103:2 104:2 105:2 106:6 pages 17:21 31:11 37:5 42:12,15,22 43:11,16 44:9,14,18 44:23 104:15 105:9 paid 16:9 40:15 86:4 paper 84:12 papers 20:7 82:16 paragraph 61:18 62:5,6 part 4:23 84:15 88:15 parties 107:14 party 89:18 91:6,11 92:15 95:16 PATENT 1:1 PATTERSON 2:3,9 Paulo 39:21 72:4 76:8 pay 16:8 20:25 21:2,3 21:4,18 32:16 33:24 34:12 36:22 37:13 37:15 57:3 78:19 81:17 87:8,10 99:4 99:11,21 100:4 payee 21:24 paying 79:7,11 86:5 99:7 Payment 22:6 payments 16:5 payor 21:19 37:17 pays 90:25 PENN 102:25 104:25 105:25 106:1 people 15:4 40:4 47:19 64:2 75:25 90:12 91:2,2 92:25 percent 40:25 78:3 period 23:14 24:19 25:8 27:5,23 29:15 permission 87:22 permits 82:13 person 88:13 91:8
--	--	---	---

<p>personal 59:2 personally 55:9 59:10 perspective 15:17 petitioner 1:4 2:3,9 20:16 Photocopy 104:9 pictures 51:7 place 5:15 15:2,2 43:15,19 45:5 placed 28:25 31:21 43:8 44:11,16 57:11 Plaintiff's 8:2 9:16 12:6 16:21 21:10 22:23 24:9 25:23 28:22 30:17 31:12 32:22 34:8 37:6 41:19 46:17 49:5 52:7 53:18 56:18 60:13 69:9 103:2 104:2 105:2 PLAZA 102:25 104:25 105:25 106:1 please 12:12 19:4,15 27:17 33:10 34:24 44:21 49:10 54:16 54:18 61:16 63:2 66:9 75:9 82:7 83:25 84:20,22 92:8 PNC 30:13 103:19,22 point 78:25 79:6,10 policy 22:13 23:6,9 23:12,14,16,17 25:8 25:12 26:3,5,16,23 27:2,5,6,23,23 29:9 29:12,15,16 Polk 1:12 portion 71:15 85:12 88:4 92:4,11,21 Portuguese 2:21 3:7 3:8 posed 94:18 possession 18:14 possible 19:23 79:15 possibly 75:8</p>	<p>Post 2:4 prepare 71:9 presence 69:24 present 2:20 48:15,18 48:22 100:3 presently 56:10 president 6:24 7:5,8 27:20,21 28:5 29:22 36:16,18 54:20 55:5 55:8 66:18 93:6 98:17,18 Press 41:3,7,14 42:18 43:9,19 44:4,8,11 45:2 104:11 previous 85:9 93:25 previously 75:15 price 15:9 primary 97:10 priority 81:10 probably 27:25 problem 55:3 63:24 proceeding 64:17 70:24 71:21 proceedings 71:24 produce 9:12 71:11 produced 9:9,14 41:23 68:20,25 69:2 69:4 product 81:18 profitable 90:11 Promissory 86:16 87:5 property 16:5,10 17:12,16 propounded 3:6 provide 96:22 102:10 provided 20:9 71:24 Prudential 103:15 PSE&G 38:6 104:10 public 1:14 3:4,10 48:24 101:20 106:21 107:6 publication 68:15 published 69:16 purchase 15:13 87:5 87:6 103:6</p>	<p>purchased 16:3,7 purchasing 15:24 purpose 22:4 pursuant 1:13 put 13:14 20:9 39:7 40:9 41:6,10 50:10 51:4 84:23 putting 13:19 P.C 1:11 p.m 70:10,11 100:8</p> <hr/> <p style="text-align: center;">Q</p> <p>question 7:13 10:7,17 11:10,14 16:6 18:5 18:9 20:5 23:24 27:13 44:21 54:18 57:5 66:8 71:17,18 71:19 78:18,21 79:2 80:12,13 81:7 82:9 83:23 84:18,18 85:10 88:3,12 91:17 92:2,6,16,17,19 93:25 94:18 95:2 96:8 questions 3:6 70:9 81:9,11 84:21 93:21 100:7</p> <hr/> <p style="text-align: center;">R</p> <p>R 2:1,18 3:9 107:1 reaction 61:7 read 61:16,20,21,24 71:15 74:4 83:6,9 83:11 85:10,12 88:3 88:5 91:25 92:4,11 92:18,21 94:15,23 94:25 95:3,4,6 101:6 reading 75:13 89:8 real 12:22,24 13:6 14:9 15:13,25 16:4 16:7 87:6 103:6 really 48:7 58:12 84:25 reason 4:3 78:17 106:6</p>	<p>reasons 4:4 recall 76:3,19 receive 60:6 received 4:7 55:22,23 58:24 59:25 61:4,8 61:13 63:19 64:11 79:22 83:15 85:6,20 86:7 91:14 102:11 receiving 65:4 recess 34:10 64:8,9 70:11 recitation 62:7,14,19 62:25 recollection 61:2 85:19 recommended 70:12 record 3:15,18,21 14:2,19 20:10 46:3 61:17,25 71:15 84:11 85:3,12 88:5 92:4,11,21 101:9,11 103:8 107:11 recorded 71:16 85:13 88:6 92:5,12,22 recycling 32:12 Redirect 93:22 102:7 referred 63:22 referring 4:19 11:15 51:5 64:16 reflected 31:4 33:13 35:10,13 reflecting 102:10 reflection 15:12 25:4 26:25 29:11 30:23 32:2 33:20 35:7 37:15 43:7 44:10,25 47:3 52:21 53:9 57:18 73:18 reflects 73:3,19 refresh 85:19 regarding 53:23 104:17 105:7 register 77:7,9,14 registered 8:16,19 39:15 51:23 52:2 53:12 56:6 72:24</p>
---	--	---	---

<p>79:3 registration 52:15,17 54:3,9,12,21 55:15 55:17,20 73:4,23 74:5 81:20 82:12,20 82:24 83:6 104:18 related 107:13 relative 48:9 88:8,19 remember 46:8 48:4 76:6,21 79:5 83:2 85:24 86:3 remembered 91:22 94:20 remove 4:8 55:25 renewable 17:7 renewals 19:3 renewed 18:19 rent 16:11,14 20:25 21:18 22:6,7 rented 16:12 repeat 7:13 10:7 16:6 23:24 27:13 36:11 44:20 49:10 54:16 54:17 63:2,4,6 66:8 71:13 92:9 rephrase 8:25 19:4 43:22 77:19 99:18 reporter 1:14 71:16 85:13 88:6 92:5,9 92:12,22 107:5 representation 44:15 representing 55:24 requested 71:14 85:11 92:3,10,20 102:9 requesting 64:21 76:3 required 82:2 reside 68:13 respond 84:2 91:20 responded 78:21 81:3 Respondent 1:7 2:15 responsibility 36:21 restaurant 4:5,5,6,9 5:22,24 9:5 11:21</p>	<p>11:23 13:4,7,9,18 14:5,24 15:5 22:8 22:10 23:7 24:17 26:14 30:5 35:19 36:3,7 39:6,9 40:2,5 40:14,17 45:15 49:9 49:13,16,19 50:24 51:4 56:7,12 58:23 59:3,7,12,24 63:11 63:16 64:5 65:8,12 66:6,13,19,21 67:3 67:20,24 68:3,10 76:7 79:17,19 80:7 80:22 81:15 82:11 87:11 90:18 97:14 97:25 98:3,7,19,24 99:4,10,17 restaurants 56:9 59:15,18,21 retire 91:14 return 15:8 104:6 Returns 104:4 review 68:16 70:18 70:22 71:10 reviewed 71:6,8,21 right 10:13 19:21 46:9,10 49:21 69:7 71:25 72:5,8,18 74:8,22 75:19 76:17 86:16 94:24 rights 60:5 roasted 38:20 Roberto 39:21 49:24 50:4,6 rodizio 35:25 RODRIGUEZ 107:5 107:20 role 6:23,25 7:4,6 36:17 row 74:12</p> <hr/> <p style="text-align: center;">S</p> <p>S 2:1 3:9 62:22 66:2,6 66:13 67:3,7,12,12 67:13 103:1 104:1 105:1</p>	<p>Saleh 1:10 3:1,16 4:1 5:1 6:1 7:1 8:1,18 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1,17 34:1 35:1 35:15 36:1,16 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 53:14 54:1 55:1,7 56:1 57:1 58:1,9 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 70:15,16 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:6,15 102:4 104:4,7 105:7 106:4,16 107:7 sales 57:19 73:12,21 74:2,21 76:17 saved 13:13 saying 78:20 79:9 says 10:13 74:7,13 84:13 search 15:2 second 42:25 61:17 62:6,8 77:18 86:14 see 10:23 14:8 16:23 18:12 19:22 56:4 69:21 76:24 86:10 90:24 91:15 seek 64:24 seen 8:4 9:18 12:9,15 16:24 19:18 21:13</p>	<p>23:2 24:12 26:9 29:2 30:20 31:22 32:25 34:18 35:3 37:8 41:25 42:5,13 43:12 46:20 50:11 52:10 57:12 60:17 69:12 sell 13:5 15:7 80:21 81:17,18 91:13 sent 60:21 68:23 sentence 61:17 62:6,9 62:15,20,25 63:4,6 separately 52:25 September 43:6,9 92:24 104:12 serve 75:22 Services 103:15 set 107:9,17 seven 105:9 seven-page 69:8 shareholders 93:15 93:19 shares 93:12 SHERIDAN 2:3,9 shop 39:4 short 64:8 Shorthand 1:14 107:5 show 56:5 72:21 85:19,23 86:7,11 showing 86:12 shown 76:22 86:12 shows 72:18 74:16 82:20 87:22 Shrewsbury 2:10,11 shut 48:16 97:14 98:7 sick 76:5 sign 15:16,22 17:9,23 37:21 51:5,6 79:18 signature 15:19 18:3 37:23 38:3 signatures 38:2 signed 17:6,7,17 18:13 19:7 86:22,24 87:2 similar 58:20</p>
--	---	--	--

<p>Simoes 1:11 sister 76:9 site 56:2 58:3,6,16 sites 69:21 sitting 19:13 skip 20:21 slang 67:15 slippers 67:16 small 40:18 45:24 69:16 soccer 91:12 sold 48:11 88:17 solution 63:23 son's 39:20 soon 30:5 40:14 Sorry 11:11 sounds 67:12 speak 4:10 11:13 Specialist 32:13 spoke 49:24 60:23 ss 101:3 stamp 103:5,7,10,12 103:14,16,17,20,23 104:5,8,10,14 105:4 start 12:13 40:19 45:21 74:21 75:16 75:18 started 13:14 15:2,10 22:19 32:14 39:10 39:16 40:16,24 41:4 56:3 58:13 63:14 65:3,5 69:5 72:11 72:12 75:2 76:7 77:18 78:19 state 3:5,11,15,17 7:17 9:23 35:24 38:7 52:3 53:22 54:2,10,13,22 55:10 55:17,21 57:2,6,8 57:15,23 62:8 73:24 79:24 81:16 98:6,11 98:16 101:3 107:2,6 statement 30:22 31:24 32:2 33:21 103:19,22 statements 30:24</p>	<p>states 1:1 10:24 65:22 66:2 87:15 steps 14:24 stop 90:10 98:12,20 stopped 48:19 86:5 90:16 97:21 98:3 99:7 store 17:13,19 18:20 18:21 25:16 51:13 stores 40:10 56:13 Street 1:12 3:19 5:16 6:13 14:10 15:6,14 15:25 16:4,8,11 17:13,18 25:16 51:13 56:13 89:19 90:22 95:17 style 36:3,7 Subscribed 101:17 106:18 sufficient 81:19 82:12 Suite 2:4,10 Sul 1:2 6:10,14,17,23 27:22 28:8 29:21 51:16,17,20,23 52:2 52:13,16,22 53:10 53:13,23 54:5,14,21 55:6,8,11 56:9,21 56:25 57:7,19,22 59:6 66:4,11,25 77:13,22 78:8,9,25 79:3,7 82:21,25 83:5,15,19,20 84:7 85:6,17,21,24 86:9 87:18 93:3,5,9 98:17 100:3 102:11 104:17 106:4 Sunday 90:14 SUPPORT 2:25 101:25 102:24 103:25 104:24 105:24 106:1,25 sure 7:14 10:8 12:18 16:7 19:5 20:9 27:14 30:12 36:12 40:25 41:14 44:22</p>	<p>48:2,7 49:11 54:19 58:12 66:10 68:14 76:15 78:2,10,11,12 surprised 61:9 sworn 3:4,10 101:17 106:18 107:9</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>T 101:1 103:1 104:1 105:1 107:1,1 table 19:13 Tais 104:4 Taj 46:12,13,25 47:5 47:11 take 14:24 22:11,14 22:17 24:25 26:3,6 28:14,17 61:14 63:25 64:12 90:18 taken 1:11 4:12 27:2 29:12 64:10 70:11 101:7 talking 19:2 44:17 62:4 73:6 97:24 tax 33:8,21 34:23 57:15,19 73:12,21 73:23 74:2,5,8,21 76:10,11,14,17 79:11,20,23 83:6 97:4 104:4,6 taxes 9:23,25 10:4 32:17 33:24 34:13 35:8 56:22,25 57:8 57:23 78:19 80:19 81:17 86:4 98:23 99:4,7,11,21 100:4 tell 27:25 86:15 ten 64:8 80:5 term 65:21,25 66:5 66:12,16 67:2,6,9 67:17 87:14 Terra 1:2 6:10,14,17 6:23 27:22 28:8 29:21 51:16,17,20 51:23 52:2,13,16,22 53:10,13,23 54:5,14 54:21 55:6,8,11</p>	<p>56:9,21,25 57:7,19 57:22 59:6 66:4,11 66:25 77:13,22 78:8 78:9,25 79:3,7 82:21,25 83:5,15,19 83:20 84:7 85:6,17 85:21,24 86:9 87:18 93:3,5,9 98:17 100:3 102:11 104:17 106:4 testified 3:12 4:25 20:25 68:5 72:3 75:15 85:4 87:13,25 88:7,18 testify 3:25 95:22 testimonies 90:20 testimony 4:12 73:11 73:14 85:9 93:25 101:7 107:11 Texas 2:5 59:15 60:3 60:7 67:21 thank 11:5 12:2 13:16 25:19 28:9 29:23 32:7 33:23 38:11 46:5 48:14 thing 18:21 48:7 51:3 58:14 64:3 92:24 95:23 things 40:7,9 56:4 67:17 75:13 think 11:11 13:15 30:13 39:10 40:13 40:25 48:2 60:2 72:11 79:5 81:13 82:8 83:16 90:5 92:23 thinking 13:19 Third 2:16 Thompson 2:15 61:4 105:6 thought 85:15 three 48:3,6,11 53:2 91:10 104:15 three-page 49:4 till 13:4 14:11 21:3 time 4:17 13:3 39:19</p>
---	---	---	--

<p>39:23 42:4 44:13 48:15,18,22 50:2 58:22 61:10 70:19 78:6,15 85:5,15,20 91:3 94:20 95:19,22 97:13,16,20 98:10 98:15 100:3 today 3:25 4:12 19:24 19:25 39:15 64:20 68:5 70:20 71:9 72:4 73:11 76:22 78:7 85:5,14 86:12 87:13,25 88:7,18 told 64:14 78:23 80:24 98:16 tomorrow 20:2 town 40:24 Trademark 1:1,1 105:7 traditional 39:6 transcript 1:10 88:24 94:15,16,23 101:7,9 107:10 translate 3:6 61:22 95:5 TRIAL 1:1 107:8 true 101:9,12 107:11 Trump 46:13 47:5,11 fruth 4:10 27:25 try 14:23 63:23 78:22 TS000017 103:7 TS000021-TS000027 104:5 TS000023 33:11 TS000163-TS000164 104:10 TS000247-TS000250 103:20 TS000267-TS000306 103:17 TS000317-TS000342 103:16 TS000350-TS000361 103:12 TS000373-TS000374 103:10</p>	<p>TS000379-TS000380 103:23 TS000382-TS000392 104:8 TS000393 103:14 TS001087 103:5 TS001287 104:14 TS001288 105:4 TS1251 52:21 53:8 TS388 34:25 turn 33:10 34:24 two 11:12,13,18 17:21 18:19 31:11 37:5 38:2 39:20 42:8,8,12,15,22 43:16 67:13 87:22 87:24 90:2,20 93:10 93:14 two-page 21:9 53:17 103:21 type 13:15 typical 35:24 T-shirts 89:22 91:4 95:14</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>U 3:2 Uh-hmm 68:14 unbehoosed 8:24 understand 3:24 4:11 18:8 57:5 62:23 71:17,18 75:12 80:13 96:8 United 1:1 65:22 66:2 87:15 use 50:18,23 57:19 62:11,12 65:21,25 66:5,12 67:2,17 87:19,23 uses 66:16,17 utility 37:13 38:6 U.S 2:25 13:10 101:25 102:24 103:25 104:24 105:24 106:1,25</p>	<hr/> <p style="text-align: center;">V</p> <hr/> <p>v 1:5 valid 18:18 various 82:15 Village 69:15 105:8 Voice 41:15 69:15 105:8 vowels 67:13 vs 106:4</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>W 101:1 Wage 33:21 WALL 2:12 want 52:24 85:3 94:23 wanted 4:8 13:5 15:3 15:7,8 50:2 55:24 56:5 60:4,22 61:14 wants 38:15 63:6 wasn't 40:8,15,15 90:11 way 67:11 73:15 107:15 web 2:7,13 56:2 58:3 58:5,16 69:21 week 9:9 43:5 65:4 went 13:5 27:22 39:4 91:3,5,5,7 We'll 18:12 we're 3:21 20:20 63:22 64:3,19,21 73:6 we've 4:10 15:11,20 16:23 19:17 26:8 28:4 45:19 WHEREOF 107:17 wife 39:19,21 76:8,8 93:17,18 wife's 76:8 Wildwood 48:9 88:11 91:9 withdraw 20:17 Withdrawn 103:8 witness 3:7 33:12 35:2 78:11 95:13,16</p>	<p>102:3 107:7,12,17 word 40:10 words 84:23 work 7:9 13:11 32:8 34:3 61:15 90:15 worked 5:23,25 13:12,12 Workers 76:4 working 32:9,12,15 64:22 write 67:11 writing 22:5 written 38:8 68:16 81:7 Www.boinabrasa.... 58:7 www.pattersonshe... 2:7,13 W2 33:5,6,8,21 35:6 35:8,11,14</p> <hr/> <p style="text-align: center;">X</p> <hr/> <p>X 102:1 103:1 104:1 105:1</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>Yeah 91:17 year 22:19 23:16,20 24:17 29:7,7 33:6,8 35:6 88:23 90:23 91:14 95:23 104:12 years 5:6,10 13:12 17:8 18:18 48:3,6 48:11 80:5 90:2,3 91:10 York 2:16,16 3:5,11 47:23,25 48:5,13,13 65:12,18 68:6,10,13 68:15 69:17,24 70:3 88:9,14,20,21 89:4 89:11,14,15,19 91:5 91:7,19 94:4,5,6 95:8,17,20,24 101:3 101:4 102:25 104:25 105:25 106:1 107:2,3,6</p>
--	---	---	--

Z	55:18 76:23,25 82:19 104:17 19 52:19 53:16,19 62:11 63:8,12,17 77:16 83:3,18 84:9 99:19 100:2 104:18 1995 13:20 39:11,14 50:8 1996 6:3 8:12 10:5,11 11:4 19:7,12 23:18 23:21 24:3 30:6 32:7,9,16 33:9,21 36:5,9,13,17 37:20 39:16,24 40:4 47:9 47:12 48:15,18,22 51:10,12 63:14 74:11 75:5,7 78:6 78:16 86:18 97:12 97:16,20 98:10,15 98:25 99:7,9,19 104:4,10 1997 22:3 23:20,21 24:3,22,25 25:6 30:8,11 31:7,14 32:6 33:25 34:3,12 34:15,23 35:6,8,16 40:25 41:3,4,9,12 43:6,9 103:9 104:6 104:7,12 1998 26:2,6,19,22 27:3,7,8 1999 6:16 27:7,11,14 28:4,7,10,14,17 29:7,13,17,18 43:20 43:23 44:2,7,11 45:6,8,11,14 51:22 52:19 57:25 62:11 63:8,13,17 77:16 83:3,18 84:9 99:19 100:2	2-2-3-6-3-8-6-5-2	2-2-3-6-3-8-6-5-2 83:8 20 56:16,19 57:12 83:4 85:15 105:4 2000 29:7,17,19 58:12 62:13 2001 58:13 2002 83:20 84:8,13 86:2,10 102:11 2005 90:4,5 2006 90:5 2007 53:21 54:15 55:5,18,19 58:21 60:9,25 61:5 64:12 69:6 105:6 2008 1:12 89:9 101:8 101:18 106:3,19 107:9,18 21 60:11,14 103:9 105:5 212 2:17,17 212)759-6014 106:2 212)759-6155 106:2 22 27:7,7,8,11,14 68:19 69:10 103:11 105:8 22nd 86:18 23 43:5 23rd 104:12 24 103:13 25 103:15 25th 78:6,15 26 37:20 104:10 27 83:19 84:8,13 86:2 86:9 102:11 28 8:12 103:17	31 31:7 103:21 32 104:4 34 89:6 104:6 37 104:9
S	0	4	4 11:4 14:13 16:19,21 16:24 17:13,19 18:22 20:15 25:16 43:11 44:9,14,18,19 44:23 51:13 56:14 75:5,7 103:8 4-1-99 83:10 41 104:11 46 104:13 46th 89:19 90:22 95:17 49 104:15	
1	2	3	5	
07 62:18 07105 3:20 25:17 07702 2:11	29:7,16,19 44:18 73:10 103:5 2-2-3-4-3-5-7-0-5 74:6	3 33:19 12:4,7 14:18 14:23 15:12,20 18:22 43:11 44:9,14 44:19,23 56:13 86:13 102:5 103:6 3:18 100:8 30 32:6 103:18 3040 2:4	5 20:21 21:8,11 89:7 103:9 52 104:17 53 104:18 530-9404 2:11 530-9808 2:12 56 105:4 595 2:10	
2	3	4	6	
13 34:6,9,20 104:6 14 37:3,6 104:9 14th 29:17,17,18,19 148 3:19 15 10:5,11 41:17,20 44:9 74:11 104:11 15th 75:2 1500 2:4 16 46:15,18 103:8 104:13 17 43:5 45:6 49:3,6 50:11 104:15 17th 104:12 18 52:5,8 53:7 54:15	5	6	6 22:21,24 90:4 103:9 103:11 6-4-96 74:18 60 105:5 623-4844 2:5 623-4846 2:6 686-7071 2:22 69 105:8	
3	7	7	7	
17 43:5 45:6 49:3,6 50:11 104:15 17th 104:12 18 52:5,8 53:7 54:15	7	7	7 1:12 24:7,10 25:4 47:9 103:4,13 106:3 7th 62:13 101:8 107:8 70 5:16 6:13 14:10 15:6,14,25 16:4,8 16:10 17:13,18 25:16 51:13 56:13	

102:6 713 2:5,6 732 2:11,12 751-3048 2:17 77056 2:5			
8			
8 25:21,24 26:9 103:4 103:15 8-27-02 83:13 83 1:12 86 102:10 880-3238 2:17			
9			
9 23:18,20,21,21 24:3 24:3 28:20,23 29:2 103:5,17 917 2:22 919 2:16 92047056 1:5 93 102:7 95 13:14,24 50:7,7 72:12 96 7:22 11:25 13:16 15:23 19:3 40:23 45:22 46:9 72:10,14 72:15,25 97 25:7,10 46:9 55:9 98 25:7,10 26:14 27:18 99 26:14 27:4,18,20 28:3 83:17			

C E R T I F I C A T E

STATE OF NEW YORK)

COUNTY OF NEW YORK)

I, MADELINE RODRIGUEZ, a Shorthand Reporter and Notary Public for the State of New York, do hereby certify that FARID SALEH, the witness whose EXAMINATION BEFORE TRIAL was held on August 7th, 2008, as hereinbefore set forth, was duly sworn by me, and that this transcript of such examination is a true and accurate record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or by marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of August, 2008.


MADELINE RODRIGUEZ

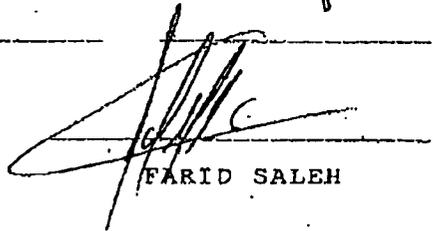
DEPOSITION OF FARID SALEH - 8/7/2008

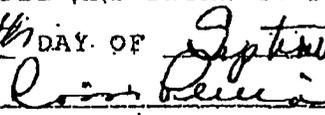
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U.S. LEGAL SUPPORT, INC.
ONE PENN PLAZA, NEW YORK, N.Y. 10119
(212) 759-6014 (212) 759-6155 fax

DATE: August 7, 2008
DEPOSITION: Terra Sul Corp vs. Boi Na Brasa, Inc.
DEPONENT: Farid Saleh.

PAGE	LINE(S)	CHANGE	REASON
62	10	"BRASA" should be	
		"BRAZA"	Transcription error
62	12	"BRASA" should be	
		"BRAZA"	Transcription error
63	12	"BRASA" should be	
		"BRAZA"	Transcription error


FARID SALEH

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 4th DAY OF September 2008.


NOTARY PUBLIC
ROSA PEREIRA
A Notary Public of New Jersey
My Commission Expires 10/28/08

MY COMMISSION EXPIRES: _____

U.S. LEGAL SUPPORT, INC.

Cancellation No. 92047056

Terra Sul Corporation v. Boi Na Brasa, Inc.

EXHIBIT A-1

Offered by Terra Sul Corporation



New Jersey Department of State
 Division of Commercial Recording
 Certificate of Incorporation, Profit
 (Title 14A:2-7 New Jersey Business Corporation Act
 For Use by Domestic Profit Corporations)

C-100 Rev. 7/92

FILED

MAR 23 1996

This is to Certify that, there is hereby organized a corporation under and by virtue of the above noted statute of the New Jersey Statutes.

1. Name of Corporation: CHURRASCARIA BOI NA BRASA CORP.
2. The purpose for which this corporation is organized is (are) to engage in any activity within the purposes for which corporations may be organized under NJSA 14A 1-1 et seq:
3. Registered Agent: Farid Saleh
4. Registered Office: 79 St. Francis Street, 2nd floor, Newark, New Jersey 07105
5. The aggregate number of shares which the corporation shall have authority to issue is: 100 no par value.
6. If applicable, set forth the designation of each class and series of shares, the number in each, and a statement of the relative rights, preferences and limitations.
7. If applicable, set forth a statement of any authority vested in the board to divide the shares into classes or series or both and to determine or change their designation number, relative rights, preferences and limitations.
8. The first Board of Directors shall consist of 1 Directors (minimum of one).

Name	Street Address	City	State	Zip
Farid Saleh	79 St. Francis Street	Newark	NJ	07105
9. Name and Address of Incorporator(s):

Name	Street Address	City	State	Zip
Irene Quattrochi	83 Polk Street	Newark	NJ	07105
10. The duration of the corporation is: Perpetual
11. Other provisions:

In Witness whereof, each individual incorporator being over eighteen years of age has signed this certificate, or if the Incorporator is a corporation, has caused this Certificate to be signed by its duly authorized officers this 25th day of March, 1996.

Signature: Irene Quattrochi

Signature: _____

Signature: _____



1

Cancellation No. 92047056

Terra Sul Corporation v. Boi Na Brasa, Inc.

EXHIBIT A-2

Offered by Terra Sul Corporation



STATE OF NEW JERSEY
CERTIFICATE OF AUTHORITY

DIVISION OF TAXATION
TRENTON, NEW JERSEY
08646

The person, partnership or corporation, named below is hereby authorized to collect:

NEW JERSEY SALES & USE TAX
pursuant to: N.J.S.A. 54:32B-1 ET SEQ.

This authorization is good ONLY for the named person at the address specified herein.
This authorization is not valid if any change of ownership or address is reflected.

CHURRASARIA HOI NA BRASA CO
70 ADAMS ST
NEWARK NJ 07105

Tax Registration No. 223-435-705/000
Tax Effective Date 04-15-96
Document Locator No. R0000616425
Date issued 06-04-96

Richard D. Hardin

Director, Division of Taxation

This Certificate is NOT assignable or transferable. It must be conspicuously displayed at above address

(See Reverse Side)

CA-1 (10-94)

PLAINTIFFS
EXHIBIT
2
MAR 8 7 108

Cancellation No. 92047056

Terra Sul Corporation v. Boi Na Brasa, Inc.

EXHIBIT A-3

Offered by Terra Sul Corporation



**OFFER TO PURCHASE
REAL ESTATE**

Be it known, the undersigned FARID M. SALEH, 79 ST. FRANCIS ST. 2ND FL
Newark, N.J. 07105 (Buyers) offers to purchase from
LINDOLFO PEREIRA (Seller's) real estate known as
 'Churracavaria RODEIO BEST' City/Town of 70 ADAMS ST. SHY
 County of NEWARK State of N.J. said property more
 particularly described as: Lot _____ Block _____ and containing _____ square feet of
 land, more or less

The purchase price offered is	\$ <u>45,000.00</u>
Deposit herewith paid	\$ <u>500.00</u>
Further deposit upon signing sales agreement	\$ <u>4,500.00</u>
Balance at closing	\$ <u>27,000.00</u>
Total Purchase Price	\$ <u>45,000.00</u>

This offer is conditional upon the following terms: _____

- * Owner shall pay broker Lucky Realty a commission of 2,500.00 upon closing and 03-11-96
- * Said property is to be sold free and clear of all encumbrances by good and marketable title, with full possession to said property available to Buyer at date of closing.
- * The Parties agree to execute a standard purchase and sales agreement on the terms contained within _____ days from acceptance of this offer.
- * The closing shall occur on or before 03-11-1996, at the public recording office, unless such other time and place shall be agreed upon.
- * Other terms: Seller to \$13,000.00 mortgage for a period of 13 months

* This offer shall remain open until _____ o'clock, _____ 19 _____ and not accepted by said time offer shall be deemed rescinded and all deposits shall be refunded.
 Signed under seal this 02 day of 28 1996

 BROKER

 BUYER

 BUYER

 SELLER

 SELLER

TS 000017

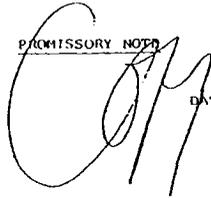


3

PROMISSORY NOTE

AMOUNT : \$13,000.00
RATE : None
TERM : One (1) Year

DATED: March 22, 1996



1) For value received the undersigned promises to pay to the order of LINDOLFO DA SILVA at 71 Niagara Street, Newark, New Jersey, the sum of \$13,000.00 with no interest in installments as follows:

2) The sum of One Thousand Eighty Three and Thirty Three Cents (\$1,083.33) per month commencing April 22, 1996 and a like sum on the 22nd day of each succeeding month until the loan is paid in full. The final payment is March 22, 1997.

3) The undersigned shall have the privilege of prepaying this Note in full or in any part at any time without penalty.

4) This Note represents the unpaid balance of the part of the purchase price of the sale of a certain luncheonette Restaurant sold to the undersigned, located at 70 Adams Street, Store # 4, Newark, New Jersey.

The entire principal balance of this Note shall become immediately due and payable at the election of the holder hereof of five (5) days notice to the undersigned upon the occurrence of any of the following events:

a) Any installment payment on this Note is not paid in full within Twenty (20) days after the due date.

b) A proceeding in Bankruptcy, Receivership, Insolvency is instituted by or against the undersigned or the undersigned makes an assignment for the benefit of creditors.

F.M.S

5) In the event of a sale or other transfer of the aforesaid restaurant, the entire principal balance hereunder shall accelerate and immediately become due and payable.

6) WAIVERS. I give up my right to require that the Lender to the following: (a) to demand payment (called "presentment"); (b) to notify me of nonpayment (called "notice of dishonor"); and (c) to obtain an official certified statement showing nonpayment (called a "protest"). The Lender may exercise any right under this Note, the Security Agreement or under any law, even if Lender has delayed in exercising that right or has agreed in an earlier instance not to exercise that right. Lender does not waive its right to declare that I am in default by making payments or incurring expenses on my behalf.

7) The undersigned agrees that in the event that a default occurs and this Note is referred to an attorney for collection, the undersigned shall pay an additional amount equal to twenty (20) percent to the unpaid principal and interest at the rate of eight (8) percent from the date of default, but in no event less than \$750.00 as reasonable attorney's fees, plus costs of suit.

WITNESS:

FAUSTO SIMOES, ESQ.
AN ATTORNEY AT LAW OF NEW JERSEY



MARIO SALEHI

Cancellation No. 92047056

Terra Sul Corporation v. Boi Na Brasa, Inc.

EXHIBIT A-5

Offered by Terra Sul Corporation

CHURRASCARIA BOI NA BRASA CORP.
STORE 4
70 ADAMS ST. PH. 201-589-6069
NEWARK, NJ 07105

0136

55-760312 83

MAY 6TH 19 97

PAY TO THE
ORDER OF

NEWARK ADAMS

\$ 1,300.00

THIRTEEN HUNDRED E-VEN

DOLLARS

PNC BANK

PNC Bank, N.A.
New Jersey 060

FOR

RENT

⑆031207607⑆ 0136 ⑈8109269093⑈

⑆0000130000⑆



TS 000373

6

ENDORSE HERE:

X
PENN FEDERAL SAVINGS
FOR DEPOSIT ONLY
NEWARK ADAMS ASSOCIATES
1275001267

DO NOT SIGN / WRITE / STAMP BELOW THIS LINE
FOR FINANCIAL INSTITUTION USAGE ONLY

6/12/97 6/12/97 6/12/97
021862719
766 95-760
176500000
000000000
000000000
000000000
000000000

FEDERAL RESERVE BANK
Security features on this document include a MicroPrint
Abstract of this language and indicate alteration.

Cancellation No. 92047056

Terra Sul Corporation v. Boi Na Brasa, Inc.

EXHIBIT A-6

Offered by Terra Sul Corporation

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
DECLARATIONS
COLONIA INSURANCE COMPANY**

NEW
Renewal of Number*

090-1

ORIGINAL

Policy No. CGL903206A

Named Insured and Mailing Address (No., Street, Town or City, County, State, Zip Code)
· CHURRASCARIA BOI NA BRASA
70 ADAMS STREET
NEWARK NJ 07105

ASSOCIATED INSURANCE MANAGEMENT CORP.
ONE SEAPORT PLAZA
199 WATER STREET
NEW YORK, N.Y. 10038

Policy Period: From 05/09/96 to 05/09/97 at 12:01 A.M. Standard Time at your mailing address shown above.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE							
General Aggregate Limit (Other Than Products-Completed Operations)						\$	1,000,000.
Products-Completed Operations Aggregate Limit						\$	500,000.
Personal and Advertising Injury Limit						\$	500,000.
Each Occurrence Limit						\$	500,000.
Fire Damage Limit						\$	50,000. Any One Fire
Medical Expense Limit						\$	5,000. Any One Person
RETROACTIVE DATE (CG 00 02 only)							
Coverage A of this insurance does not apply to "bodily injury" or "property damage" which occurs before the Retroactive Date, if any, shown here: <u>NONE</u>							
<small>(Enter Date or "none" if no Retroactive Date applies)</small>							
DESCRIPTION OF BUSINESS AND LOCATION OF PREMISES							
Form of Business:							
<input checked="" type="checkbox"/> Individual <input type="checkbox"/> Joint Venture <input type="checkbox"/> Partnership <input type="checkbox"/> Organization (Other than Partnership or Joint Venture)							
Business Description*: RESTAURANT							
Location of All Premises You Own, Rent or Occupy:							
70 ADAMS STREET NEWARK NJ 07105							
PREMIUM							
Classification	Code No.	Premium Basis	Rate		Advance Premium		
			Pr/Co	All Other	Pr/Co	All Other	
01 RESTAURANTS - WITH SALES OF ALCOHOLIC BEVERAGAES THAT ARE LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS - WITHOUT DANCE FLOOR	16816	s)	50000	1.073	17.228	107.	861.
Total Advance Premium \$							968.
Premium shown is payable: \$ 968. at inception; \$ 1st Anniversary; \$ 2nd Anniversary							

FORMS AND ENDORSEMENTS
Forms and Endorsements applying to this Coverage Part and made part of this policy at time of issue:
SEE FORM GU207 - COMMERCIAL GENERAL LIABILITY FORMS LIST

Countersigned: * CLIFFSIDE PARK NJ
07/23/96 WZ
By Charles J. M. Clobery
Authorized Representative

*Entry optional if shown in Common Policy Declarations.
†Forms and Endorsements applicable to this Coverage Part omitted if shown elsewhere in the policy.

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART DECLARATIONS, COVERAGE PART COVERAGE FORMS AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

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TS 000350

6

(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

GU 207
(Ed. 6-78)
PAGE 1

ENDORSEMENT

This endorsement, effective on 05/09/96 at 12:01 A.M. standard time, forms a part of
Policy No. CGL903206A of the COLONIA INSURANCE COMPANY
(NAME OF INSURANCE COMPANY)
Issued to CHURRASCARIA BOI NA BRASA
By METCOM EXCESS NJ 07/23/96 WZ
CLIFFSIDE PARK



Authorized Representative

COMMERCIAL GENERAL LIABILITY FORMS LIST

CG2144 (11-85) LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR PROJECT
CG2151 (09-89) AMENDMENT OF LIQUOR LIABILITY EXCLUSION - SCHEDULED ACTIV
CG2407 (11-85) PRODUCTS/COMPLETED OPERATIONS HAZARD REDEFINED
IL0208 (6/89) N.J. CHANGES-CANCELLATION AND NONRENEWAL
CG2620 (03/91) NEW JERSEY CHANGES - LOSS INFORMATION
CG2147 (10/93) EMPLOYMENT-RELATED PRACTICES EXCLUSION
NJ01 (9-95) AGGREGATE LIMITS
CG 0001 (01-96) COMMERCIAL GENERAL LIABILITY COVERAGE FORM

TS 000351

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF LIQUOR LIABILITY EXCLUSION - EXCEPTION FOR SCHEDULED ACTIVITIES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description of Activity(ies):

LIQUOR LIABILITY

(If no entry appears above, the information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

Exclusion c. of COVERAGE A (Section I) is replaced by the following:

c. "Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you:

- (1) Manufacture, sell or distribute alcoholic beverages
- (2) Serve or furnish alcoholic beverages for a charge whether or not such activity:
 - (a) Requires a license;
 - (b) Is for the purpose of financial gain or livelihood; or
- (3) Serve or furnish alcoholic beverages without a charge, if a license is required for such activity.

However, this exclusion does not apply to "bodily injury" or "property damage" arising out of the selling, serving or furnishing of alcoholic beverages at the specific activity(ies) described above.

POLICY NUMBER: CGL903206A

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR PROJECT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Premises: 70 ADAMS STREET
NEWARK NJ 07105

Project:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

This insurance applies only to "bodily injury," "property damage," "personal injury," "advertising injury" and medical expenses arising out of:

1. The ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises; or
2. The project shown in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRODUCTS/COMPLETED OPERATIONS HAZARD REDEFINED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Description of Premises and Operations:

RESTAURANT

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to "bodily injury" or "property damage" arising out of "your products" manufactured, sold, handled or distributed:

1. On, from or in connection with the use of any premises described in the Schedule, or
2. In connection with the conduct of any operation described in the Schedule, when conducted by you or on your behalf,

Paragraph a. of the definition of "Products - completed operations hazard" in the DEFINITIONS Section is replaced by the following:

- a. "Products - completed operations hazard" includes all "bodily injury" and "property damage" that arises out of "your products" if the "bodily injury" or "property damage" occurs after you have relinquished possession of those products.

POLICY NUMBER: CGL903206A

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NEW JERSEY CHANGES - CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART
BUSINESSOWNERS POLICY
COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL CRIME COVERAGE PART *
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

* This endorsement does not apply to coverage provided for employee dishonesty (Coverage Form A), forgery or alteration (Coverage Form B), or public employee dishonesty (Coverage Forms O and P).

A. Pursuant to New Jersey law, this policy cannot be cancelled or nonrenewed for any underwriting reason or guideline which is arbitrary, capricious or unfairly discriminatory or without adequate prior notice to the insured. The underwriting reasons or guidelines that an insurer can use to cancel or nonrenew this policy are maintained by the insurer in writing and will be furnished to the insured and/or the insured's lawful representative upon written request.

This provision shall not apply to any policy which has been in effect for less than 60 days at the time notice of cancellation is mailed or delivered, unless the policy is a renewal policy.

B. Paragraph 2. of the CANCELLATION Common Policy Condition is replaced by the following:

2. If this policy has been in effect for less than 60 days, we may cancel this policy by mailing or delivering to the first Named Insured and any person entitled to notice under this policy written notice of cancellation at least:

a. 10 days before the effective date of cancellation if we cancel for:

- (1) Nonpayment of premium; or
- (2) Existence of a moral hazard, as defined in N.J.A.C. 11:1-20.2(f) as follows:

(a) "The risk, danger or probability that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. Any change in the circumstances of an insured that will increase the probability of such a destruction may be considered a 'moral hazard,' and

(b) The substantial risk, danger or probability that the character, circumstances or personal habits of the insured may increase the possibility of loss or liability for which an insurer will be held responsible. Any change in the character or circumstances of an individual, corporate, partnership or other insured that will increase the probability of such a loss or liability may be considered a 'moral hazard.'"

b. 30 days before the effective date of cancellation if we cancel for any other reason.

C. The following is added to the CANCELLATION Common Policy Condition:

7. Cancellation of Policies In Effect For 60 Days or More

- a. If this policy has been in effect for 60 days or more, or is a renewal of a policy we issued, we may cancel this policy only for one or more of the following reasons:
- (1) Nonpayment of premium;
 - (2) Existence of a moral hazard, as defined in N.J.A.C. 11:1-20.2(f);
 - (3) Material misrepresentation or nondisclosure to us of a material fact at the time of acceptance of the risk;
 - (4) Increased hazard or material change in the risk assumed which we could not have reasonably contemplated at the time of assumption of the risk;
 - (5) Substantial breaches of contractual duties, conditions or warranties that materially affect the nature and/or insurability of the risk;
 - (6) Lack of cooperation from the insured on loss control matters materially affecting insurability of the risk;
 - (7) Fraudulent acts against us by the insured or its representative that materially affect the nature of the risk insured;
 - (8) Loss of or reduction in available insurance capacity;
 - (9) Material increase in exposure arising out of changes in statutory or case law subsequent to the issuance of the insurance contract or any subsequent renewal;
 - (10) Loss of or substantial changes in applicable reinsurance;
 - (11) Failure by the insured to comply with any Federal, State or local fire, health, safety or building or construction regulation, law or ordinance with respect to an insured risk which substantially increases any hazard insured against within 60 days of written notification of a violation of any such law, regulation or ordinance;
 - (12) Failure by the insured to provide reasonable and necessary underwriting information to us upon written request therefor and a reasonable opportunity to respond;
 - (13) Agency termination, provided:
 - (a) We document that replacement coverage at comparable rates and terms has been provided to the first Named Insured, and we have informed the first Named Insured, in writing, of the right to continue coverage with us; or
 - (b) We have informed the first Named Insured, in writing, of the right to continue coverage with us and the first Named Insured has agreed, in writing, to the cancellation or nonrenewal based on the termination of the first Named Insured's appointed agent.
 - (14) Any other reasons in accordance with our underwriting guidelines for cancellation of commercial lines coverage.
- b. If we cancel this policy based on paragraph 7.a.(1) or (2) above, we will mail a written notice, stating the reason for cancellation, to the first Named Insured and any person entitled to notice under this policy, at least 10 days before the effective date of cancellation. For cancellation due to the nonpayment of premium, the notice will state the effect of nonpayment by the due date. Cancellation for nonpayment of premium will not be effective if payment of the amount due is made before the effective date set forth in the notice. If we cancel this policy for any other reason listed above, we will mail a written notice, stating the reason for cancellation, to the first Named Insured and any person entitled to notice under this policy, not more than 120 days nor less than 30 days before the effective date of such cancellation.
- c. Notice will be sent to the last mailing addresses known to us, by:
- (1) Certified mail; or
 - (2) First class mail, if we have obtained from the post office a date stamped proof of mailing showing names and addresses.
- d. We need not send notice of cancellation if you have:
- (1) Replaced coverage elsewhere; or
 - (2) Specifically requested termination.

D. The following is added and supersedes any other provision to the contrary:

NONRENEWAL

1. We may elect not to renew this policy for any reason permitted to cancel it. If we elect not to renew this policy, we will mail a notice of nonrenewal, stating the reasons for nonrenewal, to the first Named Insured at least 30 days but not more than 120 days before the expiration date of this policy. If this policy does not have a fixed expiration date, it shall be deemed to expire annually on the anniversary of its inception.

2. This notice will be sent to the first Named Insured at the last mailing address known to us by:

- a. Certified mail; or
- b. First class mail, if we have obtained from the post office a date stamped proof of mailing showing the first Named Insured's name and address.

3. We need not mail or deliver this notice if you have:

- a. Replaced coverage elsewhere; or
- b. Specifically requested termination.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NEW JERSEY CHANGES - LOSS INFORMATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART ("OCCURRENCE" VERSION)

The following Condition is added TO COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

10. Your Right to Loss Information

We will provide the first Named Insured shown in the Declarations the following loss information relating to this and any preceding general liability Coverage Part we have issued to you during the previous three years:

- a. A list or other record of each "occurrence" of which we were notified in accordance with paragraph 2.a. of the Duties in the Event of Occurrence, Offense, Claim or Suit Condition in this Section. We will include a brief description of the "occurrence" and information on whether any claim arising out of the "occurrence" is open or closed.
- b. A summary by policy year, of payments made and amounts reserved, stated separately under any applicable General Aggregate Limit and

Products/Completed Operations Aggregate Limit.

Amounts reserved are based on our judgment. They are subject to change and should not be regarded as ultimate settlement values.

You must not disclose this information to any claimant or any claimant's representative without our consent.

We will provide this information only if we receive a written request from the first Named Insured during the policy period. We will provide this information within 45 days of receipt of the request.

We compile claim and "occurrence" information for our own business purposes and exercise reasonable care in doing so. In providing this information to the first Named Insured, we make no representations or warranties to insureds, insurers or others to whom this information is furnished by or on behalf of any insured.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT-RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to paragraph 2., Exclusions of COVERAGE A-BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I-Coverages):
- B. The following exclusion is added to paragraph 2., Exclusions of COVERAGE B-PERSONAL AND ADVERTISING INJURY LIABILITY (Section I-Coverages):

This insurance does not apply to:

"Bodily injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This insurance does not apply to:

"Personal injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal injury" to that person at whom any of the employment-related practices described in paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

Policy No.:CGL903206A

ENDORSEMENTS

THIS POLICY CONTAINS AGGREGATE LIMITS: REFER
TO SECTION III - LIMITS OF INSURANCE FOR DETAILS.

NJ01

TS 000360

Policy No.: CGL903206A

*
* **MANUAL FORM** *
*

THE FOLLOWING FORMS HAVE BEEN SELECTED TO APPLY TO THIS POLICY.
SINCE YOU HAVE INDICATED THAT IT IS NOT TO BE PRINTED BY THE LONDON
LINKS SYSTEM, IT MUST BE MANUALLY ATTACHED TO THE POLICY.
CG 0001

Cancellation No. 92047056

Terra Sul Corporation v. Boi Na Brasa, Inc.

EXHIBIT A-7

Offered by Terra Sul Corporation

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
DECLARATIONS
COLONIA INSURANCE COMPANY**

090 1

RE-WRITE
Renewal of ~~Number~~

ORIGINAL

Policy No. CGL906861

Named Insured and Mailing Address (No. Street, Town or City, County, State, Zip Code)

CHURRASCARIA BOI NA BRASA
T/A & PAULO ALEMAO
70 ADAMS STREET STORE #4
NEWARK NJ 07105

ASSOCIATED INSURANCE MANAGEMENT CORP.

ONE SEAPORT PLAZA
199 WATER STREET
NEW YORK, N.Y. 10038

Policy Period: From 10/06/97 to 10/06/98 at 12:01 A.M. Standard Time at your mailing address shown above.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE	
General Aggregate Limit (Other Than Products-Completed Operations)	\$ 1,000,000.
Products-Completed Operations Aggregate Limit	\$ 500,000.
Personal and Advertising Injury Limit	\$ 500,000.
Each Occurrence Limit	\$ 500,000.
Fire Damage Limit	\$ 100,000. Any One Fire
Medical Expense Limit	\$ 5,000. Any One Person

RETROACTIVE DATE (CG 00 02 only)
Coverage A of this Insurance does not apply to "bodily injury" or "property damage" which occurs before the Retroactive Date, if any, shown here. NONE
(Enter Date or "none" if no Retroactive Date applies)

DESCRIPTION OF BUSINESS AND LOCATION OF PREMISES
Form of Business:
 Individual Joint Venture Partnership Organization (Other than Partnership or Joint Venture)
Business Description*: RESTAURANT
Location of All Premises You Own, Rent or Occupy:
70 ADAMS STREET, STORE #4
NEWARK, NJ 07105

PREMIUM						
Classification	Code No.	Premium Basis	Rate		Advance Premium	
			Pr/Co	All Other	Pr/Co	All Other
			\$	\$	\$	\$
01 RESTAURANTS - WITH SALES OF ALCOHOLIC BEVERAGES THAT ARE LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS - WITHOUT DANCE FLOOR	16816	s) 130000	0.790	19.455	103.	2,529.
Total Advance Premium					\$	2,632.

Premium shown is payable: \$ 2,632. at inception; \$ 1st Anniversary; \$ 2nd Anniversary

FORMS AND ENDORSEMENTS NJ S/C \$8.69

Forms and Endorsements applying to this Coverage Part and made part of this policy at time of issue:
SEE FORM GU207 - COMMERCIAL GENERAL LIABILITY FORMS LIST
Countersigned: * CLIFFSIDE PARK NJ
11/24/97 IK
By Charles J. McClabey
Authorized Representative

*Entry optional if shown in Common Policy Declarations.
Forms and Endorsements applicable to this Coverage Part omitted if shown elsewhere in the policy.
THESE DECLARATIONS AND THE COMMON POLICY DECLARATIONS, IF APPLICABLE, TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE FORMS AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.



TS 000393

Cancellation No. 92047056

Terra Sul Corporation v. Boi Na Brasa, Inc.

EXHIBIT A-8

Offered by Terra Sul Corporation

Steve O. Unsero
Prudential Representative
Service Since 1991



Prudential

Prudential Insurance and Financial Services
221 Bergen Street, Newark NJ 07103
24 Hr Direct 201 517-1900 Tel 973 242-4800
Fax 973 242-4060
A Division of The Prudential Insurance Company of America



TS 000317

COMMERCIAL LINES POLICY
COMMON POLICY DECLARATIONS

SL 00365-98-01167

AMERICAN EQUITY INSURANCE COMPANY

Scottsdale, Arizona

Policy No. ACC 057900

NEW
Renewal of Number

Named Insured and Mailing Address
(No., Street, Town or City, County, State, Zip Code)
CHURRASCARIA BOINA BRASA

70 ADAMS STREET STORE #4
NEWARK NJ 07105

THIS INSURANCE IS ISSUED PURSUANT
TO THE NJ SURPLUS LINES LAW

Agent and Mailing Address
(No., Street, Town or City, County, State, Zip Code)
Metcom Excess
596 Anderson Ave.,
Suite 301

Agency No. 3100

Tax State NJ

Cliffside Park NJ 07010

Policy Period: From 05/22/1998 to 05/22/1999 at 12:01 A.M. Standard Time
at your mailing address shown above.

Business Description: RESTAURANT

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT	
	PREMIUM
Commercial Property Coverage Part	\$ _____
Commercial General Liability Coverage Part	\$ 2,018.00
	\$ _____
	\$ _____
TOTAL ADVANCE PREMIUM	\$ 2,018.00
Other Charges 3% NJ S/L TAX:	\$ 60.54
TOTAL	\$ 2,078.54

Form(s) and Endorsement(s) made a part of this policy at time of issue*:
A100J (09/1994), A104 (09/1994), CL150 (11/1985)

A100(9/94), IL0208(10/97)

*Omits applicable Forms and Endorsements if shown in specific Coverage Part/Coverage Form Declarations

Countersigned: METCOM EXCESS
06/19/1998 NM

By Chris J. McCloskey
Authorized Representative

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART DECLARATIONS, COVERAGE PART COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY Includes copyrighted material of Insurance Services Office, Inc. with its permission. Copyright, Insurance Services Office, Inc., 1983, 1984

A100 (09/1994)

ORIGINAL

TS 000318

ENDORSEMENT

SERVICE OF SUIT

Pursuant to any statute of any state, territory or district of the United States which makes provision therefore, we hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the Statute, or his successor or successors in office, as our true and lawful attorney upon whom may be served any lawful process in any action, "suit" or proceeding instituted by or on behalf of you or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the above named as the person to whom the said officer is authorized to mail process or a true copy thereof.

It is further agreed that service of process in such "suit" may be made upon Ken Brundage, or his nominee, of the Company at 8370 E. Via de Ventura, Building K, Scottsdale, Arizona 85258 and that in any "suit" instituted against any one of them upon this policy, we will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

It is agreed that in any state requiring a standard form of policy, insurance hereunder on values or properties in such state shall attach and cover in accordance with the terms and conditions of such standard form.

COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS

Policy No. ACC 057900

Effective Date: 05/22/1998 **
12:01 A.M., Standard Time

LIMITS OF INSURANCE							
General Aggregate Limit (Other Than Products - Completed Operations)							
	\$					1,000,000.00	
Products - Completed Operations Aggregate Limit	\$					500,000.00	
Personal and Advertising Injury Limit	\$					500,000.00	
Each Occurrence Limit	\$					500,000.00	
Fire Damage Limit	\$					50,000.00	Any One Fire
Medical Expense Limit	\$					1,000.00	Any One Person
THIS POLICY CONTAINS COORDINATE LIMITS. REFER TO SECTION III - LIMITS OF INSURANCE FOR DETAILS.							
RETROACTIVE DATE (CG 00 02 only)							
Coverage A of this insurance does not apply to "bodily injury" or "property damage" which occurs before the Retroactive Date, if any, shown here: _____ <small>(Enter Date or "None" if no Retroactive Date applies)</small>							
BUSINESS DESCRIPTION AND LOCATION OF PREMISES							
Form of Business: <input checked="" type="checkbox"/> Individual <input type="checkbox"/> Joint Venture <input type="checkbox"/> Partnership <input type="checkbox"/> Organization (other than Partnership or Joint Venture)							
Business Description* - RESTAURANT							
Location of All Premises You Own, Rent or Occupy:							
1.	70 ADAMS STREET #4	NEWARK	NJ	07105			
2.							
3.							
PREMIUM							
Classification	Code No.	Premium Basis	Rate		Advance Premium		
			Prem/Op	Pr/Co	Prem/Op	Pr/Co	
REST-LESS 75% ALCOHOL-NO	16816	s 90000	21.447	0.870	1,930.0	88.0	
					Total Advance Premium \$	1,930	\$ 88
FORMS AND ENDORSEMENTS (other than applicable Forms and Endorsements shown elsewhere in the policy)							
Forms and Endorsements applying to this Coverage Part and made part of this policy at time of issue: L026 (09/1994), L031 (11/1995), L054 (09/1994), L069 (09/1994), L123 (12/1995), L124 (12/1995), L125 (12/1995), L126 (12/1995), L130 (12/1995), CG0001 (10/1993), CG2144 (11/1985), CG2147 (10/1993), CG2149 (01/1996), CG2620(10/93)							

* Information omitted if shown elsewhere in the policy.

** Inclusion of date optional.

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.
Includes copyrighted material of Insurance Services Office, Inc., with its permission. Copyright, Insurance Services Office, Inc., 1983, 1984

CL150 (Ed. 6-1993)

TS 000320

NOTICE TO POLICYHOLDERS

This insurance does not provide coverage as required by Environmental Protection Agency (EPA) 40 CFR Parts 280 and 281 for underground storage tanks nor any coverage under CERCLA or similar State or Federal Environmental Act(s).

This policy excludes all Coverage for Pollution.

All other Terms and Conditions of this Policy remain unchanged.

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION — PUNITIVE OR EXEMPLARY DAMAGES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to COVERAGES A and B (Section I):

This insurance does not apply to a claim of or indemnification for punitive or exemplary damages. If a suit shall have been brought against you for a claim within the coverage provided under the policy, seeking both compensatory and punitive or exemplary damages, then we will afford a defense for such action. We shall not have an obligation to pay for any costs, interest or damages attributable to punitive or exemplary damages.

All other Terms and Conditions of this Policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

EXCLUSION — VOLUNTARY LABOR

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to COVERAGES A, B and C (Section I):

This insurance does not apply to "bodily injury", "personal injury" or medical payments to any member, associate, affiliated member, or to any person or persons loaned to or volunteering services to you, whether or not paid by you, arising out of or in the course of work performed for you or on your behalf.

All other Terms and Conditions of this Policy remain unchanged.

ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATION - OTHER INSURANCE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

CONDITION 4., Other Insurance, under COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), item b(3) providing Excess Insurance if the loss arises out of the maintenance or use of aircraft, "autos" or watercraft is deleted.

All other Terms and Conditions of this Policy remain unchanged

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - ASSAULT AND BATTERY - HIRING / SUPERVISION (NJ ONLY)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Paragraph w., Exclusions of COVERAGE A, Bodily Injury and Property Damage Liability (Section I - Coverage):

The insurance does not apply to "bodily injury" or "property damage" arising out of any alleged assault and battery or out of any act or omission in connection with the prevention or suppression of such acts, including the alleged failure to provide adequate security whether caused by or at the instigation or direction of the insured, his employees, patrons or any other person.

This insurance does not apply to claims, accusations, or charges of negligent hiring, placement, training or supervision arising from actual or alleged assault or battery.

The following exclusion is added to Paragraph 2., Exclusions of COVERAGE B, Personal and Advertising Injury Liability (Section I - Coverages):

This insurance does not apply to "personal injury" arising out of any alleged assault and battery or out of any act or omission in connection with the prevention or suppression of such acts, including the alleged failure to provide adequate security whether caused by or at the instigation or direction of the insured, his employees, patrons or any other person.

All other Terms and Conditions of this Policy remain unchanged.

L123(12/1995)

TS 000325

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - TOTAL LIQUOR LIABILITY (NJ ONLY)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion c. under paragraph 2., Exclusions of COVERAGE A, Bodily Injury and Property Damage (Section I - Coverages) is replaced by the following:

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured or his indemnitee may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

All other Terms and Conditions of this Policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTUAL LIABILITY LIMITATION (NJ Only)

(Limited Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The definitions of "insured contract" in DEFINITIONS (Section V) is replaced by the following:

"Insured Contract" means any written:

- a. Contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. Sidetrack agreement;
- c. Easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. Elevator maintenance agreement, or
- f. That part of any other contract or agreement pertaining to your business (including indemnification of a municipality in connection with work performed for a municipality) under which you assume tort liability of another party to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

An "insured contract" does not include that part of any contract or agreement:

- (1) That indemnifies any person or organization for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, track, road bed, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (3) Under which the Insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection or engineering services;
- (4) That indemnifies any person or organization for "property damage" to premises rented or loaned to you;
- (5) That indemnifies any person or organization for "bodily injury" or "property damage" arising from an "occurrence" caused by the negligence of said person or organization; or
- (6) That indemnifies any person or organization for "bodily injury" or "property damage" arising from the ownership, maintenance or use of any aircraft.

All other Terms and Conditions if this Policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF PREMIUM CONDITIONS (NJ Only)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

CONDITION 5. Premium Audit, under COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), is replaced by the following:

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

The deposit premium shown on the declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation, or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.

The rates for each classification shown on the Declarations are multiplied by the estimated premium bases of that classification for the term to determine the deposit premium. We may, at our discretion, conduct an audit of the insured's books to determine the actual premium bases developed during the policy period. The premium bases used are payroll, admissions, gross sales, total costs, area, each exposure unit or units and are defined in accordance with company rules and the following additional definitions:

- (1) Payroll (premium basis symbol p): Remuneration paid to employees, including but not limited to:
- (a) Money or substitutes for money; commissions; bonuses; overtime; payments to statutory insurance or pension plans; profit sharing or incentive plans; pay for holidays, vacation or sickness; and fees paid to employment agencies for temporary personnel provided to the insured.
 - (b) If your operations consist of a number of separate operations classified individually on the Declarations page, the payroll will be allocated to each classification where you have maintained records for each separate operation. Any such operation for which separate records are not maintained by you shall be assigned to the highest rated classification.
 - (c) For premium computation purposes, the payroll of executive officers, individual insureds and co-partners is subject to a minimum annual payroll per person of:

\$

(If no entry is made, the minimum payroll as established by the company's rating rules will apply).

The rates apply per \$1,000 of Payroll.

- (2) Admissions (premium basis symbol m): The total number of persons, other than employees of the named insured, admitted to the event insured or to events conducted on the premises whether on paid admissions, tickets, complimentary tickets or passes.

The rates apply per 1,000 Admissions.

(3) Gross sales (premium basis symbol s): The gross amount charged by the named insured, concessionaires of the named insured or by others trading under the insured's name for:

- (a) All goods or products, sold or distributed;
- (b) Operations performed during the policy period; and
- (c) Rentals; or
- (d) Dues or fees.

The rates apply per \$1,000 of Gross Sales.

(4) Total Cost (premium basis symbol c): The total cost of all work let or sublet in connection with each specific project including:

- (a) The cost of all labor, materials and equipment furnished, used or delivered for use in the execution of the work; or
- (b) All fees, bonuses or commissions made, paid or due.

The rates apply per \$1,000 of Total Cost.

(5) Area (premium basis symbol a): The total number of square feet of floor space at the insured premises.

The rates apply per 1,000 square feet of area.

(6) Each (premium basis symbol t): This basis of premium involves units of exposure, and the quantity comprising each unit of exposure is indicated in the declarations page, such as "per person".

The rates apply per each unit of exposure.

(7) Units (premium basis symbol u): A single room or group of rooms intended for occupancy as separate living quarters by a family, by a group of unrelated persons living together, or by a person living alone.

The rates apply per unit.

- b. Premium shown in this Coverage Part is the deposit premium. At the close of each audit period (or part thereof terminating with the end of the policy period) we will compute the earned premium for that period. If the earned premium is greater than the deposit premium paid, an audit premium is due. Audit premiums are due and payable on notice to the first Named Insured. If the total earned premium for the policy period is less than the deposit premium, the difference is refunded subject to the minimum premium.
- c. The first Named Insured must keep records of information we need for premium computation, and shall supply copies at such times as we may request.
- d. We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

All other Terms and Conditions of this Policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEDUCTIBLE LIABILITY INSURANCE (NJ Only)

This endorsement modifies insurance provided under the following

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Coverage	SCHEDULE	Amount of Deductible
Bodily Injury Liability		\$ 500.00 per claim
Property Damage Liability		\$ 500.00 per claim

APPLICATION OF ENDORSEMENT (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury" and "property damage", however caused):

1. Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the schedule as applicable to such coverages, and the limits of insurance applicable to each "occurrence" for such coverages will be reduced by the amount of such deductible. "Aggregate" limits for such coverages shall not be reduced by the application of such deductible.
2. The deductible amounts stated are on a PER CLAIM BASIS and the deductible amount applies:
 - a. Under the Bodily Injury Liability, to all damages because of "bodily injury" sustained by one person; or
 - b. Under the Property Damage Liability, to all damages because of "property damage" sustained by one person or organization; as a result of any one "occurrence".
3. The terms of this insurance, including those with respect to:
 - a. Our right and duty to defend "suits" seeking those damages; and
 - b. Your duties in the event of an "occurrence", claim or "suit", apply irrespective of the application of the deductible amount.
4. We may at our sole election and option, either:
 - a. Pay any part or all of the deductible among to effect settlement of any claim or "suit" and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us; or
 - b. Upon our receipt of notice of any claim or at any time thereafter, request you to pay over and deposit with us all or any part of the deductible amount, to be held and applied per the terms of this policy.

All other Terms and Conditions of this Policy remain unchanged.

L 130 (12/1995)

TS 000330

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we," "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under WHO IS AN INSURED (Section II). Other words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS (Section V).

SECTION I - COVERAGES**COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY****1. Insuring Agreement.**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend any "suit" seeking those damages. We may at our discretion investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (Section III); and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
 - (2) The "bodily injury" or "property damage" occurs during the policy period.
- c. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury."

2. Exclusions

This insurance does not apply to:

a. Expected or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) Assumed in a contract or agreement that is an "insured contract," provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
- (2) That the insured would have in the absence of the contract or agreement.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation and Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and

- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract."

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants.
- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:
- (i) If the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
- (ii) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

Subparagraphs (a) and (d)(i) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treat-

ing, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

g. Aircraft, Auto or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading."

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
- (a) Less than 26 feet long; and
- (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in paragraph f.(2) or f.(3) of the definition of "mobile equipment."

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition or stunting activity.

i. War

"Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

j. Damage to Property

"Property damage" to:

- (1) Property you own, rent or occupy;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;

- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard."

- k. **Damage to Your Product**
 "Property damage" to "your product" arising out of it or any part of it.
- l. **Damage to Your Work**
 "Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard."
 This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.
- m. **Damage to Impaired Property or Property Not Physically Injured**
 "Property damage" to "impaired property" or property that has not been physically injured, arising out of:
 (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
 (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.
 This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.
- n. **Recall of Products, Work or Impaired Property**
 Damage claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:
 (1) "Your product";
 (2) "Your work"; or
 (3) "Impaired property";
 if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in LIMITS OF INSURANCE. (Section III).

COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement.

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal injury" or "advertising injury" to which this insurance applies. We will have the right and duty to defend any "suit" seeking those damages.

We may at our discretion investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); and
 (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverage A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENT - COVERAGES AND B.

- b. This insurance applies to:

- (1) "Personal injury" caused by an offense arising out of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you;
 (2) "Advertising injury" caused by an offense committed in the course of advertising your goods, products or services; but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

- a. "Personal injury" or "advertising injury":
 (1) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
 (2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
 (3) Arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the insured; or
 (4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.
- b. "Advertising injury" arising out of:

Breach of contract, other than misappropriation of advertising ideas under an implied contract;

The failure of goods, products or services to conform with advertised quality or performance;

The wrong description of the price of goods, products or services; or

An offense committed by an insured whose business is advertising, broadcasting, publishing or telecasting.

COVERAGE C. MEDICAL PAYMENTS

1. Insuring Agreement.

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations; provided that:
 - (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within one year of the date of the accident, and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions.

We will not pay expenses for "bodily injury":

- a. To any insured.
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.
- d. To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
- e. To a person injured while taking part in athletics.
- f. Included within the "products-completed operations hazard."
- g. Excluded under Coverage A.
- h. Due to war, whether or not declared, or any act or condition incident to war. War includes a civil war, insurrection, rebellion or revolution.

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

We will pay, with respect to any claim or "suit" we defend:

1. All expenses we incur.
2. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
3. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to \$100 a day because of time off from work.
5. All costs taxed against the insured in the "suit."
6. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners and their spouses are also insureds, but only with respect to the conduct of your business.
- c. An organization other than a partnership or joint venture, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

2. Each of the following is also an insured:

- a. Your "employees," other than your "executive officers," but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, no "employee" is an insured for:
 - (1) "Bodily injury" or "personal injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), or to a co-"employee" while in the course of his or her employment or while performing duties related to the conduct of your business;

- (b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraphs (1)(a) or (b) above; or
 - (d) Arising out of his or her providing or failing to provide professional health care services.
- (2) "Property damage" to property:
- (a) Owned, occupied or used by,
 - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees" or, if you are a partnership or joint venture, by any partner or member.
- b. Any person (other than your "employee"), or any organization while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:
- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
 - b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.
4. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier.
- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits."
2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard."
4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal injury" and all "advertising injury" sustained by any one person or organization.
5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence."
6. Subject to 5. above, the Fire Damage Limit is the most we will pay under Coverage A for damages because of "property damage" to premises, while rented to you or temporarily occupied by you with permission of the owner, arising out of any one fire.
7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

1. **Bankruptcy.**
Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.
2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit.**
 - a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
 - b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
 - c. You and any other involved insured must:
 - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation, settlement or defense of the claim or "suit"; and
 - (4) Assist us, upon our request in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
 - d. No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.
3. **Legal Action Against Us.**
No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. **Other Insurance.**
If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

- a. **Primary Insurance**

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

- b. **Excess Insurance**

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

- (1) That is Fire, Extended Coverage, Builder's Risk Installation Risk or similar coverage for "your work";
- (2) That is Fire insurance for premises rented to you; or
- (3) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Coverage A (Section I).

When this insurance is excess, we will have no duty under Coverage A or B to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. **Method of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also.

Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. **Premium Audit.**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. **Representations.**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. **Separation Of Insureds.**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. **Transfer Of Rights Of Recovery Against Others To Us.**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. **When We Do Not Renew.**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in

the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V - DEFINITIONS

1. "Advertising injury" means injury arising out of one or more of the following offenses:
 - a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - b. Oral or written publication of material that violates a person's right of privacy;
 - c. Misappropriation of advertising ideas or style of doing business; or
 - d. Infringement of copyright, title or slogan.
2. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment."
3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or
 - c. All parts of the world if:
 - (1) The injury or damage arises out of:
 - (a) Goods or products made or sold by you in the territory described in a. above; or
 - (b) the activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; and
 - (2) The insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.
5. "Employee" includes a "leased worker." "Employee" does not include a "temporary worker."
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Impaired property" means tangible property, other than "your product" or "your work," that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.
- B. "Insured contract" means:
- A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
 - A sidetrack agreement;
 - Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 - An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - An elevator maintenance agreement;
 - That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
Paragraph f. does not include that part of any contract or agreement.
 - That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing;
 - That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
 - Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - Under which the insured, if an architect, engineer or surveyor, assumes liability for injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection or engineering services.
9. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker."
10. "Loading or unloading" means the handling of property.
- After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - While it is in or on an aircraft, watercraft or "auto";
 - While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto."
11. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - Vehicles maintained for use solely on or next to premises you own or rent;
 - Vehicles that travel on crawler treads;
 - Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - Power cranes, shovels, loaders, diggers or drills; or
 - Road construction or resurfacing equipment such as graders, scrapers or rollers;
 - Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lightning and well servicing equipment; or
 - Cherry pickers and similar devices used to raise or lower workers;
 - Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
 - Equipment designed primarily for:
 - Snow removal;
 - Road maintenance, but not construction or resurfacing; or
 - Street cleaning;
 - Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lightning and well servicing equipment.

12. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
13. "Personal injury" means injury, other than "bodily injury" arising out of one or more of the following offenses:
- False arrest, detention or imprisonment;
 - Malicious prosecution;
 - The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owners, landlord or lessor;
 - Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
 - Oral or written publication of material that violates a person's right of privacy.
14. a. "Products-completed operations hazard" includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
- Products that are still in your physical possession; or
 - Work that has not yet been completed or abandoned
- b. "Your work" will be deemed completed at the earliest of the following times:
- When all of the work called for in your contract has been completed.
 - When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
 - When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- c. This hazard does not include "bodily injury" or "property damage" arising out of:
- The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the "loading or unloading" of it;
 - The existence of tools, uninstalled equipment or abandoned or unused materials; or
 - Products or operations for which the classification in this Coverage Part or in our manual of rules includes products or completed operations.
15. "Property damage" means:
- Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.
16. "Suit" means a civil proceeding in which damages because of "bodily injury," "property damage," "personal injury" or "advertising injury" to which this insurance applies are alleged. "Suit" includes:
- An arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or
 - Any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.
17. "Your product" means:
- Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - You;
 - Others trading under your name; or
 - A person or organization whose business or assets you have acquired; and
 - Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- "Your product" includes:
- Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
 - The providing of or failure to provide warnings or instructions.
- "Your product" does not include vending machines or other property rented to or located for the use of others but not sold.
18. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
19. "Your work" means:
- Work or operations performed by you or on your behalf; and
 - Materials, parts or equipment furnished in connection with such work or operations.
- "Your work" includes:
- Warranties or representations made at any time with respect to the fitness, quality, durability or performance or use of "your work"; and
 - The providing of or failure to provide warnings or instructions.

POLICY NUMBER: ACC 057900

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR PROJECT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
SCHEDULE

Premises: 70 ADAMS STREET #4
NEWARK, NJ 07105

Project:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

This insurance applies only to "bodily injury," "property damage," "personal injury," "advertising injury" and medical expenses arising out of:

1. The ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises; or
2. The project shown in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT-RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to paragraph 2., Exclusions of COVERAGE A-BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I-Coverages):

This insurance does not apply to:

"Bodily injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- (1) Whether the Insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

B. The following exclusion is added to paragraph 2., Exclusions of COVERAGE B-PERSONAL AND ADVERTISING INJURY LIABILITY (Section I-Coverages):

This insurance does not apply to:

"Personal injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal injury" to that person at whom any of the employment-related practices described in paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- (1) Whether the Insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL POLLUTION EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion f. under paragraph 2., Exclusions of COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages) is replaced by the following:

This insurance does not apply to:

f. Pollution

(1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.

(2) Any loss, cost or expense arising out of any.

(a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or

b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing, the effects of pollutants.

Pollutants means any solid, liquid, gaseous, or thermal irritant or containment including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

Cancellation No. 92047056

Terra Sul Corporation v. Boi Na Brasa, Inc.

EXHIBIT A-9

Offered by Terra Sul Corporation

COMMERCIAL LINES
POLICY



AMERICAN EQUITY
INSURANCE COMPANY

THIS POLICY CONSISTS OF:

- DECLARATIONS
- COMMON POLICY CONDITIONS
- ONE OR MORE COVERAGE PARTS. A COVERAGE PART CONSISTS OF:
 - One or more coverage forms
 - Applicable forms and endorsements

In Witness Whereof, We have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by Our authorized representative.

Barbara A. Sutherland

Secretary

E. J. Keating

President

A100J (02/1999)



TS 000267

COMMERCIAL LINES POLICY
COMMON POLICY DECLARATIONS

AMERICAN EQUITY INSURANCE COMPANY

New Rewrite
 Renewal Cross-Ref.

Scottsdale, Arizona

Policy No. ACC 080062

ACC 057900
Policy Number

S/L 00365-99-01629

Named Insured and Mailing Address
(No., Street, Town or City, County, State, Zip Code)
CHURRASCARIA BOINA BRASA

This Insurance is Issued Pursuant to the New Jersey
Surplus Lines Law.

NO FLAT CANCELLATION

70 ADAMS STREET STORE #4
NEWARK NJ 07105

Agent and Mailing Address
(No., Street, Town or City, County, State, Zip Code)
Metcom Excess
P.O. Box 3140

Agency No. 3100

Cliffside Park NJ 07010

Tax State NJ

Policy Period: From 06/14/1999 to 06/14/2000 at 12:01 A.M. Standard Time at your mailing address shown above.

Business Description: RESTAURANT

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY,
WE AGREE WITH YOU TO PROVIDE THE INSURANCE STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED.
THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT

	PREMIUM
Commercial Property Coverage Part	\$ _____
Commercial General Liability Coverage Part	\$ <u>1,750.00</u>
	\$ _____
	\$ _____
Other Charges	TOTAL ADVANCE PREMIUM \$ <u>1,750.00</u>
POLICY FEE \$ 50.00	TOTAL OTHER CHARGES \$ <u>102.50</u>
3% NJ S/L TAX 52.50	TOTAL \$ <u>1,852.50</u>

Form(s) and Endorsement(s) made a part of this policy at time of issue*:
A104 10-1998, IL0017 11-1998, IL0021 04-1998, IL0208 04-1998, CL150 06-1993

A100(3/97)

*Omits applicable Forms and Endorsements if shown in specific Coverage Part/Coverage Form Declarations.

Countersigned: Cliffside Park, NJ
07/12/1999 NM


Countersigned by Authorized Representative

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART DECLARATIONS, COVERAGE PART COVERAGE
FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY
Includes copyrighted material of Insurance Services Office, Inc. with its permission. Copyright, Insurance Services Office, Inc., 1983, 1984

A100 (03/1997)

ORIGINAL

TS 000268

A104 (10/1998)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SERVICE OF SUIT

Pursuant to any statute of any state, territory or district of the United States which makes provision therefore, we hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the Statute, or their successor or successors in office, as our true and lawful attorney upon whom may be served any lawful process in any action, "suit" or proceeding instituted by or on behalf of you or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the following individual as the person to whom the said officer is authorized to mail process or a true copy thereof.

It is further agreed that service of process in such "suit" may be made upon the chief claims officer of the Company at 7676 E. Pinnacle Peak Road, Scottsdale, AZ 85255.

All other Terms and Conditions of this Policy remain unchanged.

A104 (10/1998)

TS 000269

COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. Examination Of Your Books And Records

We may examine and audit your books and record as they relate to this policy at any time during the policy period and up to three years afterward.

D. Inspections And Surveys

1. We have the right to:
 - a. Make inspections and surveys at any time;
 - b. Give you reports on the conditions we find; and
 - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
(Broad Form)

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY
COMMERCIAL AUTO COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
PROFESSIONAL LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
SPECIAL PROTECTIVE AND HIGHWAY LIABILITY POLICY NEW YORK DEPARTMENT OF TRANSPORTATION
UNDERGROUND STORAGE TANK POLICY

1. The insurance does not apply:

A. Under any Liability Coverage, to "bodily injury" or "property damage":

- (1) With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:

- (1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
- (2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or
- (3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this endorsement:

"Hazardous properties" include radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "Special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a) Any "nuclear reactor";
- (b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel" or (3) handling, processing or packaging "waste";
- (c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NEW JERSEY CHANGES - CANCELLATION
AND NONRENEWAL**

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART
BUSINESSOWNERS POLICY
COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL CRIME COVERAGE PART*
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
PROFESSIONAL LIABILITY COVERAGE PART

* This endorsement does not apply to coverage provided for employee dishonesty (Coverage Form A), forgery or alteration (Coverage Form B), or public employee dishonesty (Coverage Forms O and P).

- A. Pursuant to New Jersey law, this policy cannot be cancelled or nonrenewed for any underwriting reason or guideline which is arbitrary, capricious or unfairly discriminatory or without adequate prior notice to the insured. The underwriting reasons or guidelines that an insurer can use to cancel or nonrenew this policy are maintained by the insurer in writing and will be furnished to the insured and/or the insured's lawful representative upon written request.

This provision shall not apply to any policy which has been in effect for less than 60 days at the time notice of cancellation is mailed or delivered, unless the policy is a renewal policy.

- B Paragraph 2. of the Cancellation Common Policy Condition is replaced by the following:

2. If this policy has been in effect for less than 60 days, we may cancel this policy for any reason subject to the following:

- a. We may cancel this policy by mailing or delivering to the first Named Insured and any person entitled to notice under this policy written notice, of cancellation, at least:

(1) 10 days before the effective date of cancellation if we cancel for:

(a) Nonpayment of premium; or

(b) Existence of a moral hazard, as defined in N.J.A.C. 11:1-20.2(f) as follows:

(i) "The risk, danger or probability that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. Any change in the circumstances of an insured that will increase the probability of such a destruction may be considered a 'moral hazard'; and

(ii) "The substantial risk, danger or probability that the character, circumstances or personal habits of the insured may increase the possibility of loss or liability for which an insurer will be held responsible. Any change in the character or circumstances of an individual, corporate, partnership or other insured that will increase the probability of such a loss or liability may be considered a 'moral hazard'".

(2) 30 days before the effective date of cancellation if we cancel for any other reason.

- b. In the notice of cancellation which is sent to the first Named Insured, we will state the reason for cancellation.

C. The following is added to the Cancellation Common Policy Condition:

7. Cancellation of Policies In Effect For 60 Days or More

- a. If this policy has been in effect for 60 days or more, or is a renewal of a policy we issued, we may cancel this policy only for one or more of the following reasons:
- (1) Nonpayment of premium;
 - (2) Existence of a moral hazard, as defined in N.J.A.C. 11:1-20.2(f);
 - (3) Material misrepresentation or nondisclosure to us of a material fact at the time of acceptance of the risk;
 - (4) Increased hazard or material change in the risk assumed which we could not have reasonably contemplated at the time of assumption of the risk;
 - (5) Substantial breaches of contractual duties, conditions or warranties that materially affect the nature and/or insurability of the risk;
 - (6) Lack of cooperation from the insured on loss control matters materially affecting insurability of the risk;
 - (7) Fraudulent acts against us by the insured or its representative that materially affect the nature of the risk insured;
 - (8) Loss of or reduction in available insurance capacity;
 - (9) Material increase in exposure arising out of changes in statutory or case law subsequent to the issuance of the insurance contract or any subsequent renewal;
 - (10) Loss of or substantial changes in applicable reinsurance;
 - (11) Failure by the insured to comply with any Federal, State or local fire, health, safety or building or construction regulation, law or ordinance with respect to an insured risk which substantially increases any hazard insured against within 60 days of written notification of a violation of any such law, regulation or ordinance;
 - (12) Failure by the insured to provide reasonable and necessary underwriting information to us upon written request therefor and a reasonable opportunity to respond;
 - (13) Agency termination, provided:
 - (a) We document that replacement coverage at comparable rates and terms has been provided to the first Named Insured, and we have informed the first Named Insured, in writing, of the right to continue coverage with us, or
 - (b) We have informed the first Named Insured, in writing, of the right to continue coverage with us and the first Named Insured has agreed, in writing, to the cancellation or nonrenewal based on the termination of the first Named Insured's appointed agent.
 - (14) Any other reasons in accordance with our underwriting guidelines for cancellation of commercial lines coverage.
- b. If we cancel this policy based on Paragraphs 7.a.(1) or (2) above, we will mail or deliver a written notice, to the first Named Insured and any person entitled to notice under this policy, at least 10 days before the effective date of cancellation. If we cancel this policy for any other reason listed above, we will mail or deliver a written notice to the first Named Insured and any person entitled to notice under this policy, not more than 120 days nor less than 30 days before the effective date of such cancellation.
- c. In the notice of cancellation which is sent to the first Named Insured, we will state the reason for cancellation. For cancellation due to the nonpayment of premium, the notice will state the effect of nonpayment by the due date. Cancellation for nonpayment of premium will not be effective if payment of the amount due is made before the effective date set forth in the notice.
- d. Notice will be sent to the last mailing addresses known to us, by:
- (1) Certified mail; or
 - (2) First class mail, if we have obtained from the post office a date stamped proof of mailing showing names and addresses.
- e. We need not send notice of cancellation if you have:
- (1) Replaced coverage elsewhere; or
 - (2) Specifically requested termination.

D. The following is added and supersedes any other provision to the contrary;

NONRENEWAL

1. We may elect not to renew this policy for any reason permitted to cancel it. If we elect not to renew this policy, we will mail a notice of nonrenewal, stating the reasons for nonrenewal, to the first Named Insured at least 30 days but not more than 120 days before the expiration date of this policy. If this policy does not have a fixed expiration date, it shall be deemed to expire annually on the anniversary of its inception.
2. This notice will be sent to the first Named insured at the last mailing address known to us by:
 - a. Certified mail; or
 - b. First class mail, if we have obtained from the post office a date stamped proof of mailing showing the first Named Insured's name and address.
3. We need not mail or deliver this notice if you have:
 - a. Replaced coverage elsewhere; or
 - b. Specifically requested termination.

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
DECLARATIONS**

Policy No. ACC-080062

Effective Date: 06/14/1999 12:01 A.M., Standard Time

LIMITS OF INSURANCE							
General Aggregate Limit (Other Than Products / Completed Operations)				\$	1,000,000		
Products / Completed Operations Aggregate Limit				\$	500,000		
Personal and Advertising Injury Limit				\$	500,000		
Each Occurrence Limit				\$	500,000		
Fire Damage Limit				\$	50,000		Any One Fire
Medical Expense Limit				\$	1,000		Any One Person
<p align="center">THIS POLICY CONTAINS ADDENDUMS; REFER TO SECTION III - LIMITS OF INSURANCE FOR DETAILS</p>							
RETROACTIVE DATE (CG 0002 only)							
Coverage A of this insurance does not apply to "bodily injury" or "property damage" which occurs before the Retroactive Date, if any, shown here: _____ (Enter Date or "None" if no Retroactive Date applies)							
BUSINESS DESCRIPTION AND LOCATION OF PREMISES							
Form of Business:							
<input checked="" type="checkbox"/> Individual <input type="checkbox"/> Joint Venture <input type="checkbox"/> Partnership <input type="checkbox"/> Organization (other than Partnership or Joint Venture)							
Business Description *: RESTAURANT							
Location of All Premises You Own, Rent or Occupy:							
1. 70 ADAMS STREET #4, NEWARK, NJ 07105							
2.							
3.							
PREMIUM							
Code No.	Classification Description	Type	Premium Basis	Rate Prem/Op	Pr/Co	Advance Premium Prem/Op	Pr/Co
16816	REST-LESS 75% ALCOHOL-NO DANCING-W/CKG	s	90,000	14.525	.761	1,307	443
Total Advance Premium \$						1,307	\$ 443
FORMS AND ENDORSEMENTS (other than applicable Forms and Endorsements shown elsewhere in the policy)							
Forms and Endorsements applying to this Coverage Part and made part of this policy at time of issue:							
L026 03-1997, L031 03-1997, L054 03-1997, L069 03-1997, L123 03-1997, L124 03-1997, L125 03-1997, L126 03-1997, L130 03-1997, L140 12-1998, CG0001 07-1998, CG2147 07-1998, CG2149 07-1998, CG2160 09-1998, CG2407 01-1996							
CG2620(10/93)							

*Information omitted if shown elsewhere in the policy.

CL150 (06/1993) THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD. Includes copyrighted material of Insurance Services Office, Inc., with its permission, Copyright, Insurance Services Office, Inc., 1983, 1984

TS 000276

COMMERCIAL GENERAL LIABILITY
L026 (03/1997)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE TO POLICYHOLDERS

This insurance does not provide coverage as required by Environmental Protection Agency (EPA) 40 CFR Parts 280 and 281 for underground storage tanks nor any coverage under CERCLA or similar State or Federal Environmental Act(s).

This policy excludes all Coverage for Pollution.

All other Terms and Conditions of this Policy remain unchanged.

L026 (03/1997)

TS 000277

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - PUNITIVE OR EXEMPLARY DAMAGES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to COVERAGES A and B:

This insurance does not apply to a claim of or indemnification for punitive or exemplary damages. If a suit shall have been brought against you for a claim within the coverage provided under the policy, seeking both compensatory and punitive or exemplary damages, then we will afford a defense for such action. We shall not have an obligation to pay for any costs, interest or damages attributable to punitive or exemplary damages.

All other Terms and Conditions of this Policy remain unchanged.

COMMERCIAL GENERAL LIABILITY
LD54 (03/1997)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

EXCLUSION - VOLUNTARY LABOR

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to COVERAGES A, B and C (Section 1):

This insurance does not apply to "bodily injury", "personal injury" or medical payments to any member, associate, affiliated member, or to any person or persons loaned to or volunteering services to you, whether or not paid by you, arising out of or in the course of work performed for you or on your behalf.

All other Terms and Conditions of this Policy remain unchanged.

LD54 (03/1997)

TS 000279

COMMERCIAL GENERAL LIABILITY
L069 (03/1997)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATION - OTHER INSURANCE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

CONDITION 4. . Other Insurance, under COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), item b(3) providing Excess Insurance if the loss arises out of the maintenance or use of aircraft, "autos" or watercraft is deleted

All other Terms and Conditions of this Policy remain unchanged.

L069 (03/1997)

TS 000280

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - ASSAULT AND BATTERY - HIRING / SUPERVISION (NJ ONLY)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Paragraph w., Exclusions of COVERAGE A, Bodily Injury and Property Damage Liability (Section I - Coverage):

The insurance does not apply to "bodily injury" or "property damage" arising out of any alleged assault and battery or out of any act or omission in connection with the prevention or suppression of such acts, including the alleged failure to provide adequate security whether caused by or at the instigation or direction of the insured, his employees, patrons or any other person.

This insurance does not apply to claims, accusations, or charges of negligent hiring, placement, training or supervision arising from actual or alleged assault or battery.

The following exclusion is added to Paragraph 2., Exclusions of COVERAGE B, Personal and Advertising Injury Liability (Section I - Coverages):

This insurance does not apply to "personal injury" arising out of any alleged assault and battery or out of any act or omission in connection with the prevention or suppression of such acts, including the alleged failure to provide adequate security whether caused by or at the instigation or direction of the insured, his employees, patrons or any other person.

All other Terms and Conditions of this Policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - TOTAL LIQUOR LIABILITY (NJ ONLY)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion c. under paragraph 2., Exclusions of COVERAGE A, Bodily Injury and Property Damage (Section I - Coverages) is replaced by the following:

c. **Liquor Liability**

"Bodily injury" or "property damage" for which any insured or his indemnitee may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

All other Terms and Conditions of this Policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTUAL LIABILITY LIMITATION (NJ Only)

(Limited Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The definitions of "insured contract" in DEFINITIONS (Section V) is replaced by the following:

"Insured Contract" means any written:

- a. Contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. Sidetrack agreement;
- c. Easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. Elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business (including indemnification of a municipality in connection with work performed for a municipality) under which you assume tort liability of another party to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

An "insured contract" does not include that part of any contract or agreement:

- (1) That indemnifies any person or organization for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, track, road-bed, tunnel, underpass or crossing.
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection or engineering services;
- (4) That indemnifies any person or organization for "property damage" to premises rented or loaned to you;
- (5) That indemnifies any person or organization for "bodily injury" or "property damage" arising from an "occurrence" caused by the negligence of said person or organization; or
- (6) That indemnifies any person or organization for "bodily injury" or "property damage" arising from the ownership, maintenance or use of any aircraft.

All other Terms and Conditions of this Policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF PREMIUM CONDITIONS (NJ Only)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

CONDITION 5. Premium Audit, under COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), is replaced by the following:

5. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

The deposit premium shown on the declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation, or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.

The rates for each classification shown on the Declarations are multiplied by the estimated premium bases of that classification for the term to determine the deposit premium. We may, at our discretion, conduct an audit of the insured's books to determine the actual premium bases developed during the policy period. The premium bases used are payroll, admissions, gross sales, total costs, area, each exposure unit or units and are defined in accordance with company rules and the following additional definitions:

(1) Payroll (premium basis symbol p): Remuneration paid to employees, including but not limited to:

- (a) Money or substitutes for money; commissions; bonuses; overtime; payments to statutory insurance or pension plans; profit sharing or incentive plans; pay for holidays, vacation or sickness; and fees paid to employment agencies for temporary personnel provided to the insured.
- (b) If your operations consist of a number of separate operations classified individually on the Declarations page, the payroll will be allocated to each classification where you have maintained records for each separate operation. Any such operation for which separate records are not maintained by you shall be assigned to the highest rated classification.
- (c) For premium computation purposes, the payroll of executive officers, individual insureds and co-partners is subject to a minimum annual payroll per person of:

\$

(If no entry is made, the minimum payroll as established by the company's rating rules will apply).

The rates apply per \$1,000 of Payroll.

(2) Admissions (premium basis symbol m): The total number of persons, other than employees of the named insured, admitted to the event insured or to events conducted on the premises whether on paid admissions, tickets, complimentary tickets or passes.

The rates apply per 1,000 Admissions.

(3) Gross sales (premium basis symbol s): The gross amount charged by the named insured, concessionaires of the named insured or by others trading under the insured's name for:

- (a) All goods or products, sold or distributed;
- (b) Operations performed during the policy period; and
- (c) Rentals; or
- (d) Dues or fees.

The rates apply per \$1,000 of Gross Sales.

(4) Total Cost (premium basis symbol c): The total cost of all work let or sublet in connection with each specific project including:

(a) The cost of all labor, materials and equipment furnished, used or delivered for use in the execution of the work;
or

(b) All fees, bonuses or commissions made, paid or due.

The rates apply per \$1,000 of Total Cost.

(5) Area (premium basis symbol a): The total number of square feet of floor space at the insured premises.

The rates apply per 1,000 square feet of area.

(6) Each (premium basis symbol t): This basis of premium involves units of exposure, and the quantity comprising each unit of exposure is indicated in the declarations page, such as "per person".

The rates apply per each unit of exposure.

(7) Units (premium basis symbol u): A single room or group of rooms intended for occupancy as separate living quarters by a family, by a group of unrelated persons living together, or by a person living alone.

The rates apply per unit.

- b. Premium shown in this Coverage Part is the deposit premium. At the close of each audit period (or part thereof terminating with the end of the policy period) we will compute the earned premium for that period. If the earned premium is greater than the deposit premium paid, an audit premium is due. Audit premiums are due and payable on notice to the first Named Insured. If the total earned premium for the policy period is less than the deposit premium, the difference is refunded subject to the minimum premium.
- c. The first Named Insured must keep records of information we need for premium computation, and shall supply copies at such times as we may request.
- d. We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

All other Terms and Conditions of this Policy remain unchanged.

POLICY NUMBER: ACC 080062

COMMERCIAL GENERAL LIABILITY
L130 (03/1997)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEDUCTIBLE LIABILITY INSURANCE (NJ Only)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Coverage	Amount of Deductible
Bodily Injury Liability	\$ 500 per claim
Property Damage Liability	\$ 500 per claim

APPLICATION OF ENDORSEMENT (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury" and "property damage", however caused).

1. Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the schedule as applicable to such coverages, and the limits of insurance applicable to each "occurrence" for such coverages will be reduced by the amount of such deductible. "Aggregate" limits for such coverages shall not be reduced by the application of such deductible.
2. The deductible amounts stated are on a PER CLAIM BASIS and the deductible amount applies:
 - a. Under the Bodily Injury Liability, to all damages because of "bodily injury" sustained by one person; or
 - b. Under the Property Damage Liability, to all damages because of "property damage" sustained by one person or organization;
as a result of any one "occurrence".
3. The terms of this insurance, including those with respect to:
 - a. Our right and duty to defend "suits" seeking those damages; and
 - b. Your duties in the event of an "occurrence", claim or "suit",
apply irrespective of the application of the deductible amount.
4. We may at our sole election and option, either:
 - a. Pay any part or all of the deductible amount to effect settlement of any claim or "suit" and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us; or
 - b. Upon our receipt of notice of any claim or at any time thereafter, request you to pay over and deposit with us all or any part of the deductible amount, to be held and applied per the terms of this policy.

All other Terms and Conditions of this Policy remain unchanged.

L130 (03/1997)

TS 000286

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - LEAD CONTAMINATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This endorsement excludes "occurrences" at or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured; or from the operations of the insured, which result in:

- a. "Bodily Injury" arising out of the ingestion, inhalation or absorption of lead in any form;
- b. "Property Damage" arising from any form of lead;
- c. "Personal Injury" arising from any form of lead;
- d. "Advertising Injury" arising from any form of lead;
- e. "Medical Payments" arising from any form of lead;
- f. Any loss, cost or expense arising out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of lead; or
- g. Any loss, cost or expense arising out of any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of lead.

All other Terms and Conditions of the Policy remain unchanged.

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - Definitions.

SECTION I - COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance, and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverage A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

b. This insurance applies to "bodily injury" and "property damage" only if:

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and

(2) The "bodily injury" or "property damage" occurs during the policy period.

c. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

(1) That the insured would have in the absence of the contract or agreement; or

(2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage". provided:

(a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

(b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol;
or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured; However, this subparagraph does not apply to:

- (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building;
- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

- (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
- (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor, or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion does not apply to:

(1) A watercraft while ashore on premises you own or rent;

(2) A watercraft you do not own that is:

(a) Less than 26 feet long; and

(b) Not being used to carry persons or property for a charge;

(3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

(4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

(1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

(2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

j. Damage To Property

"Property damage" to:

(1) Property you own, rent, or occupy;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraph (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. **Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

l. **Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. **Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. **Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. **Personal And Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III - Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. **Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A And B.

b. This insurance applies to:

"personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. "Personal and advertising injury":

- (1) Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury";
- (2) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (3) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- (4) Arising out of a criminal act committed by or at the direction of any insured;
- (5) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement;
- (6) Arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement";
- (7) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (8) Arising out of the wrong description of the price of goods, products or services stated in your "advertisement";
- (9) Committed by an insured whose business is advertising, broadcasting, publishing or telecasting. However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section; or
- (10) Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

b. Any loss, cost or expense arising out of any:

- (1) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "pollutants".

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within one year of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

- a. To any insured.
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.
- d. To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
- e. To a person injured while taking part in athletics.
- f. Included within the "products-completed operations hazard".
- g. Excluded under Coverage A.
- h. Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
 - a. All expenses we incur.
 - b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
 - c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
 - e. All costs taxed against the insured in the "suit".
 - f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
 - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
 - b. This insurance applies to such liability assumed by the insured;
 - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
 - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
 - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
 - f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and
 - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

- (2) Provides us with written authorization to:
 - (a) Obtain records and other information related to the "suit", and
 - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of paragraph 2.b.(2) of Section I - Coverage A - Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in paragraph I, above, are no longer met.

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an insured:
 - a. Your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" is an insured for:
 - (1) "Bodily injury" or "personal and advertising injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while that co-"employee" is either in the course of his or her employment or while performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of Paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
 - (d) Arising out of his or her providing or failing to provide professional health care services.
 - (2) "Property damage" to property:
 - (a) Owned, occupied or used by,
 - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by
you, any of your "employees", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
 - b. Any person (other than your "employee"), or any organization while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:
 - a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
 - b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.
4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
 - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverage A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (b) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I - Coverage A - Bodily Injury And Property Damage Liability.

(2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part

c. Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request

6. Representations

By accepting this policy, you agree:

a. The statements in the Declarations are accurate and complete;

b. Those statements are based upon representations you made to us; and

c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V - DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters.

2. "Auto" means a land motor vehicle, trailer or semi trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".
3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or
 - c. All parts of the world if:
 - (1) The injury or damage arises out of:
 - (a) Goods or products made or sold by you in the territory described in a. above; or
 - (b) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business, and
 - (2) The insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.
5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;if such property can be restored to use by:
 - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
 - b. Your fulfilling the terms of the contract or agreement.
9. "Insured contract" means:
 - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
 - b. A sidetrack agreement;
 - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e. An elevator maintenance agreement;
 - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

 - (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
 - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities
10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
11. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
 - e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
 - f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment designed primarily for:
 - (a) Snow removal,
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral or written publication of material that violates a person's right of privacy;
 - f. The use of another's advertising idea in your "advertisement"; or

- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
16. "Products-completed operations hazard":
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
- (a) When all of the work called for in your contract has been completed.
- (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site
- (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- b. Does not include "bodily injury" or "property damage" arising out of:
- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.
17. "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.
18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
20. "Your product" means:
- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
- (1) You;
- (2) Others trading under your name; or
- (3) A person or organization whose business or assets you have acquired; and
- b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- "Your product" includes:
- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- b. The providing of or failure to provide warnings or instructions.
- "Your product" does not include vending machines or other property rented to or located for the use of others but not sold.

21 "Your work" means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- b. The providing of or failure to provide warnings or instructions.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT-RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2., Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability:

This insurance does not apply to:

"Bodily injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

- B. The following exclusion is added to Paragraph 2., Exclusions of Section I - Coverage B - Personal And Advertising Injury Liability:

This insurance does not apply to:

"Personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person,
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL POLLUTION EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion 1, under paragraph 2., Exclusions of Coverage A - Bodily Injury And Property Damage Liability (Section I - Coverages) is replaced by the following:

This insurance does not apply to:

I. Pollution

(1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

(2) Any loss, cost or expense arising out of any:

(a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or

(b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing, the effects of, "pollutants".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - YEAR 2000 COMPUTER - RELATED AND
OTHER ELECTRONIC PROBLEMS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2., Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability and Paragraph 2., Exclusions of Section I - Coverage B - Personal And Advertising Injury Liability:

2. Exclusions

This insurance does not apply to "bodily injury", "property damage", "personal injury" or "advertising injury" (or "personal and advertising injury" if defined as such in your policy) arising directly or indirectly out of:

- a. Any actual or alleged failure, malfunction or inadequacy of:
 - (1) Any of the following, whether belonging to any insured or to others:
 - (a) Computer hardware, including microprocessors;
 - (b) Computer application software;
 - (c) Computer operating systems and related software;
 - (d) Computer networks;
 - (e) Microprocessors (computer chips) not part of any computer system; or
 - (f) Any other computerized or electronic equipment or components; or
 - (2) Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph 2.a.(1) of this endorsement due to the inability to correctly recognize, process, distinguish, interpret or accept the year 2000 and beyond.
- b. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph 2.a. of this endorsement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRODUCTS/COMPLETED OPERATIONS HAZARD REDEFINED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
SCHEDULE

Description of Premises and Operations: RESTAURANT

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to "bodily injury" or "property damage" arising out of "your products" manufactured, sold, handled or distributed:

1. On, from or in connection with the use of any premises described in the Schedule, or
2. In connection with the conduct of any operation described in the Schedule, when conducted by you or on your behalf.

Paragraph a. of the definition of "Products-completed operations hazard" in the DEFINITIONS Section is replaced by the following:

"Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" that arises out of "your products" if the "bodily injury" or "property damage" occurs after you have relinquished possession of those products.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

~~THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.~~

NEW JERSEY CHANGES - LOSS INFORMATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART ("OCCURRENCE" VERSION)

The following Condition is added TO COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

10. Your Right to Loss Information

We will provide the first Named Insured shown in the Declarations the following loss information relating to this and any preceding general liability Coverage Part we have issued to you during the previous three years:

- a. A list or other record of each "occurrence" of which we were notified in accordance with paragraph 2.a. of the Duties in the Event of Occurrence, Offense, Claim or Suit Condition in this Section. We will include a brief description of the "occurrence" and information on whether any claim arising out of the "occurrence" is open or closed.
- b. A summary by policy year, of payments made and amounts reserved, stated separately under any applicable General Aggregate Limit and

Products/Completed Operations Aggregate Limit.

Amounts reserved are based on our judgment. They are subject to change and should not be regarded as ultimate settlement values.

You must not disclose this information to any claimant or any claimant's representative without our consent.

We will provide this information only if we receive a written request from the first Named Insured during the policy period. We will provide this information within 45 days of receipt of the request.

We compile claim and "occurrence" information for our own business purposes and exercise reasonable care in doing so. In providing this information to the first Named Insured, we make no representations or warranties to insureds, insurers or others to whom this information is furnished by or on behalf of any insured.