

August 6, 2014

To: Members, Government Management Committee  
Attn: Councillors Shiner, Chair; V. Crisanti, D. Ford, M. Fragedakis,  
P. Leon, and P. McConnell

Re: **Item: 32.6 – 238 Queen Street West**

I am attaching a background document which has been provided to me by residents who are very concerned about the history of this site.

I draw your attention to the long history of how the site has been used, and in particular, that the original purpose of this facility has not been observed.

This is brought to your attention so that it can be considered in your decision.

A handwritten signature in blue ink, appearing to read "Ceta", with a long, sweeping flourish extending to the right.

Ceta Ramkhalawansingh

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

**BETWEEN:**

**CITY OF TORONTO**

**Applicant**

**- and -**

**QUEEN-ST. PATRICK MARKET INC.**

**Respondent**

**FRESH AS AMENDED APPLICATION RECORD**

City Solicitor's Office  
City of Toronto  
Legal Department  
55 John Street, Metro Hall  
26<sup>th</sup> Floor, Toronto, ON  
M5V 3C6

Michele Wright, LSUC#: 40724W

Telephone: (416) 397-5342  
Fax: (416) 397-1765  
Email: [mwright4@toronto.ca](mailto:mwright4@toronto.ca)

Solicitor for the City of Toronto

TO: Queen-St. Patrick Market Inc.  
390 Bay Street  
Suite 2801  
Toronto, Ontario  
M5H 2Z2

Queen-St. Patrick Market Inc.  
5 Fairview Mall Drive  
Suite 478  
Willowdale, Ontario  
M2J 2Z1

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

BETWEEN:

CITY OF TORONTO

Applicant

- and -

QUEEN-ST. PATRICK MARKET INC.

Respondent

AMENDED NOTICE OF APPLICATION

APPLICATION UNDER Rule 14.05(3)(d) and (h)

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following pages.

THIS APPLICATION will come on for a hearing on November 24, 2008, at 10:00 a.m. at 393 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application has been heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date \_\_\_\_\_

Issued by \_\_\_\_\_  
Local registrar

Address of court office:

393 University Avenue  
Toronto, Ontario  
M5G 1E6

TO: Queen-St. Patrick Market Inc.  
390 Bay Street  
Suite 2801  
Toronto, Ontario  
M5H 2Z2

Queen-St. Patrick Market Inc.  
5 Fairview Mall Drive  
Suite 478  
Willowdale, Ontario  
M2J 2Z1

## APPLICATION

**The applicant (the "City") makes application for:**

1. an order terminating the Lease dated June 15, 1989 (the "Lease") between the City and the respondent ("Market Inc.") for the building known as the "St. Patrick Market" as a result of:
  - a. Market's failure to operate the Building in compliance with section 13 and Schedule C of the Lease, which requires that the Building be used as a "mini-food market"; and
  - b. Market Inc.'s persistent failure to provide audited financial statements and pay Percentage Rent annually as required by section 4 of the Lease.
2. an order that the respondent ("Market Inc.") pay the City arrears of Base Rent in accordance with section 4(6) of the Lease of \$4,262.13 per month (\$51,145.56 per annum), and ~~pay the City arrears of Base Rent (as defined in the lease dated June 15, 1989 (the "Lease") between the City and Market Inc.) totalling \$16,388.13, for the period from October 1, 2004 to and including May 1, 2007;~~
3. an order that Market Inc. provide audited financial statements for the fiscal years ~~from 2000 to 2004 and 2006,~~ ending October 31, 2007 within 30 days in accordance with ~~as it is required to do pursuant to section 4(d) of the Lease;~~
4. an order that Market Inc. pay the City arrears of Percentage Rent, ~~to be~~ calculated in accordance with section 4(c) of the Lease for the fiscal years ending October

- 31, 2000 to and including October 31, 2006, which totals \$159,707.00, plus the Percentage Rent calculated to be owing for the fiscal year ending October 31, 2007 within 30 days of the delivery of the audited financial statements for 2007;
5. an order that Market Inc. provide audited financial statements for the fiscal year ending October 31, 2008 and pay any Percentage Rent owing on or before January 31, 2009, in accordance with sections 4(c) and (d) of the Lease;
  6. an order that Market Inc. pay the City \$4,059.80, which is the cost incurred by the City to have an audit conducted of Market Inc.'s books and records performed for the fiscal year ending October 31, 2005;
  7. ~~an order terminating the Lease as a result of Market Inc.'s persistent non-compliance with the terms of the Lease;~~
  8. If the Lease is terminated, an order that Market Inc. pay the City \$12,786.39 for 3 months Base Rent, as liquidated damages, in accordance with section 16(i) of the Lease;
  9. prejudgment and post-judgment interest calculated in accordance with section 4(h) of the Lease at the Canadian Imperial Bank of Commerce ("CIBC") Prime Rate plus 4%, compounded monthly, from the date each payment of Percentage Rent, Additional Rent and arrears of Base Rent was due;
  10. costs of this application in accordance with section 16(ii) of the Lease;
  11. such further and other relief as this Honourable Court deems just.

**The grounds for the application are as follows.**

1. The City owns the property municipally known as 238 Queen Street West, also known as the St. Patrick Market (the "Building").
2. Market Inc. and the City entered into a lease dated June 15, 1989 (the "Lease").
3. Pursuant to the Lease, Market Inc. leased the Building from the City for a term of 50 years, commencing October 1, 1989 to operate a food market, effectively a "mini St. Lawrence Market".
4. Market Inc. sub-leases space in the ground level of the Building to approximately 11 food businesses that each operate independent stalls in the Building. Eight of the stalls are currently leased and provide a range of take-out fast food products for sale.
5. Five stalls in the Building are currently vacant.
6. The current use of the Building is contrary to Section 13 and Schedule C of the Lease.
7. The essential provisions in the Lease are:
  - a. the term is for 50 years, commencing October 1, 1989;
  - b. the Building will not "be used for any purpose other than a mini-food market" in accordance with section 13 and Schedule C;
  - c. Market Inc. was and is required to pay:

- i. Base rent of \$1 per annum for the first 10 years (to September 30, 1999);
  - ii. Base rent of \$45,000 per annum for the next five years (from October 1, 1999 to September 30, 2004);
  - iii. Base rent of \$51,145.55 per annum for the next five years (from October 1, 2005 to date; calculated as \$45,000 adjusted to reflect an increase in the Consumers Price Index, All Items since July 1, 1999); and
  - iv. Percentage rent equal to ten percent of the annual net operating profit earned by Market Inc., which ~~is~~ was to be paid annually within 90 days of Market Inc.'s year end, October 31;
- d. Market Inc. is required to deliver audited financial statements to the City for the purpose of ascertaining the Percentage Rent payable; and
  - e. Market Inc. is also required to maintain books and records showing all leases and contracts with respect to the Premises, and all charges or transactions with respect to the Premises.
8. Effective June 1, 2007, Market Inc. began paying Base Rent of \$51,145.55 per annum.
  9. Market Inc. failed to pay the arrears of Base Rent owing, which is equal to the difference between the correct rent of \$51,145.55 and the former rent of \$45,000,



which accumulated between October 1, 2004 to and including May 1, 2007 because Market Inc. was paying the former rent throughout that period.

10. Market Inc. has never paid Percentage Rent.
11. For many years, Market Inc. never even delivered the audited financial statements required to calculate the Percentage Rent owing.
12. As a result, in 2006, the City retained an accountant to prepare audited financial statements for the fiscal year ending October 31, 2005.
13. The audited financial statements prepared for the City for the fiscal year ending October 31, 2005 confirmed that Percentage Rent was owed to the City.
14. Therefore, a notice of default dated May 9, 2007 was sent to Market Inc. demanding payment of all arrears owed to the City and delivery of audited financial statements, among other things.
15. In March, 2008, after the court application was commenced, Market Inc. delivered audited financial for the fiscal years ending October 31, 2001 to 2004 and 2006.
16. The audited financial statements delivered by Market Inc. in March, 2008 confirm that Percentage Rent is owing to the City.
17. Subsequently, the City sent a second notice of default dated September 9, 2008 to Market Inc. particularizing the City's demand for payment of arrears of Percentage Rent and advising that Market Inc. was in breach of the use provisions

of the Lease, among other things.

18. To date, despite demands that it do so, Market Inc. has failed to:
  - i. present any proposal or take any steps to bring the uses of the Building into compliance with the Lease;
  - ii. deliver audited financial statements to the City for the fiscal year ending October 31, 2007;
  - iii. pay the arrears of increased Base Rent owing from since October 1, 2004 to and including May 31, 2007; and
  - iv. pay Percentage Rent calculated to be owing for the fiscal years 2001 to 2006, totalling \$159,707, plus any Percentage Rent that may be owing for 2007, plus interest.
  
19. As a result of Market Inc.'s failure to comply with the terms of the Lease, the City is seeking, among other things:
  - a. an order terminating the Lease as a result of Market Inc.'s persistent failure to comply with the Lease;
  - b. an order compelling Market Inc. to pay the arrears of Percentage Rent calculated to be owing to date, together with interest in accordance with the Lease, and to provide audited financial statements for the fiscal year ending October 31, 2007 in order that additional arrears of Percentage Rent for that year can be calculated; and

c. an order for judgment for the arrears of Base Rent and Additional Rent owing.

20. Rule 14.05(3)(d) and (h) of the *Rules of Civil Procedure*.

The following documentary evidence will be used at the hearing of the application:

1. Affidavit of Raymond Kessler, sworn October 20, 2008, and the exhibits thereto.
2. Affidavit of Kieran Hallinan, sworn October 17, 2008, and the exhibits thereto.
3. ~~Affidavit of Rick Masucci, and the exhibits thereto.~~

November 21, 2007  
October 20, 2008

City Solicitor's Office  
City of Toronto  
Legal Department  
55 John Street, Metro Hall  
26<sup>th</sup> Floor, Toronto, ON  
M5V 3C6

Michele Wright, LSUC#: 40724W

Telephone: (416) 397-5342  
Fax: (416) 397-1765  
Email: [mwright4@toronto.ca](mailto:mwright4@toronto.ca)

Solicitor for the City of Toronto

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

**BETWEEN:**

**CITY OF TORONTO**

**Applicant**

**- and -**

**QUEEN-ST. PATRICK MARKET INC.**

**Respondent**

**AFFIDAVIT OF RAYMOND KESSLER**

I, Raymond Kessler, of the City of Burlington, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Manager, Leasing and Site Management, of the Facilities and Real Estate Division of the City of Toronto (the "City"). In this position, I am responsible for negotiating and managing over 1,000 leases for the City, including the lease dated June 15, 1989 (the "Lease") between the City and Queen-St. Patrick Market Inc. ("Market Inc."). I am also a registered professional planner and a member of the Canadian Institute of Planners, and have been involved in real estate for over 25 years.

2. For the purposes of swearing my affidavit, I have reviewed: the Lease (attached as Exhibit A); the sub-lease dated June 16, 1989 between the City and Market Inc. for the basement premises (the "Basement Lease") (attached as Exhibit B); the Facilities and Real Estate Division's file in this matter; information maintained by the Accounting Services Division on receivables owed by Market Inc. I have also

communicated with Ken Willard, a property officer who reports to me, and Luba Tymkewycz, the Manager of Portfolio Management in the Facilities and Real Estate Division who provided certain historical documentation to me. Accordingly, I have knowledge of the matters to which I hereinafter depose. Where I have obtained information from the documents or others, I have so indicated and I believe this information to be true.

*The St. Patrick Market – 50 Year Lease to Market Inc.*

3. The City owns the property municipally known as 238 Queen Street West. The property is located on Queen Street West between University and Spadina Avenues.

4. The current building on the property is a single storey brick structure, with a basement. The building is referred to as the St. Patrick Market (the "Market Building"). Lanes run alongside the building on the east and west sides and provide one means of access to a park area at the rear of the building.

5. The City's records indicate that the property was bequeathed to the City in 1837 by D'Arcy Boulton, who bequeathed it in trust "for use and purpose of establishing, keeping and maintaining a public market for the benefit and advantage of the citizens of Toronto and others resorting thereto". As a result of legislation enacted by the Province of Ontario, however, I am advised by the City Solicitor's office that the property is no longer held in trust and the City owns it in fee simple; this has been the case since approximately 1947.

6. When the St. Patrick Market first opened in 1836, it was Toronto's second public market. The City's records show that the existing building on the property was built around 1914 and it is the third market building to have been constructed on that site.

7. Pursuant to the Lease, Market Inc. leased the entire Market Building from the City for a term of 50 years, commencing October 1, 1989.

8. Under the terms of the Lease, Market Inc. pays the City Base Rent, Percentage Rent and Additional Rent, all of which are defined terms in the Lease. The Base Rent is essentially a fixed amount payable each month, which increases in accordance with a formula in the Lease over the 50 year term of the Lease. Percentage Rent is 10% of Market Inc.'s net operating profit. Additional Rent includes amounts that Market Inc. is required to pay the City if the City incurs costs related to Market Inc.'s use of the property, such as property taxes or should the City retain an accountant to audit Market Inc.'s financial statements (as the City did do for the 2005 fiscal year), which is discussed further below.

9. Significantly, the Lease also contains provisions that stipulate what the permitted uses of the Market Building are. In particular, section 13 of the Lease states that the Market Building will not "be used for any purpose other than a mini-food market consisting of not less than two or more of the following:

- a. a bakery, meat and seafood store, flower shop, fruit and vegetable stand, cheese and dairy product stand,
- b. the types of uses as set out in the Use Schedule "C" attached hereto."

10. Use Schedule "C" states that "other uses permitted in the operation of the [Market Building] as a mini-market are sale and/or preparation of confectionary, chocolate and chocolate products, saveory snacks, nuts, pastry, cakes, frozen desserts, packaged foods, bulk foods, health foods, prepared meals (cooked, partly cooked, prepared but uncooked)." The schedule further states that "there is to be no restaurant, café or other similar use" and that "all foods, meals... are to be restricted to "take-out" only."

11. At the current time, Market Inc. has subdivided the space on the ground level of the Market Building into approximately 11 areas. Market Inc. then sub-leases space to food businesses that each operate independent stalls in the Market Building providing a range of take-out food products for sale. The current tenants include Chinese Buffet, Queen Pizza, Greek Food, California Thai, India House, Bakestands Gourmet Burger, and I Love Loulou's Shawarma. There are also several vacant stalls. I have attached a diagram showing each of the stalls in the Market Building and their current uses as Exhibit C.

12. Market Inc. is not operating the Market Building in compliance with the Lease because the current tenants are only fast food restaurants. This is contrary to the Lease and to the representations made by Market Inc. when it was negotiating with the City before the Lease was executed. Attached as Exhibit D is a copy of the proposal submitted by Market Inc. for the Market Building in April 1988, in which Market Inc. proposed to use the Market Building as a food market to include "an on site bakery and sweet shop offering varieties of breads and pastries", a "green grocer with displays of vegetables and fruits; a butcher selling various types and cuts of meat; an independent sea

food fish retailer; a cheese and dairy store, as well as fresh pasta outlet offering all type of freshly made pastas". In addition, attached as Exhibit E to my affidavit is a copy of the 1989 reports to and decisions of Toronto City Council which sets out Council's consideration of Market Inc.'s proposal and the decision of City Council in 1989, and further reflects the parties discussions and intention to create a mini-food market along the lines of the St. Lawrence Market model.

13. On September 9, 2008, the City sent a notice of default to Market Inc. Attached as Exhibit F is a copy of the notice of default dated September 9, 2008. The notice of default followed an earlier letter dated August 22, 2008 from the City's solicitor, Ms. Wright, to Market Inc.'s solicitor in which Ms. Wright advised of the City's position that Market Inc. was not operating the Market Building in accordance with the use provisions of the Lease, among other issues raised.

14. The notice of default dated September 9, 2008 requested that, among other things, Market Inc. advise the City by October 10, 2008 of the specific steps that it was taking to bring the uses of the Market Building into compliance with the Lease. For example, several of the existing locations within the Market Building are vacant and apparently available to be leased according to signage in the Market Building. The City has, to date however, not received any information or proposal from Market Inc. indicating that Market Inc. was attempting or intended to take any steps to, at the least, lease the currently vacant premises to tenants who would allow Market Inc. to meet the use criteria in the Lease.



*Failure by Market Inc. to Operate a Food Market in the Building*

15. In 1997, City staff initially investigated the uses of the Market Building. Attached as Exhibit G is a memorandum dated July 10, 1997 from Ken Willard, who is a property officer with Facilities & Real Estate at that time and today, to which is also attached a memorandum from Kathy McDonald dated January 2, 1997. Both of these memoranda set out the then existing uses of the Market Building. At that time, as is evident from the documents, there was some market-type use of the Market Building, including Molisana Bakery. Other uses included a butcher and wine shop that occupied the premises for some time and then ceased to do so, as is reflected in the documents.

16. In 1999, the City engaged in communications with George Friedmann, the principal of Market Inc., regarding the use of the Market Building and Market Inc.'s efforts to attract tenants to satisfy the use provisions in the Lease. This is confirmed by a series of correspondence including the following.

- a. A letter dated February 18, 1999 from the City to Mr. Friedmann which discusses a meeting held February 9, 1999 regarding the status of Market Inc.'s marketing plans for the Market Building, attached as Exhibit H. This letter acknowledges that Market Inc. was having some difficulty in finding tenants to occupy the Market Building that would satisfy the terms of the Lease. Therefore, at the February 9, 1999 meeting, there were some discussion about whether the terms of the Lease could be amended in order to provide greater flexibility to Market Inc. As the letter sets out, however, any change to the permitted use of the Market Building would

require City Council's approval and amendment to the Lease itself. The letter requests that Market Inc. provide a status report with respect to whether and how it would like to pursue alternative options to find tenants for the Market Building. I have reviewed the Facility & Real Estate Division's file and can find no subsequent correspondence from Market Inc. in which Market Inc. specifically responded to the options discussed in this February 18, 1999 letter, nor any communication from Market Inc. providing a business plan or proposal pursuant to which it might have suggested any change to the permitted uses of the Market Building.

- b. On April 22, 1999, the City wrote again to Market Inc., care of its property management company at that time, requesting that Market Inc. provide an update on the status of its efforts to lease the Market Building to a grocerant type operation. A copy of this letter is attached as Exhibit I.
- c. Subsequent correspondence was exchanged on September 22, 1999 in another letter from the City to Mr. Friedmann, which confirms that Market Inc. had indicated that it had located a baker to become a tenant in the Market Building. The City, at that time, requested that Market Inc. provide a re-marketing plan in conformity with the Lease as there were significant portions of the Market Building that remained vacant. This letter dated September 22, 1999 is attached as Exhibit J to my affidavit.
- d. A letter dated September 30, 1999 from Mr. Friedmann replies to the City's letter of September 22, 1999. In this letter from Mr. Friedmann, he

advised the City that a bakery operation should be operational by November 1, 1999 and that negotiations were under way with a cheese vendor and a new green grocer interested in the Market Building. Attached as Exhibit K is a copy of the letter dated September 30, 1999.

- e. On November 19, 1999 the City wrote to Market Inc. again to articulate its concerns that it was in breach of the Lease because the only tenants occupying the Market Building at that time were carry out fast food style businesses. One of the issues raised in the letter is that seating had been placed in the aisle of the Market Building. This was contrary to the Lease and this specific issue was eventually dealt with as the seating was removed in approximately 2002. A copy of this letter is attached as Exhibit L.
- f. On December 8, 1999, the City wrote again to Market Inc., through its property management company. The issue of Market Inc.'s failure to comply with the use provisions in the Lease was raised again at that time. A copy of this letter is attached as Exhibit M.

17. Aside from this correspondence, I can find no other communication in the Facilities and Real Estate Division's files that addresses the issue of the uses of the Market Building. The specific issue appears to not have been pursued with Market Inc. by the City from approximately 2000 to 2008. In the same interval, the City received no communication from Market Inc. proposing a business plan or strategy in support of any request to amend the terms of the Lease to expand the permitted uses, nor any other

request to continue to pursue the course of action it has taken to lease space in the Market Building to fast food restaurants.

18. In 2008, this specific issue was raised again by the Facilities and Real Estate Division. City Council, at its meeting of July 15, 16, and 17, 2008, directed staff to amend the existing court application to seek a court order terminating Market Inc.'s Lease on the basis of Market Inc.'s failure to operate the Market Building in accordance with the terms of the Lease that require the Market Building to be used as a food market. Subsequently, the City's solicitor then wrote to Market Inc. in August and September, 2008, which correspondence was referenced above. Attached as Exhibit N is an extract from the Minutes of Council's July 15, 16, and 17, 2008 meeting, together with the public portion of the report Council considered.

*Market Inc.'s Default Under the Lease*

19. Prior to the notice of default sent to the tenant on September 9, 2008 indicating, among other things, that the use of the Market Building contravenes the Lease, the City had sent Market Inc. a notice of default on May 9, 2007. In the notice of default dated May 9, 2007, the City advised Market Inc. that it was in default of the Lease at that time because it had failed to:

- a. provide audited financial statements as required by the terms of the Lease;
- b. failed to pay any arrears of Percentage Rent (as defined in the Lease) that might then be owing (the calculation of which required the audited financial statements);

- c. failed to pay arrears of Base Rent (as defined in the Lease), which total \$16,388.13 for the period from October 1, 2004 to and including May 1, 2007; and
- d. failed to pay \$4,059.80, to reimburse the City for the cost of obtaining audited financial statement for 2005, in accordance with the terms of the Lease.

Attached as Exhibit O is a copy of the City's notice of default dated May 9, 2007.

20. Under the terms of the Lease, Market Inc. is required to deliver audited financial statements to the City. The requirement that Market Inc. provide audited financial statements was included in the Lease to allow the City to ascertain the correct Percentage Rent payable and to provide assurance that Market Inc. is paying the City all of the monies that the City is entitled to under the Lease.

21. The Percentage Rent to be paid to the City is equal to ten percent of the annual net operating profit earned by Market Inc. Under the Lease, Market Inc. must pay the City any Percentage Rent owed within 90 days of Market Inc.'s year end each year.

22. Following delivery of the notice of default dated May 9, 2007, the City and Market Inc. entered into negotiations and a tolling agreement to prevent the running of the limitation period. The tolling agreement was effective May 9, 2007. The City gave Market Inc. notice on November 6, 2007 that it was terminating the tolling agreement 30 days from November 6, 2007, in accordance with its terms. The City's notice of application was issued on November 23, 2007.

23. On January 28, 2008, Market Inc. advised the City, through its counsel, that it had retained accountants to prepare audited financial statements. Audited, financial statements for the fiscal years ending October 31, 2001 to 2004 and 2006 were provided to the City on March 7, 2008. Attached as Exhibit P to my affidavit is a copy of the audited financial statements provided to the City by Market Inc. on March 7, 2008. Market Inc. did not provide audited financial statements for the year ending October 31, 2005, but financial statements for that year were prepared by a chartered accountant retained by the City, as will be discussed further below.

24. To date, however, no audited financial statements have been provided for the fiscal year ending October 31, 2007. Additional audited financial statements will also be owed shortly for the fiscal year ending October 31, 2008 as payment of any Percentage Rent owing is due within 90 days of October 31, 2008. I am advised by Ms. Wright that she has written to counsel for Market Inc. requesting the 2007 audited financial statements, but none have been provided.

25. When Market Inc. delivered audited financial statements in February, 2008, this was the first time that audited financial statements had been provided to the City since the Lease was executed, even though the City had repeatedly demanded that Market Inc. deliver audited financial statements. Attached as Exhibit Q to my affidavit are the letters from the City to Market Inc. or its property management company sent between 1995 and 2006 in which the City demanded that audited financial statements be provided.

26. No audited financial statements were provided to the City by Market Inc. before 2008, although Market Inc. did provide unaudited statements of earnings for the

years ending October 31, 1992 to October 31, 2001, inclusive, in 2003. Attached as Exhibit R is a copy of the letter dated February 14, 2003 from Market Inc.'s solicitors to the City.

*City Retained Accountant to Obtain 2005 Audited Financial Statement*

27. In 2006, when the City sought to again address the issue of Market Inc.'s failure to provide audited financial statements as required by the Lease, it decided to retain a chartered accountant to prepare audited financial statements for one fiscal year, 2005, as a starting point to evaluate whether Percentage Rent was likely owing to the City. To this end, the City wrote to Market Inc. on June 12, 2006 to advise that it had retained a chartered accountant, Charles Havill, to prepare audited financial statements. Attached as Exhibit S is a copy of the City's letter to Market Inc. dated July 12, 2006.

28. Charles Havill prepared an audited financial statement. Attached as Exhibit T is a copy of the audited financial statement prepared by Charles Havill.

29. The City disagrees with one element of the 2005 financial statements prepared by Charles Havill. In Note 3 on page 3 of the statements attached, Mr. Havill states that "Revenues include the amount of \$433,491 representing prior years' adjustments of actual operating cost recoveries in excess of amounts previously received from tenants." This amount is the amount at issue between the City and Market Inc. in the action commenced by Market Inc., court file 07-CV-343601PD2. The City disputes that \$433,491 is due and owing to Market Inc. by the City because Market Inc. has failed to provide supporting documentation for the demands it is making of the City for payment. Therefore, for the purposes of calculating Percentage Rent owed for 2005, Market Inc.'s

revenue should be reduced by the \$433,491 that is in dispute until that issue has been resolved by the Court.

30. According to the Statement of Net Operating Profit for 2005 prepared by Mr. Havill, Market Inc.'s net operating profit was \$765,534. Deducting the disputed revenue of \$433,491 from this amount yields net operating profit of \$332,043. The Percentage Rent (10% of this amount) owed to the City is, therefore, \$33,204.30 for 2005. This amount has never been paid to the City.

31. In total, the Percentage Rent that the City has been able to calculate is owed to it totals \$159,707 for the fiscal years 2001 to 2006. How this amount was arrived at will be reviewed in greater detail in Mr. Hallinan's affidavit, but it is based on the audited financial statements provided by Market Inc. for the fiscal years 2001 to 2004 and 2006, and the audited financial statement prepared for the City for the fiscal year 2005. I believe additional Percentage Rent is likely owing to the City for the fiscal year 2007 and will soon become due in respect of the year ending October 31, 2008, but we do not yet have the necessary financial statements to confirm the precise amounts.

32. The City paid \$4,059.80 for the 2005 audited financial statements to be prepared. Attached as Exhibit U is a copy of the invoices the City received from Charles Havill. Pursuant to the terms of the Lease, Market Inc. is required to reimburse the City for this cost as Additional Rent and it has not done so to date.



***Market Inc. Owes Arrears of Base Rent***

33. The Base Rent is currently \$51,145.55 per year. This amount of Base Rent has been applicable since October 1, 2004 as the Lease contains a formula by which the Base Rent increases every five years. Attached as Exhibit V is a copy of a letter dated September 20, 2006 from the City to Market Inc. that described how the increased Base Rent that was due had been arrived at.

34. Accordingly, the Base Rent that Market Inc. owes is \$4,262.13 per month. Market Inc. has paid this amount since June 1, 2007. However, for the period between October 1, 2004 and May 30, 2007, Market Inc. did not pay the correct amount of rent. For this period of time, Market Inc. paid only \$3,750 per month, which was the Base Rent due and payable before October 1, 2004.

35. The shortfall in Base Rent that is owed by Market Inc. totals \$16,388.13, plus interest in accordance with the Lease until the date the Base Rent is paid. Attached as Exhibit W is a copy of the City's account statement that shows the amount owed to the City in arrears of Base Rent.

***City's Sub-Lease of the Basement: Response to Summary Judgment Motion in Market Inc. Action***

36. Pursuant to the Basement Lease, the City leases the basement of the Market Building back from Market Inc. and the basement is occupied by a charitable organization.

37. Market Inc. has commenced an action, court file 07-CV-343601PD2, against the City for damages alleged to have accrued over the period from the year ending October

31, 1993 to October 31, 2007. Market Inc.'s notice of motion calculates the damages to be \$594,242 for this period of time.

38. The City initially defended the action in December, 2007 on the basis that it has always paid the amounts that it was invoiced by Market Inc. in connection with the basement premises. However, after some audited financial statements were received from Market Inc. in February, 2008, the City requested that the accounting firm that it retained in connection with this court application, Hallinan Tautrim, also review the amounts claimed by Market Inc.

39. The result of the assessment carried out by Hallinan Tautrim is that the City has actually overpaid Market Inc. by \$29,520 for the years ending October 31, 2001 to October 31, 2006. Mr. Hallinan sets out in greater detail in his affidavit the analysis done to arrive at this result.

40. Therefore, the City has delivered an amended statement of defence (and has sought the consent of Market Inc. to file it) to add a counterclaim and specifically plead that not only does the City not owe Market Inc. the monies claimed but, in fact, the City is owed money by Market Inc. in relation to the Basement Lease. At the same time, because the original statement of claim did not set out any dollar amount of damages claimed nor articulate any precise period over which damages were alleged to have accrued, there was no specific pleading by the City that at least part of Market Inc.'s action is barred as a result of the operation of limitation periods. In view of the information provided in the summary judgment motion, the City will also amend its statement of defence to plead that at least part of the claim is statute barred in any event.

41. I note that the City did request an affidavit of documents from Market Inc. in March, 2008. An unsworn affidavit of documents was delivered on August 13, 2008, and it is attached as Exhibit X to my affidavit. It does not list a single record that pre-dates the fiscal year ending October 31, 2001 (for which an audited financial statement has now been prepared). This is consistent with Mr. Friedman's affidavit sworn January 28, 2008 which states in paragraph 11 that the vast majority of Market Inc.'s records were destroyed in a fire in December, 2002.

42. It was not until 2005 that Market Inc. raised for the first time with the City its allegation that the City has failed to pay the appropriate amount of Additional Rent owing for the Basement. From the outset, the City always took the position that it required documentation to substantiate this claim before it could be considered and, although Market Inc. did repeat its demand for payment on several occasions, no effort was ever made to provide supporting documentation. Therefore, the first analysis carried out by the City of Market Inc.'s claim for Additional Rent occurred when Hallinan Tautrim reviewed the audited financial statements to consider this issue at the City's request in 2008. As I set out above, their conclusion is that the City does not owe Market Inc. any monies and is, in fact, owed \$29,520.

### *Conclusion*

43. The City is seeking to terminate the Lease and regain possession of the Market Building because of Market Inc.'s:

- a. failure to operate Market Building in accordance with the use provisions of the Lease;

- b. persistent failure to provide audited financial statements as required; and
- c. failure to pay the Percentage Rent, Additional Rent, and arrears of Base Rent owing.

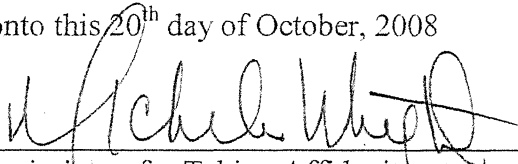
44. The City is also seeking an order that Market Inc.:


- a. pay the City Percentage Rent for the period October 31, 2001 to October 31, 2006 in the amount \$159,707 owing in accordance with the terms of the Lease;
- b. deliver audited financial statements for the fiscal year ending October 31, 2007 and pay any Percentage Rent calculated to be owing forthwith, together with interest in accordance with the Lease;
- c. deliver audited financial statements for the fiscal year ending October 31, 2008 and payment of the Percentage Rent calculated to be owing by January 31, 2009 in accordance with the Lease;
- d. pay \$4,059.80 as Additional Rent, which was the cost to the City of having audited financial statements prepared for 2005;
- e. pay \$16,388.13 as arrears of Base Rent, plus interest in accordance with the Lease; and
- f. repay the City \$29,520 which represents the overpayment by the City to Market Inc. of Additional Rent for the Basement premises, together with interest in accordance with the Basement Lease.

45. I swear this affidavit in support of the City's application to terminate the Lease and collect monies owing from Market Inc.

SWORN before me at the City of )

Toronto this 20<sup>th</sup> day of October, 2008 )

  
\_\_\_\_\_  
Commissioner for Taking Affidavits, etc.

  
\_\_\_\_\_  
Raymond Kessler

STANDARD FORM OF LEASE

THIS Lease made the 15th day of June, one thousand nine hundred and eighty-nine.

IN PURSUANCE OF THE SHORT FORMS OF LEASES ACT

B E T W E E N:

THE CORPORATION OF THE CITY OF TORONTO  
(hereinafter called the "Landlord")

OF THE FIRST PART

- and -

QUEEN-ST. PATRICK MARKET INC.  
(hereinafter called the "Tenant")

OF THE SECOND PART

1. DEMISED PREMISES

WITNESSETH that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the said Tenant, to be paid, observed and performed, the said Landlord has demised and leased and by these presents doth demise and Lease unto the said Tenant, and the Tenant does Lease from the Landlord the building currently situate on lands known municipally known as No. 238 Queen Street West, Toronto, Ontario, being ALL THOSE CERTAIN PREMISES described more fully in Schedule "A" attached hereto and shown hatched on a plan of survey to be attached hereto not later than six (6) months from the Commencement Date and designated as "A1" (hereinafter variously referred to as the "Demised Premises", the "Demised Lands", the "Buildings" and/or the "Project").

2. TERM

TO HAVE AND TO HOLD the Demised Premises for and during the Term of fifty (50) years, (hereinafter called the "Term") to be computed from the first (1st) day of September, 1989, which date is hereinafter referred to as the "Commencement Date", and from thenceforth ensuing and to be fully completed and ended on the thirty-first (31st) day of August, 2039.

3. NET LEASE

The Tenant acknowledges and agrees that it is intended that this Lease is a completely carefree Lease to the Landlord, that the Landlord is not responsible during the Term or any renewal thereof, for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Demised Premises, or the use and occupancy thereof, or the contents thereof or the business carried on therein, and the Tenant shall pay all charges, impositions, taxes, costs and expenses of every nature and kind relating to the Demised Premises as if it were the owners.

4. RENT

(a) Covenant to Pay Rent

The Tenant agrees to pay Basic Rent, Percentage Rent and Additional Rent (hereinafter sometimes collectively referred to as "Rent") as herein provided.

(b) Basic Rent

(i) The Tenant shall pay to the Landlord at the office of the Landlord, or at such other place designated by the Landlord, in lawful money of Canada, without any prior demand therefor and without any deduction, abatement, set-off or compensation whatsoever, as Basic Rent:

(ii) For the purposes of determining the Basic Rent the Term is divided into a first Period of 10 years and then successive 5 year periods - the commencement of Period II to be the 11th anniversary of the Commencement Date, and the commencement of Period III on the 16th anniversary date, etc. as follows:

Period I

From and including the Commencement Date, in each Rental Year for a period of ten (10) years, the sum of ONE (\$1.00) Dollar per year, payable in advance in annual instalments, each in the amount of ONE (\$1.00) Dollar, the first such instalment becoming due and payable on the Commencement Date and further instalments in the said amount becoming due and payable on the first day of each and every Leasehold year thereafter for the next nine (9) years then ensuing, being the remainder of the said Period I.

Method for Payment and Determining Basic Rent for Successive Rent Periods II - IX

For each successive period of five (5) years from and including the 11th anniversary date of the Commencement Date, the sum of Forty-five thousand (\$45,000.00) Dollars per year, subject to adjustment as hereinafter set out, payable in equal monthly instalments in advance.

Adjustment of Basic Rent

At the commencement of each successive period of five (5) years during the Term, beginning in the year sixteen (16) (being the 16th anniversary of the Commencement Date), and upon the first date of each such period of five (5) years of the Term thereafter (the "Adjustment Date"), the Basic Rent shall be adjusted for the ensuing period of five (5) years during the Term in accordance with any increases in the C.P.I. (as hereinafter defined):

"Renewal Period Month" shall mean the first month of each successive period of five (5) years commencing with July 1, 2004 and continuing during the term of the Lease contemplated herein;

"C.P.I." means the Consumers Price Index, All Items Canada, as published by Statistics Canada;

"Base C.P.I." shall mean the C.P.I. for the month of July, 1999;

"Current C.P.I." means the C.P.I. for each Renewal Period Month. Where an increase is based upon the Current C.P.I. and at the time the Landlord notifies the Tenant of any such increase, the Current C.P.I. for the relevant month is not available, the Landlord may reasonably estimate the amount of such increase and the Tenant shall pay the applicable increase based on the Landlord's estimate. Any appropriate adjustments will be made retroactively to the commencement of the period in question once the Current C.P.I. becomes available.

If the Current C.P.I. in any Renewal Period Month shall exceed the Base C.P.I., then the Basic Rent of \$45,000.00 under the Lease contemplated thereby payable for the next ensuing five (5) year period and thereafter until the next Renewal Period Month, when the same adjustment shall be made, shall be increased by an amount equal to the product obtained by multiplying the Basic Rent of \$45,000.00 by a

factor, which is obtained by dividing the Current C.P.I. by the Base C.P.I.

(c) Percentage Rent

- (i) The Tenant shall pay annually to the Landlord at the office of the Landlord, or at such other place designated by the Landlord, in lawful money of Canada, as Percentage Rent, in addition to any and all amounts paid as Basic Rent, that sum equal to ten (10%) percent of the annual net operating profit of the Tenant earned in respect of and with reference to the Demised Premises (the "Net Operating Profit");
- (ii) For the purposes of subsection (i) hereof, Net Operating Profit shall be calculated with reference to that complete twelve (12) month period during the Term hereof immediately prior to the date which is the most recent rental year-end of the Tenant, and shall be paid on that date which is ninety (90) days following such rental year-end of the Tenant (the "Payment Date"). The Percentage Rent due annually to the Landlord shall be verified prior to each Payment Date by the auditors of the Tenant.
- (iii) Net Operating Profit earned by the Tenant in respect of and with reference to the Demised Premises, for the purposes of determining Percentage Rent, shall mean the operating profit earned by the Tenant in the Demised Premises net of usual operating costs in respect thereof that are not paid by sub-tenants, assignees, licensees, concessionaires etc, determined with reference to generally accepted accounting principals, providing always that usual operating costs shall include all applicable taxes and expenses excluding taxes levied on the Tenant in respect of income and profit and any sales tax or value added tax to the extent that it is recoverable by way of payment or credit from any person, government or other source and shall further include, without limitation, the Tenant's financing costs in respect of the renovation and restoration of the Demised Premises as required under and pursuant to this Lease, being the cost of servicing and retiring all indebtedness incurred in respect of or in relation to such renovations, it being understood and agreed that the entire cost of such renovation and restorations (including all bank, interest, administration, penalty or other financing-related charges) shall be or deemed to be, indebtedness incurred in respect of such renovation or restoration, and it being further understood and agreed that such indebtedness shall be serviced and retired over a ten (10) year (amortization) period.

(d) Tenant's Records

For the purposes of ascertaining the amount payable as Percentage Rent, the Tenant shall prepare and keep on the Leased Premises, or at the address set out in Section 26, adequate books and records which shall show leases, agreements and contracts for the Leased Premises, and all charges, services and other transactions on, at or from the Leased Premises made by the Tenant. The Tenant shall provide to the Landlord audited financial statements by a recognized firm of chartered accountants practicing in the City of Toronto in respect of the business and operating expenses and profits of the Tenants with respect to the Demised Premises.

(e) Right to Examine

The receipt or use by the Landlord of any statement of Net Operating Profit from the Tenant or any payment of Percentage Rent based thereon, shall neither constitute acceptance of such statement or of the



Percentage Rent payable with respect to any period, nor constitute a waiver by the Landlord of any obligation of the Tenant hereunder and shall be without prejudice to the Landlord's right for a period of four (4) years to an examination of the Tenant's books and records relating to the Operating Expenses and Profit for the period covered by any statement issued by the Tenant as above set forth. The Landlord and the Landlord's authorized representatives shall have the right to examine the Tenant's records and procedures aforesaid during regular business hours on reasonable notice, or to examine accounting records and procedures including control features affecting the determination of Net Operating Profit.

(f) Tenant's Failure

If the Tenant fails to deliver any of the statements to the Landlord provided for by this Section and within the times herein provided, the Landlord, in addition to any other rights or remedies hereunder, has the right thereafter (provided the Landlord first gives the Tenant five (5) days' written notice of any such failure) to employ a chartered accountant or auditor to examine such of the Tenant's books and records as are necessary to certify the amount of Net Operating Profit for such period as is related to the statement in question, and the Tenant shall pay to the Landlord on demand, as Additional Rent, the cost of any such examination together with any and all sums shown to be owing on account of Percentage Rent pursuant thereto.

(g) Waiver of Set-Off by Tenant

The Tenant hereby waives and renounces any and all existing and future claims and rights of set-off against any Rent and other monies payable hereunder to the Landlord and agrees to pay such Rent and other monies payable hereunder to the Landlord regardless of any claim or set-off which may be asserted by the Tenant or on its behalf.

(h) Rent Past Due

If the Tenant fails to pay, when the same is due and payable, any Basic Rent, Percentage Rent, Additional Rent or any other amount payable by the Tenant under this Lease, such unpaid amounts bear interest at the Prime Rate at such time charged by the Canadian Imperial Bank of Commerce plus four per cent (4%) from the due date thereof to the date of payment, subject to monthly compounding.

5. ADDITIONAL RENT

(a) Taxes, Utility and Other Charges

The Tenant agrees to pay when due at the Tenant's sole expense and for its own account from and after the Commencement Date:

- (i) each and every instalment of Real Property Taxes on the Demised Premises or any part thereof; and
- (ii) all utility charges and rates and similar taxes, rates, charges and assessments including payments in lieu thereof which are properly charged, levied or assessed in connection with the Demised Premises, Buildings and Project or any part thereof (including such taxes which may be levied, rated, charges or assessed against improvements, equipment and facilities or other leasehold, interest or personal property of any kind of the Tenant) or which are properly levied or assessed against the Tenant or which would, if unpaid, become a lien on the Demised Premises or the Tenant's leasehold interest therein or where such lien will, at any time, affect the interest of the Landlord; and

- (iii) any business taxes or licence fees and similar taxes which may be charged, levied or assessed in connection with the Demised Premises or operation of the Project or any part thereof or in respect of their use or occupancy by the Tenant and any and every assignee, sub-tenant, concessionaire, licensee and other person making any use of, on or from the Demised Premises or Project or which are levied or assessed against the Tenant or which would, if unpaid, become a lien on the Demised Premises Project or the Tenant's leasehold interest therein, where such lien will, at any time, affect the interest of the Landlord;
- (iv) all services used on the Demised Premises including all charges for water, gas, electricity, phone, janitorial services, window cleaning, repairs and maintenance of Demised Premises or Project;
- (v) all other charges and expenses which are the responsibility of the Tenant pursuant to this Lease and any sales taxes, value added taxes or other similar taxes which the Landlord may be obligated to pay because of this Lease, to the extent that such tax is not recoverable by way of payment or credit from any other person, government or other source;
- (vi) the Tenant will not install equipment that will exceed or overload the capacity of utility facilities and agrees that if equipment installed by the Tenant requires additional facilities, they will be installed at the Tenant's expense in accordance with the plans and specifications approved by the Landlord prior to installation;
- (vii) the parties hereto agree that all sums of money or charges required to be paid by the Tenant under this Lease (except Rent), whether or not same are designated as Additional Rent or whether or not same are payable to the Landlord or otherwise, shall be Additional Rent for the Demised Premises and shall be deemed to be and be collectable as Rent and the Landlord shall have the same remedies in respect of arrears of Additional Rent as it has in respect of arrears of Rent. If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless if not paid when due, be collectable as Additional Rent with the next instalment of Rent thereafter falling due hereunder, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder, or limit any other remedy of the Landlord.

(b) Landlord to Provide Notices

The Landlord shall forward to the Tenant any bills and notices with respect to the payments which are the responsibility of the Tenant pursuant to this Lease and received from third parties by the Landlord.

(c) Landlord May Pay Taxes, etc.

If the Tenant fails to pay when due any Additional Rent required to be paid by the Tenant pursuant to this Lease and is not contesting the same, the Landlord shall have the right to pay the same at the expense of the Tenant after thirty (30) days' prior notice to the Tenant and the Tenant covenants to pay to the Landlord forthwith upon demand as Rent any amount so paid by the Landlord. No notice shall be required to be given by the Landlord if the Project or the Landlord's or Tenant's interest in the Lease is subject to forfeiture by reason of such non-payment prior to the expiry of such notice period. This is a statement of the Landlord's right, not a Landlord duty or obligation.

(d) Adjustment of Rent

If applicable, sums paid by the Tenant under this paragraph shall be subject to adjustment to reflect any partial billing periods encountered at the commencement or termination of this Lease.

(e) Payment of Rent

All payments of Rent are payable in lawful money of Canada without deduction, abatement, set-off or compensation whatsoever. Additional Rent is due and payable as specifically provided in this Lease or otherwise with the next monthly instalment of Basic Rent.

6. INDEMNITY

6.A. Non-Liability of Landlord

The Sub-Landlord shall have no liability whatsoever with respect to claims or damages resulting from the use or occupation of the Project.

6.B. Tenant's Indemnity

The Tenant covenants to indemnify and save harmless the Landlord, in its capacity as Landlord under this Lease and also as owner and tenant of adjoining lands and buildings, from any and all claims, liabilities, damages, costs, expenses, suits or actions resulting from:

- (a) any breach, violation or non-performance of any covenant, obligation or agreement of the Tenant contained in this Lease;
- (b) any damage to property, either real or personal and either owned by the Landlord or others, howsoever occasioned by the construction and/or use or occupation of the Project by the Tenant or those for whom the Tenant is at law responsible;
- (c) any personal or bodily injury to any person or persons, including death resulting at any time therefrom, howsoever occasioned by the construction, use or occupation of the Project by the Tenant or those for whom the Tenant is at law responsible; and/or
- (d) any contract, lien privilege, mortgage, charge or encumbrance on the Project arising from or occasioned by the act, default or negligence of the Tenant or those for whom the Tenant is at law responsible; and
- (e) against payment for all loss, costs, charges, expenses arising from all the taxes, rates, duties, assessments and licence fees referred to and all taxes which may be in the future levied in lieu of those taxes and any loss, cost, charges, and expenses, suffered by the Landlord as a result of non-payment by the Tenant.

This Section shall survive the termination or expiry of this Lease, any provisions in this Lease to the contrary notwithstanding.

7. ACCEPTANCE OF THE DEMISED PREMISES

The Tenant acknowledges and agrees that,

- (a) it accepts the Demised Premises and any improvements or other items under or on the Demised Premises in an "as is" condition;

- (b) the Landlord has no obligations with respect to any alterations, restorations, improvements, renovations or repairs of or to any portion of the Demised Premises, all of which shall be completed by the Tenant at its sole cost and expense and, where applicable, in accordance with the provisions of this Lease.

8. ALTERATIONS, RESTORATION, IMPROVEMENTS, ETC.

- (a) The Tenant agrees that within six (6) months of the Commencement Date, it will commence the construction pursuant to the Plans, Specifications and Construction Time Table as approved by the Commissioner of City Property and the Toronto Historical Board. The Landlord acknowledges the conditions it has imposed on the Tenant pursuant to clauses (a), (d) and (e) of this Section 8 and will not unreasonably delay such processing or withhold such consent to the extent that it is in the Landlord's power to do so, providing such construction follows the principal design concept set out in the proposal accepted by the Landlord.
- (b) The Tenant represents and warrants to the Landlord, based on which the Landlord entered into this Lease, that there are no legal restrictions on the right of the Tenant to carry out its obligations under this Lease, to effect the said renovations and to operate the Demised Premises.
- (c) The Tenant agrees to deliver to the Landlord security in the form of a standing Letter of Credit on such terms as are acceptable to the Landlord in an amount equal to the total cost of construction, renovation, restoration and repair as approved by the Landlord prior to said Commencement Date, which the Landlord shall hold to ensure full performance of the work and payment of any construction liens.
- (d) If the Tenant fails to commence construction pursuant to paragraph 8(a) or deliver a Letter of Credit pursuant to paragraph 8(c), the Landlord is entitled to terminate this Agreement on written notice without prejudice to the Landlord's rights to retain any Deposit or Letter of Credit and to claim and prove a greater sum of damages or to avail itself of any other remedies.
- (e) The Tenant covenants to pursue this work diligently and continuously and to complete same in a good and workmanlike manner and within eighteen (18) months of the Lease Commencement Date in a manner satisfactory to the Commissioner of City Property of the Landlord.
- (f) That if the Tenant shall during the said Term desire to affix or erect partitions, counters or fixtures in any part of the walls, floors or ceilings of the Demised Premises, or make any other alterations, replacements, improvements or demolition therein, it may do so at its expense at any time and from time to time provided that the Tenant's rights to do such work to the Demised Premises shall be subject to the following conditions:
  - (1) That before undertaking any such work, the Tenant shall submit to the Landlord plans sufficient to show the proposed alterations. The Tenant acknowledges that the building is declared to be of historical significance and that any repairs or replacements to any of the historically relevant portions of the Demised Premises will have to be approved by the Toronto Historical Board. Within fifteen (15) days after receiving the drawings and other material from the Tenant, the Landlord will advise the Tenant in writing whether or not it approves of the Changes, and if not, suggesting modifications to the drawings and other items, and within fifteen (15) days after the Tenant receives the Landlord's request, the Tenant will submit revised drawings

and other similar material for the Landlord's approval, and the parties agree to negotiate in good faith to modify the proposed Changes in order to obtain the Landlord's consent thereto;

- (2) That all such alterations shall conform to all building by-laws and building codes, if any, then in force affecting the Demised Premises and the Tenant shall not suffer or permit any construction or other liens to be filed or placed against the Demised Premises or against title to the lands on which they are situate and if so filed, the Tenant shall forthwith discharge same at its expense and if not so discharged within twenty (20) days, then the Landlord may, but shall not be obligated to, discharge such liens and any and all costs incurred in doing so shall be treated as Additional Rent and shall forthwith be paid to the Landlord by the Tenant.
- (3) That such alterations will not be of such kind or extent as to in any manner alter, weaken or endanger the integrity of the structure of the said building after the alterations are completed or reduce the value of the said building.
- (4) The Tenant will provide the Commissioner of Finance of the Landlord security acceptable to him to ensure the completion of the work.
- (g) That except as herein otherwise provided, the Tenant will not make alterations or replacements or demolish or erect or affix or remove or change the location or style of any part of the exterior of the building, or affix or change any sign without the written consent of the Landlord being first had and obtained.
- (h) That at the expiration of the Term hereby granted, or any renewal thereof, all fixtures, alterations, additions and improvements shall remain upon the Demised Premises until the Landlord shall advise the Tenant to remove the same from the Demised Premises and make good all damage occasioned to the Demised Premises by the taking down or removal thereof. If the Tenant fails or is not required by the Landlord to remove such fixtures, alterations, additions and improvements, then upon the Tenant giving up occupancy of the Demised Premises, all such fixtures, alterations, additions and improvements shall at the option of the Landlord become the property of the Landlord or be removed by the Landlord at the expense of the Tenant.
- (i) At the expiration of the Term or the earlier termination of this Lease, the Tenant agrees to peaceably surrender and yield up to the Landlord the Demised Premises in the state of repair required of the Tenant pursuant to this Lease together with the Tenant's possession thereof and together with all the rights of the Tenant under this Lease and thereupon the rights of the Tenant under this Lease shall terminate.

9. LIENS

The Tenant shall at all times throughout the Term and any renewal thereof, promptly pay all its contractors, material men, suppliers and workmen and all charges incurred by or on behalf of the Tenant for any work, materials or services which may be done, supplied or performed at any time in respect of the Demised Premises and the Tenant shall do any and all things necessary so as to ensure that no construction or other lien is registered against the Demised Premises or any part thereof or against the Landlord's or the Tenant's interest in the Demised Premises and if any lien is made, filed or registered, the Tenant shall discharge it or cause it to be discharged forthwith at the Tenant's expense, provided that if the Tenant wishes to contest the validity of such claim for lien, and has so notified the Landlord or paid into court to the credit of the lien action the amount of the lien

plus a reasonable amount for costs, it shall commence such contestation within thirty (30) days of notice thereof provided that it complies with all laws or orders to contest. The Tenant shall use its best efforts to ensure that its subtenants and all other persons occupying portions of the Demised Premises comply with the provisions of this Section to the extent relating to work performed or material supplied by them or on their behalf.

If the Tenant fails to discharge or cause any such lien to be discharged or comply with laws upon contestation as aforesaid, then, in addition to any other right or remedy of the Landlord, the Landlord may elect to discharge the same by paying the amount required for its discharge into court and the amount paid by the Landlord and all costs and expenses including reasonable solicitor's fees (on a solicitor and client basis) incurred as a result of the registration and discharge of the lien shall be immediately due and payable by the Tenant to the Landlord as Additional Rent.

#### 10. LEASEHOLD MORTGAGE

##### 10.01 Tenant's Right to Mortgage

The Tenant shall have the right, at any time and from time to time during the Term, to grant a Leasehold Mortgage and any assignments of subleases and rents and to extend, modify, renew or replace any such Leasehold Mortgage or assignment, provided, however, that:

- (a) the Leasehold Mortgagee is a Schedule "A" or Schedule "B" bank or a trust company or institutional lender qualified to do business in Ontario, or, in the alternative, the Landlord has approved the Leasehold Mortgagee;
- (b) the Landlord has been given written notice of such Leasehold Mortgage and assignment by way of security together with the name and address for service of the Leasehold Mortgagee;
- (c) the Tenant is not then in default hereunder;
- (d) such Leasehold Mortgage and assignment cover the whole of the Tenant's interest in this Lease and such other agreements and provide that any loss under the policies of insurance required to be furnished pursuant thereto shall be disposed of in accordance with the provisions of this Agreement; and
- (e) such Leasehold Mortgagee has entered into an agreement with the Landlord in a form reasonably satisfactory to the Landlord to the effect that:
  - (i) if and when the Leasehold Mortgagee becomes a mortgagee in possession (as defined in such agreement which Term shall not include a receiver or receiver and manager appointed by the Leasehold Mortgagee) it will, during such time as it remains a mortgagee in possession, be bound by and use its best efforts to perform all of the obligations of the Tenant contained in this Lease, and any other collateral agreements between the Landlord and Tenant relating to the Project and to remedy any default of the Tenant thereunder arising prior to the time of going into possession; and
  - (ii) it will not assign its rights under the Leasehold Mortgage or this Lease unless the assignee enters into a similar written agreement with the Landlord.

This agreement shall provide that such Leasehold Mortgagee or its assignee shall be released by the Landlord from its obligations under this Lease, and any other collateral agreements between the Landlord and the Tenant relating to the Project if such Leasehold Mortgagee or the assignee transfers its interest in this Lease and such other agreements to some other person

claiming under it who enters into a similar agreement with the Landlord.

10.02 Rights of Leasehold Mortgagee

A Leasehold Mortgagee may enforce its Leasehold Mortgage and acquire title to the Tenant's leasehold estate in any lawful way.

Without limitation, the Leasehold Mortgagee may, by its representative or by a receiver as the case may be, take possession of and manage the Project, and upon foreclosure of (or without foreclosure upon exercise of any contractual or statutory power of sale under) such Leasehold Mortgage, the Leasehold Mortgagee may sell or assign the Tenant's leasehold estate, subject to any other collateral agreements between the Landlord and the Tenant relating to the Project.

10.03 Landlord's Reversionary Interest Superior

Nothing contained in this Lease shall in any way bind the Landlord or its successors or assigns to subordinate its reversionary interest in the project to any Leasehold Mortgage.

11. REPAIRS

- (a) The Tenant covenants to maintain, repair and replace the Demised Premises at its cost throughout the Term of this Lease. Without limiting the generality of the foregoing, the Tenant agrees that it will at all times keep the Demised Premises (including exterior entrances and all glass and windows) and all partitions, doors, fixtures, equipment and appurtenances thereof (including lighting, heating and plumbing fixtures, and the electrical, mechanical, heating and air conditioning systems) in good order, condition and repair (including periodic painting or re-decorating and preventative maintenance as determined by the Landlord's Commissioner of City Property) and including such repairs or replacements as are required to keep the Demised Premises in good repair and condition.
- (b) All aforesaid repairs, restorations and replacements shall be made in a good and workmanlike manner and of a first class quality.
- (c) In addition to the obligations set out aforesaid, the Tenant shall effect all repairs for which it is obligated hereunder according to notice in writing from the Landlord, who may enter the Demised Premises at any reasonable time and view the state of repair, but failure to give notice shall not relieve the Tenant from its obligation to repair.
- (d) The Tenant shall not make any repairs or replacements, or demolition related thereto ("Changes") of or to any part of the Demised Premises or the improvements thereon without first obtaining the Landlord's written approval, which will not be unreasonably withheld.

The Tenant shall forward evidence and assurances to the Landlord satisfactory to the Landlord's Commissioner of City Property to allow him to approve thereof and all changes:

- (A) will comply with all applicable by-laws, zoning regulations, other governmental requirements and the requirements of the Tenant's fire insurance underwriters;
- (B) will not weaken or endanger the integrity of the existing structure of the Demised Premises, diminish their value or restrict the Landlord's coverage on any neighbouring properties for zoning purposes; and

The Tenant will provide the Landlord with security acceptable to the Landlord that all proposed Changes will be duly completed in accordance with the provisions hereof.

- (e) The Landlord and its agents have the right to enter the Demised Premises at all times to examine the state of repair and replacement thereof, and to service and maintain the existing facilities and services pertaining to hydro, water and gas on reasonable notice during normal business hours and provided there is no unreasonable interference with the Tenant or any subtenant. Further the Landlord and its agents have the right to enter the Demised Premises without notice, to inspect any repairs and if not repaired as required by this agreement, to repair any damage to the existing facilities and services located in the basement of the Demised Premises or any damages which occur thereto as a result of an emergency. This would then be billed to the Tenant on the basis of Additional Rents pursuant to the terms of paragraph 5(c).
- (f) If the Tenant refuses or neglects to repair properly as required hereunder and to the reasonable satisfaction of the Landlord's Commissioner of City Property as soon as reasonably possible after written demand, the landlord may make such repairs without liability to the Tenant for any loss or damage that may accrue to the Tenant's merchandise, fixtures or other property or to the Tenant's use by reason thereof, and upon completion thereof, the Tenant shall pay the Landlord's costs for making such repairs plus twenty per cent (20%) for overhead, upon presentation of a bill therefor, as Additional Rent. Said bill shall include interest as set out in the invoice.
- (g) The Tenant covenants that it will leave the Demised Premises in the state of repair required by the terms of this Lease. Without limiting the generality of the foregoing, it is agreed that at the expiration or earlier termination of the tenancy hereby created, the Tenant shall surrender the Demised Premises in as good condition and repair as required by the terms of the Lease and shall surrender the buildings and improvements. All rights of the Tenant and any sublease or occupancy agreement shall thereupon terminate. The Tenant's obligation to observe or perform this covenant shall survive the expiration of the Term of this Lease.

## 12. ASSIGNMENT

### 12.(a) Assignment by Tenant

Until the Tenant has completed the Project pursuant to the Construction Schedule and the use of the Demised Premises as a mini-market has been operational at not less than 75% capacity, the Tenant shall have no right to assign its rights or obligations under this Lease.

After such time, the Tenant shall have the right to assign its interest in this Lease provided that the Tenant shall have obtained the prior consent of the Landlord, which consent may not be unreasonably withheld. The Tenant acknowledges that the Landlord shall have the right to withhold consent if the assignee's credit-worthiness is less than that of the Tenant.

No assignment by the Tenant shall be effective until the assignee has entered into an agreement directly with the Landlord, in a form satisfactory to the Landlord, agreeing to assume the obligations of the Tenant in this Lease.

No assignment by the Tenant relieves it of liability under this Lease.

No consent by the Landlord applies to any subsequent transaction.



The transfer of effective control of the Tenant shall be deemed to be an assignment of this Lease requiring the consent of the Landlord as aforesaid.

**12.(b) Subletting by Tenant**

The Tenant shall not have the right to sublet any space in the Buildings except as hereinafter set out.

The Tenant may operate the Demised Premises as a mini-market by subletting, licensing, etc. areas within the Building for uses as set out in Schedule "C", without the consent of the Landlord, provided that the subtenants do not detract from the use of the premises as a mini-market and provided that the Term of any such subleases, licences, concessions, ends before the termination of this Lease. Any use other than those set out in said Schedule "C" must be approved by the Landlord and such consent may be unreasonably withheld.

The Tenant agrees to provide the Landlord with the names and addresses of all sublessees, licensees, consignees, etc., from time to time during the Term forthwith after any request by the Landlord for such information.

12.(c) Where the Tenant, assignee, sub-tenant, licensee, consignee, etc. is a corporation, the transfer or issue for sale, assignment, bequest, inheritance, operation of law or other disposition, or by subscription from time to time resulting in the change of the present control of the beneficial interest in the majority of the voting shares of the said assignee, sub-tenant, licensee, consignee, etc. shall constitute an assignment of the Demised Premises and of this Lease or of the sublease, licence, etc. as the case may be.

**13. USE**

That the Demised Premises will not, during the said Term, at any time be used for any purpose other than a mini-food market consisting of not less than two or more of the following:

- (a) a bakery, meat and seafood store, flower shop, fruit and vegetable stand, cheese and dairy product stand;
- (b) the types of uses as set out in the Use Schedule "C" attached hereto.

The Tenant shall obtain the prior written consent of the Landlord to any changes to the Use Schedule. The Tenant shall deliver to the Landlord's Commissioner of City Property written notice of any changes to the Schedule from time to time and no change shall be commenced prior to receipt of the approval of the Landlord. Such uses shall be carried on continuously and diligently throughout the Term of this Lease.

**14. FIXTURES**

And that no fixtures, goods or chattels of any kind will, except in the ordinary course of business, be removed from the Demised Premises during the Term hereby demised or at any time thereafter without the written consent of the Landlord, its successors or assigns, being first had and obtained, until all Rent in arrears as well as all Rent to become due during the remainder of the Term hereby granted shall have been fully paid, or the payment thereof secured to the satisfaction of the Landlord or its assigns.

15. GOVERNMENTAL REGULATIONS

The Tenant shall, at the Tenant's sole cost and expense, comply with all laws, by-laws and ordinances and the orders, rules and regulations of all county, municipal, provincial, federal and other applicable governmental authorities, now in force or which may hereafter be in force, pertaining to the Demised Premises, and shall faithfully observe in the use and occupation of the Demised Premises all municipal and county ordinances and provincial and federal statutes now in force or which may hereafter be in force.

16. DISTRESS AND DEFAULT

(1) Right to Re-Enter

If and whenever:

- (a) the Tenant fails to pay any Rent or other sums due hereunder on the day or dates appointed for the payment thereof; or
- (b) the Tenant fails to observe or perform any other of the terms, covenants or conditions of this Lease to be observed or performed by the Tenant, other than those terms, covenants or conditions set out below in subparagraphs (c) to (i), inclusive, for which no notice is required, provided the Landlord first gives the Tenant thirty (30) days' (or any shorter period of time provided in this Lease) written notice of any such failure to perform and the Tenant within the thirty (30) day period fails to commence diligently and thereafter to proceed diligently to cure the failure to perform; or
- (c) the Tenant becomes bankrupt or insolvent or takes benefit of any act now or hereafter in force for bankrupt or insolvent debtors or files any proposal or makes any assignment for the benefit of creditors or any arrangement or compromise; or
- (d) a receiver or a receiver and manager is appointed for all or a portion of the Tenant's property and such appointment is not vacated within sixty (60) days; or
- (e) any steps are taken or any action or proceedings are instituted by the Tenant, including, without limitation, any steps or action before any court or governmental body of competent jurisdiction for the dissolution, winding-up or liquidation of the Tenant or its assets; or
- (f) any steps are taken or any action or proceedings are instituted by any party other than the Tenant, including, without limitation, any steps or action before any court or governmental body of competent jurisdiction for the dissolution, winding-up or liquidation of the Tenant or its assets, but only after a final judgment or adjudication by such court or governmental body; or
- (g) the Tenant makes a sale in bulk of any of its assets, wherever situate (other than pursuant to a permitted assignment hereunder and pursuant to the Bulk Sales Act of Ontario or than a bulk sale of worn out fixtures, equipment, etc. that has been replaced as new); or
- (h) the Tenant abandons or attempts to abandon the Project; or
- (i) this Lease is taken under by a Writ of Execution; or
- (j) the Tenant effects an assignment or change in control except in a manner permitted by this Lease; or

(k) re-entry is permitted under any other terms of this Lease;

then and in every such case the then current instalment of Rent and the next ensuing three (3) months' Rent and all other sums for such period as are and shall be due under the Terms of this Lease as Rent or otherwise shall accelerate and immediately become due and payable as liquidated damages. The Landlord, in addition to any other rights or remedies it has pursuant to this Lease or at law, has the immediate right of re-entry upon the Demised Premises and it may repossess the Demised Premises and enjoy them as of its former state, and except as herein otherwise provided may expel all persons and remove all property from the Demised Premises and such property may be removed and sold or disposed of by the Landlord as it deems advisable or may be stored in a public warehouse or elsewhere at the cost and for the account of the Tenant.

Notwithstanding the foregoing and without limiting any other remedies the Landlord may have arising out of this Lease or at law, upon the happening of a default by the Tenant under this Lease, the Landlord shall have the right, without any re-entry or termination of this Lease, to enter upon the Project and can attempt to cure such such default. This shall not obligate the Landlord to cure or attempt to cure any default or after having commenced to cure or attempt to cure such default, to continue to do so.

(ii) Expenses

If legal action is brought for recovery of possession of the Demised Premises, for the recovery of Rent or any other amount due under the Lease, or because of the breach of any other terms, covenants or conditions herein contained on the part of the Tenant to be kept or performed, and a breach is established, the Tenant shall pay to the Landlord all reasonable expenses incurred therefor, including a solicitor's fee (on a solicitor and his client basis), unless a court shall otherwise award.

(iii) Landlord's Rights

If the Tenant fails to pay, when due, any amounts or charges required to be paid pursuant to this Lease, the Landlord, after giving twenty (20) days' prior written notice to the Tenant, may at its option pay all or any part of the same. If the Tenant is in default in the performance of any of its covenants or obligations hereunder (other than the payment of Rent or other sums required to be paid pursuant to this Lease), the Landlord may from time to time after giving twenty (20) days' prior written notice perform or cause to be performed any of such covenants or obligations and for such purpose may do such things as may be required including, without limitation, entering upon the Demised Premises and doing such things upon or in respect of the Demised Premises or any part hereof as the Landlord reasonably considers requisite or necessary. All expenses incurred and expenditures made pursuant to this Section 16(iii) plus a sum equal to twenty per cent (20%) thereof representing the Landlord's overhead shall be paid by the Tenant as Additional Rent forthwith upon demand. The Landlord shall have no liability to the Tenant for any loss or damages resulting from any such action or entry by the Landlord upon the Demised Premises under Section 16 and same is not a re-entry or a breach of any covenant for quiet enjoyment contained in this Lease.

(iv) Right to Relet

Subject to Section 16(i) if the Landlord elects to re-enter the Demised Premises as herein provided, or if it takes possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from

time to time without terminating this Lease make such alterations and repairs as are necessary in order to relet the Demised Premises or any part thereof for such Term or terms (which may be for a Term extending beyond the Term) and at such Rent and upon such other terms, covenants and conditions as the Landlord in its sole discretion considers advisable. Upon each such reletting all rent received by the Landlord from such reletting shall be applied first, to the payment of any indebtedness other than Rent due hereunder from the Tenant to the Landlord; second, to the payment of any costs and expenses of such reletting, including brokerage fees, and solicitor's fees and of costs of such alterations and repairs; third, to the payment of Rent due and unpaid hereunder; and the residue, if any, shall be held by the Landlord and applied in payment of future rent as the same becomes due and payable hereunder. If such rent received from such reletting during any month is less than that to be paid during that month by the Tenant hereunder, the Tenant shall pay any such deficiency which shall be calculated and paid monthly in advance on or before the first day of each and every month. No such re-entry or taking possession of the Project by the Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to the Tenant. Notwithstanding any such reletting without termination the Landlord may at any time thereafter elect to terminate this Lease for such previous breach. If the Landlord at any time terminates this Lease for any breach, in addition to any other remedies it may have, it may recover from the Tenant all damages it incurs by reason of such breach, including the cost of recovering the Project, solicitor's fees (on a solicitor and his client basis) and including the worth at the time of such termination of the excess, if any, of the amount of Rent and charges equivalent to Rent required to be paid pursuant to this Lease for the remainder of the stated Term over the then reasonable rental value of the Project for the remainder of the stated Term, all of which amounts shall be immediately due and payable by the Tenant to the Landlord.

In addition to any and all other rights, including the rights referred to in this Section and in Section 10.01, the full amount of the current month's instalment of Basic Rent and Additional Rent and any other payments required to be made monthly hereunder, together with the next three (3) months' instalments of Basic Rent and the aggregate of such payments for the next three (3) months, all of which shall be deemed to be accruing due on a day-to-day basis, shall immediately become due and payable as accelerated Rent, and the Landlord may immediately distraint for the same, together with any arrears then unpaid.

(v) Distress

The Tenant further covenants, promises and agrees with the Landlord that notwithstanding any present or future Act of the Legislature of the Province of Ontario, none of the goods or chattels of the Tenant at any time during the continuance of the Term hereby created on the said Demised Premises shall be exempt from levy by distress for Rent in arrears by the Tenant as provided for by the said Section of said Act, and that upon any claim being made for such exemption by the Tenant or on distress being made by the Landlord, this covenant and agreement may be pleaded as an estoppel against the Tenant in any action brought to test the right to the levying upon such goods as are named exempted in the said Section, the Tenant waiving as he hereby does all and every benefit that could or might have accrued to him under and by virtue of the said section of the said Act but for the above covenants.

(vi) Protection of Leasehold Mortgagees

The Landlord agrees, for the benefit of any Leasehold Mortgagees of whom notice and an address for service has been given to the Landlord, as follows:

- (a) the Landlord shall not exercise any of its rights or remedies against the Tenant consequent upon any default or non-performance by the Tenant of any of its obligations under this Lease unless, and it shall be a condition precedent to any such exercise that:
- (i) the Landlord shall have given each such Leasehold Mortgagee notice specifying such default or non-performance;
  - (ii) in the case of any non-payment of Rent or other money payment, the same shall not have been remedied within a period of thirty (30) days after such notice to the Leasehold Mortgagee; and
  - (iii) in the case of any other breach or non-performance, the same shall not have been remedied within a period after such notice to such Leasehold Mortgagee which is the greater of sixty (60) days and such longer time as would have reasonably sufficed for the remedying of such breach of non-performance if the Leasehold Mortgagee had commenced to remedy the same within forty-five (45) days after such notice and thereafter proceeded to remedy the same with reasonable diligence (provided that such Leasehold Mortgagee shall not be entitled to the advantage of such longer time unless it shall have duly commenced to remedy the same within such period and shall actually have proceeded shall have provided to the Landlord reasonable evidence satisfactory to the Landlord as to the steps being taken by the Leasehold Mortgagee toward remedying the same);
- (b) if the Landlord shall become entitled to and shall terminate this Lease by re-entry, forfeiture or otherwise, on account of any breach or non-performance by the Tenant, the Landlord shall give notice to any Leasehold Mortgagee promptly upon any termination of this Lease being effected accompanied by particulars of the nature and extent of the default which brought about termination. The Landlord agrees that, upon the request of any Leasehold Mortgagee if such request is made in writing within thirty (30) clear days after the giving of the above-mentioned notice by the Landlord, the Landlord will grant to such Leasehold Mortgagee or the nominee of such Leasehold Mortgagee (or, if more than one such Leasehold Mortgagee shall make such a request, whichever of such Leasehold Mortgagees has priority as between the Leasehold Mortgagees making such request by virtue of having the most senior Leasehold Mortgage) a new Lease of the Project between the Landlord as landlord and such Leasehold Mortgagee or the nominee of such Leasehold Mortgagee as tenant for a Term equal in duration to the then remaining residue of the Term, at the same rent and otherwise upon the same terms and including the same covenants, provisions, agreements and conditions as are contained in this Lease and remain to be fulfilled or complied with subject only to the same conditions of title as this Lease is subject to on the date of execution hereof and to any encumbrances upon the Tenant's interest or created or agreed to by the Tenant and to rights, if any, of any sublessees then in possession of any part of the Demised Lands; provided, however, that the Landlord's obligation to grant such new Lease is conditional upon the Landlord being paid all its expenses in connection with such new Lease and all monies which would have been lawfully due and owing under or contemplated by this Lease to the date of such new Lease and subject to the Construction Agreement or any provisions thereof remaining to be satisfied and all other subsisting agreements between the Landlord and the

Tenant relating to the Project being complied with in full by such Leasehold Mortgagee; and

- (c) the provisions of this Section shall be enforceable by every Leasehold Mortgagee intended to be benefitted thereby, notwithstanding that such Leasehold Mortgagee is not a party to this Lease, and whenever requested by the Tenant or any Leasehold Mortgagee intended to be benefitted by the provisions of this Section, the Landlord will enter into an agreement directly with such Leasehold Mortgagee on the terms of this Section.

(vii) Remedies of Landlord Cumulative

The remedies of the Landlord specified in this Lease are cumulative and are in addition to any remedies of the Landlord at law or equity. No remedy shall be deemed to be exclusive, and the Landlord may from time to time have recourse to one or more or all of the available remedies specified herein or at law or equity.

17. INSURANCE

- (a) The Tenant shall, during the entire Term hereof, keep in full force and effect:
  - (i) a policy of public liability and property damage insurance with companies qualified to do business in the Province of Ontario with respect to the Demised Premises, the sidewalks in front of the Demised Premises and the business operated by the Tenant and any licensees, concessionaires and sub-tenants of the Tenant in the Demised Premises, in which the limits of public liability shall not be less than Five Million Dollars (\$5,000,000.00) for bodily injury to any one or more person and in which the property damage liability shall be not less than Two Million Dollars (\$2,000,000.00). All such policies shall contain a severability of interests clause and a cross-liability clause. This upset limit will be subject to review by the Landlord every five years.
  - (ii) Insurance upon the Demised Premises and every part thereof, including the buildings, the improvements and all property of every description and kind owned by the Tenant or for which the Tenant is legally liable, or installed by or on behalf of the Tenant, and which is located within or upon the Demised Premises, in an amount of not less than full replacement cost thereof and the cost of debris removal, with coverage against, at least, the peril of fire, sprinkler leakage and all other perils covered by "All Risks" insurance coverage with a "by-law" endorsement, and including earthquake, flood and collapse. If there is a dispute as to the amount which comprises full replacement cost, the decision of an independent insurance advisor acceptable to both parties shall be conclusive.
  - (iii) Broad form Boiler and Machinery insurance on a blanket repair and replacement basis, with limits for each accident in an amount not less than the \$2,000,000.00 covering all boilers, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus owned or operated by the Tenant. The Tenant will ensure that any additional equipment installed or used in the building by its subtenants or any other person in the Demised Premises, or relating to or serving the Demised Premises, shall have boiler and machinery coverage.
  - (iv) The Tenant shall at all times maintain tenants' legal liability insurance for the actual cash value of the Demised Premises, including loss of use thereof.

- (v) Prior to the commencement of any demolition or construction on the Demised Premises, the Tenant shall cause to be effected, maintained and kept in force, until completion of such demolition or construction, insurance insuring the Landlord and the Tenant and their employees and all those for whom they are at law responsible (without rights of cross claim as between the Landlord and the Tenant) from damage to the Demised Premises, fixtures, equipment and building materials on the Demised Premises from time to time during demolition and construction (which may be by policies effective from time to time covering the risks during different phases of demolition and construction) by an "all risks" form, including resultant damage from error in design and faulty workmanship and, to the extent available and as would be obtained by a prudent owner of such a project, to the Replacement Cost thereof at all times and in any event in an amount sufficient to prevent the Landlord or the Tenant from being deemed to be a co-insurer. The insurance required under this Section shall be of a "wrap-up" type including all interests.
- (b) All policies shall contain a waiver of any subrogation rights which the Tenant's insurers may have against the Landlord and against those for whom the Landlord is in law responsible, whether any such damage is caused by the act, omission or negligence of the Landlord or those for whom the Landlord is in law responsible.
- (c) All policies of insurance shall be in a company or companies authorized to do business in the Province of Ontario and upon terms and conditions and in amounts satisfactory to the Commissioner of Finance of the Landlord. The Landlord and the Tenant shall be named as the insured in all policies purchased by the Tenant and the interest of all mortgagees shall be noted therein. All policies shall contain a clause requiring the insurer to give the Landlord and mortgagees thirty (30) days written notice of material alteration or cancellation of such policies. The Tenant shall deliver to the Landlord's Commissioner of Finance forthwith after placing such insurance, certificates of insurance.
- (d) Notwithstanding any other terms, covenants and conditions contained in this Lease, the Tenant will indemnify the Landlord, its employees, agents or servants and save them harmless from and against any and all loss (including loss of all Rent payable by the Tenant pursuant to this Lease), claims, actions, damages, liability and expenses in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever (collectively, the "Damage") arising from or out of this Lease, or any occurrence in, upon or at the Demised Premises, or the occupancy or use by the Tenant or any other person of the Demised Premises or any part thereof, or occasioned wholly or in part by any act or omission of the Tenant or by any other person on the Demised Premises. The Tenant's obligation pursuant to this Section 17(d) to indemnify and save harmless the Landlord shall extend to and include, without limiting the generality of the scope of the provisions contained in this Section, damage to any portion of or otherwise relating to the Demised Premises, and damage to any portion of any lands or buildings neighbouring the Demised Premises or any occupants thereof, including their respective customers, employees, agents and invitees if the said damage or injury is related to or arises from the Demised Premises. If the Landlord shall, without fault on its part, be made a party to any litigation commenced by or against the Tenant, then the Tenant shall protect, indemnify and hold the Landlord harmless and shall pay all costs, expenses and reasonable legal fees incurred or paid by the Landlord in connection with such litigation. Such indemnification shall survive the expiry or earlier termination of this Lease.

- (e) Except for the fault or the negligence of the Landlord or for any person for whom at law the Landlord is responsible, the Landlord shall not, in any event whatsoever be liable or responsible in any way for any personal injury or death that may be suffered or sustained by, or for any loss of or damage or injury to any property belonging to the Tenant or any employee, servant, agent, sub-lessee, licensee or invitee of the Tenant on the Demised Premises no matter how caused.
- (f) The Tenant shall comply and cause all persons occupying portions of the Demised Premises to comply with all requirements of the Insurer's Advisory Organization or of any insurer of the Demised Premises or any portion of it.
- (g) Notwithstanding the foregoing, the parties hereto agree that the Landlord shall not be liable in any way for any damage, loss or injury arising by or from any mistake, error, oversight or otherwise in the non-obtaining of insurance coverage or the obtaining of coverage lesser than as specified in connection with the obtaining and maintaining of any policy of insurance, any invalidity or partial invalidity or ineffectual form of any policy of insurance or as a result of default in payment by any company or companies carrying such insurance or any loss in connection with any such insurance as hereinbefore set out.
- (h) The Tenant agrees that if the Tenant fails to take out or to keep in force any insurance, or notice of cancellation shall be given to the Landlord respecting any insurance policy, or if any insurance policy upon the Demised Premises or any part thereof shall be cancelled or refused to be renewed by any insurers or such insurance is not available, by reason of the use or occupancy of the Demised Premises or any part thereof and should the Tenant not commence to diligently rectify (and thereafter proceed diligently to rectify) the situation within forty-eight (48) hours after written notice by the Landlord to the Tenant, the Landlord has the right without assuming any obligation in connection therewith, to effect such insurance at the sole cost of the Tenant and all outlays by the Landlord shall be immediately paid by the Tenant to the Landlord as Additional Rent and the Landlord may re-enter and take possession of the Demised Premises.
- (i) If any policies of insurance required contain any co-insurance clauses or provisions, then the Tenant will maintain or cause to be maintained at all times a sufficient amount of insurance to meet the requirements of any co-insurance clause or provisions so as to prevent the Tenant from becoming a co-insurer under the terms of its policy or policies and to permit full recovery of the amount insured in the event of a loss.

18. WATER AND GAS DAMAGE

- (a) It is further declared and agreed that the Landlord shall not be liable for any damage to any property at any time upon or in the Demised Premises arising from gas, steam, water, rain or snow, which may leak into, issue or flow from any part of the said building, or from the gas, water, steam or drainage pipes or plumbing works of the same or from any other place or quarter or for any damage caused by or attributable to the condition or arrangement of any electric or other wires in the said building.
- (b) The Tenant shall be liable for any damage done by reason of water being left running from the taps in the Demised Premises or from gas permitted to escape therein or therefrom.

19. NOTICE OF ACCIDENT

The Tenant shall give the Landlord prompt written notice of any accident or other defect in the sprinkler system, water pipes, gas



pipes or heating apparatus, telephone, electric or other wires on any part of the premises.

20. USE NOT TO BE A NUISANCE

Provided that the Tenant will not do or permit anything to be done on the Demised Premises or permit or keep anything therein which may be annoying to the Landlord or other occupants of the said building or which the Landlord may deem to be a nuisance or annoyance to the occupiers or owners of any lands or premises adjoining or in the vicinity of the Demised Premises and that no machinery shall be used therein which shall cause any undue vibration in or to the Demised Premises and that in case of the Landlord or any other occupants of the said building reasonably complaining that any machinery or operation or process is a nuisance to it or them or which causes any undue vibration or noise in the premises, that upon receiving notice thereof, the Tenant will immediately abate such nuisance. The Tenant covenants not to obstruct or interfere with the rights of the Landlord or conflict with any of the rules and regulations of the Board of Health or with any statute or municipal by-law.

21. SIGN

And it is hereby further agreed by and between the Landlord and the Tenant that no sign, advertisement or notice shall be inscribed, painted or affixed by the said Tenant on any part of the outside or inside of the Demised Premises whatever, unless of such manner, colour, size and style and in such places upon or in the Demised Premises as shall be first approved by the Landlord and the Toronto Historical Board, and furthermore, the Tenant, on ceasing to be Tenant of the Demised Premises, will, before removing his goods and fixtures from the premises, cause any sign as aforesaid to be removed or obliterated at his own expense and in a workmanlike manner, repairing all damage caused thereby, to the satisfaction of the Landlord.

22. FIRE AND DESTRUCTION

Provided that if during the Term herein or any renewal thereof the Demised Premises shall be destroyed or damaged by fire or the elements, then the following provisions shall apply:

- (a) If the Demised Premises shall be so badly damaged as to be unfit for occupancy, and as to be, in the opinion of the Landlord, incapable of being repaired with reasonable diligence within twelve (12) months of the happening of such damage, then the Term hereby granted shall cease and be at an end to all intents and purposes from the date of such damage or destruction and the Tenant shall immediately surrender the same, and yield up possession of the Demised Premises to the Landlord, and the Rent from the time of such surrender shall be apportioned.
- (b) If, in the opinion of the Landlord, the Demised Premises shall be capable, with reasonable diligence, of being repaired and rendered fit for occupancy within twelve (12) months from the happening of such damage as aforesaid, and the Tenant shall repair the same with all reasonable speed and in accordance with paragraphs 8 and 11 herein.

23. USE OF INSURANCE PROCEEDS

Where damage or destruction to any portion of the Demised Premises occurs which is wholly or partially covered by the Tenant's insurance, then the proceeds will be paid to a Trustee who (being a Canadian chartered bank, a trust company incorporated in Canada or a recognized lending institution, insurance company or pension fund, to be selected by mutual agreement between the Landlord and the Tenant) will disburse the proceeds as follows:

- (a) Where the proceeds are less than \$200,000.00, the proceeds will be released to the Tenant and the proceeds will be used by the Tenant to repair the damage and destruction.
- (b) Where the proceeds exceed \$200,000.00, the proceeds will be released to the Tenant, from time to time, in progress payments for the purpose of reimbursing the Tenant for the costs of repairing, reconstructing or replacing (the "Restoration") as the case may be, the damaged or destroyed portion of the Demised Premises, but the release of these proceeds will be subject to the formalities set out in the remaining portions of this Section.
- (c) Any progress payments to be made by the Trustee to the Tenant will not be made without the certificate of the independent architect or engineer supervising the restoration, certifying the estimated amount required to complete the work at the date of the certificate, the amount claimed by individual contractors at that date, the amount owing on work already done, and the amount of any payments made at that date for work already done. The Trustee will be required to retain at the date of any payment an amount sufficient to pay the estimated outstanding costs of completion together with any additional amounts required to satisfy the holdback provisions of the Construction Lien Act (Ontario), as amended from time to time, and any successor legislation.
- (d) If at the end of two (2) years following the occurrence of damage or destruction, the Trustee is holding or is entitled to the payment (subject to complying with any conditions imposed by the Tenant's insurers) of any insurance proceeds, and the reconstruction has not been commenced and thereafter diligently proceeded with, then the Landlord may require the Trustee to pay the balance of the proceeds held by the Trustee to the Landlord and the Trustee will be discharged from all further obligations, and the Landlord shall thereupon hold such proceeds in the same manner and for the same purpose as the Trustee was holding them.
- (e) On the completion of the Restoration and the Tenant's payment in full of all contractors and suppliers in connection with such work, the Trustee will, upon receipt of reasonable evidence that the work has been completed and paid for in full and that there is no outstanding lien claim, release any surplus proceeds to the Tenant.
- (f) The fees and expenses of the Trustee will be borne by the Tenant and shall be paid out of the proceeds held by the Trustee.

#### **24. NO ABATEMENT OF RENT**

There shall be no abatement from or reduction of the Rent due hereunder, nor shall the Tenant be entitled to damages, losses, costs or disbursements from the Landlord during the Term hereby created on, caused by or on account of fire, (except as above), water, sprinkler systems, partial or temporary failure or stoppage of heat, light, elevator, live steam or plumbing service in or to the Demised Premises or building, whether due to acts of God, strikes, accidents, the making of alterations, repairs, renewals, improvements, structural changes to the Demised Premises or building or the equipment or systems supplying the said services, or from any cause whatsoever; provided that the said failure or stoppage be remedied within a reasonable time.

#### **25. PROTECTIVE INSTALLATIONS**

The Tenant agrees to pay the cost of any installations, additions or alterations to the premises that the Landlord may be required to make

by any Municipal, Provincial or other governing authority, or requested by any private protective system used by the Tenant, for the security and protection of the Tenant and its employees and its or their effects including but not so as to limit the foregoing installations, additions and alterations for fire and theft protection, and all such installations, additions or alterations shall forthwith become the property of the Landlord.

26. NOTICES

Any notice which either of the parties is required or permitted to give pursuant to any provision of this Lease shall be in writing and given, if delivered personally,

(a) To the Tenant:

Queen-St. Patrick Market Inc.  
390 Bay Street  
Suite 2801  
Toronto, Ontario  
M5H 2Z2

(b) To the Landlord at:

The Corporation of the City of Toronto,  
Commissioner of City Property,  
9th Floor, East Tower,  
City Hall,  
Toronto, Ontario,  
M5H 2N2

and such notice shall be deemed to have been given at the time it was delivered.

27. OVER HOLDING

Provided further and it is hereby agreed that should the Tenant hold over after the expiration of this Lease and the Landlord thereafter accepts Rent for the Demised Premises, the Tenant shall hold the Demised Premises as a monthly tenant only of the Landlord but subject in all other respects to the terms and conditions of this Lease.

28. EXCUSE OF LANDLORD'S PERFORMANCE

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

29. NOTICE OF DEFAULT

(a) The Landlord will, simultaneously with the giving of any notice of default to the Tenant, give a duplicate of the notice of default to any user or occupier of the Demised Premises.

(b) The Landlord will, prior to exercising its rights to terminate this Lease or other rights of re-entry as a result of a default by the Tenant, provide the Tenant with the opportunity to cure the Tenant's default within the time period specified in Section 16.

30. SECURITY DEPOSIT

The Tenant agrees throughout the Term, prior to commencing any work in the Demised Premises to deposit with the Landlord's Commissioner of Finance the sum of Ten (10%) per cent of the value of the work to be done or such other security as is acceptable to the Landlord's Commissioner of Finance. Said security shall be held by the Landlord without liability for interest, as security for the faithful performance by the Tenant of all of the work in accordance with the terms, covenants and conditions of this Lease by the Tenant to be kept and performed. The Landlord may, at its option (but the Landlord shall not be required to), appropriate and apply any portion of said security to the payment of any sum or sums to have been paid by the Tenant. Should the entire security, or any portion thereof, be appropriated and applied by the Landlord for the payment of such sums, then the Tenant shall, upon the written demand of the Landlord, forthwith remit to the Landlord a sufficient amount in cash to restore said security to the original sum deposited, and the Tenant's failure to do so within five (5) days after receipt of such demand shall constitute a breach of this Lease. Should the Tenant comply with all of said terms, covenants and conditions and promptly pay all accounts and sums due for the work, the said deposit shall be returned in full to the Tenant within forty-six (46) days after the substantial performance of the work (substantial performance being as defined by the Construction Lien Act, 1983, S.O.).

31. ACKNOWLEDGEMENT OF TENANCY

- (a) Within ten (10) days after request therefor by the Landlord, or in the event that upon any sale or assignment or transfer of the Demised Premises and/or the land thereunder by the Landlord, an acknowledgment of tenancy shall be required from the Tenant, and the Tenant agrees to deliver in recordable form a certificate to any proposed mortgagee or purchaser, or to the Landlord, certifying (if such be the case) that this Lease is in full force and effect; that Rent is paid currently without any defences or offsets thereto; that the Tenant is in possession; that there are no prepaid rents or security deposits other than those set out in this Lease; that there are no uncured defaults by the Landlord or stating those claimed by the Tenant
- (b) Upon the request of the Landlord, the Tenant will subordinate or postpone its rights hereunder to the lien of any mortgage or the lien resulting from any other method of financing or refinancing, now or hereafter placed upon the land of which the Demised Premises form a part, and to all advances made or hereafter to be made upon the security thereof, and the Tenant will execute promptly any instruments of postponement or subordination which may be so requested to give effect to the foregoing.

32. VOIDANCE OF LEASE FOR IMPROPER USE

It is agreed hat in case the said Demised Premises or any part thereof, be used by any other person or persons, or for any other purpose than as above provided, without the written consent of the Landlord, and provided the Landlord first gives the Tenant fourteen (14) days written notice of the improper use and the Tenant within the fourteen (14) days period fails to commence diligently and thereafter to proceed diligently to rectify the use, this Lease shall, at the option of the Landlord, cease and be void, and the Term hereby created expire and be at any end, anything hereinbefore to the contrary notwithstanding and the proportionate part of the current Rent shall thereupon become immediately due and payable, and the Landlord may re-enter and take possession of the Demised Premises as though the Tenant or other occupant or occupants of the said Demised Premises were holding over after the expiration of the Term; or in such case instead of determining this Lease as aforesaid and re-entering upon the Demised Premises, the Landlord may take possession of the Demised Premises, or any part or parts thereof, and let and

manage the same and grant any Lease or leases thereof upon such terms as to the Landlord or its assigns may appear to be reasonable, and demand, collect, receive and distrain for all rental which shall become payable in respect thereof, and apply the said rentals after deducting all expenses incurred in connection with the Demised Premises and in the collection of the said Rent including reasonable commission for the collection thereof and the management of the Demised Premises, upon the Rent hereby reserved, and the Landlord and its assigns and every such agent acting as aforesaid from time to time, shall in so acting be the agents of the Tenant, who alone shall be responsible for the acts, and the Landlord and its assigns shall not be accountable for any monies except those actually received, notwithstanding any act, neglect, omission or default of any such agent acting as aforesaid.

33. RIGHT OF ENTRY

- (a) The Landlord and any person authorized by the Landlord shall have the right to use, install, maintain and/or repair pipes, wires, ducts or other installations in, under or through the Demised Premises, for or in connection with the supply of any services to the Demised Premises or any other premises in the said building. Such services shall include (without limiting the generality of the foregoing) gas, electricity, water, sanitation, heat, ventilation, air conditioning and security systems.
- (b) During the six (6) months prior to the expiration of this Lease, the Landlord may exhibit the Demised Premises to prospective tenants or purchasers and place upon the Demised Premises the usual notices "To Let" or "For Sale", which notices the Tenant shall permit to remain where placed without molestation.
- (c) If the Tenant shall not be personally present to open and permit an entry into the Demised Premises at any time, when for any reason an entry therein shall be necessary or permissible, the Landlord or the Landlord's agents may enter the same by a master key, or may forcibly enter the same, without rendering the Landlord or such agents liable therefor, and without in any manner affecting the obligations and covenants of this Lease.

34. LANDLORD'S COVENANT

If the Tenant pays Rent and all sums required herein and observes the terms, covenants and conditions herein, the Landlord covenants with the Tenant for quiet enjoyment.

35. MISCELLANEOUS

- (a) The words importing the singular number only shall include the plural, and vice versa and words importing the masculine gender shall include the feminine gender, and words importing persons shall include firms and corporations and vice versa.
- (b) Unless the context otherwise requires, the word "Landlord" and the word "Tenant" wherever used herein shall be construed to include and shall mean the executors, administrators, successors and/or assigns of the said Landlord and Tenant, respectively, and when there are two or more Tenants bound by the same covenants herein contained, their obligations shall be joint and several.
- (c) This agreement shall enure to the benefit of and be binding upon the respective heirs, administrators, executors, successors and assigns of the parties hereto.
- (d) The waiver by the Landlord of any breach of any Term, covenant or condition herein contained shall not be deemed to be a waiver of such Term, covenant or condition or any subsequent breach of the same or any other Term, covenant or condition herein contained.

The subsequent acceptance of Rent hereunder by the Landlord shall not be deemed to be a waiver of any preceding breach by the Tenant of any Term, covenant or condition of this Lease, other than the failure of the Tenant to pay the particular Rent so accepted, regardless of the Landlord's knowledge of such preceding breach at the time of such acceptance of such Rent. No covenant, Term or condition of this Lease shall be deemed to have been waived by the Landlord unless such waiver be in writing by the Landlord.

- (e) No payment by the Tenant or receipt by the Landlord of a lesser amount than monthly Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any cheque or any letter accompanying any cheque or payment as Rent be or be deemed to be an accord and satisfaction, and the Landlord may accept such cheque or payment without prejudice to the Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease provided.
- (f) This Lease and the Schedules, and Rider, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between the Landlord and the Tenant concerning the Demised Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon the Landlord or the Tenant unless reduced to writing and signed by them.
- (g) The Landlord does not, in any way or for any purpose, become a partner of the Tenant in the conduct of its business, or otherwise, or joint adventurer or a member of a joint enterprise with the Tenant.
- (h) This Lease shall be interpreted and governed by the laws of the Province of Ontario.
- (i) If two or more individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) shall sign this Lease as the Tenant, the liability of each such individual, corporation, partnership or other association to pay Rent and perform all other obligations hereunder shall be deemed to be joint and several. In like manner, if the Tenant named in this Lease shall be a partnership or other association, the members of which, are, by virtue of statute or general law, subject to personal liability, the liability of each such member shall be deemed to be joint and several. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Tenant and to either corporations, associations, partnerships or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.
- (j) The Tenant shall not register this Lease or any notice thereof or other memorandum referring to or describing this Lease or parts thereof, without the prior written consent of the Landlord.

36. COMPLIANCE WITH THE PLANNING ACT, 1983

It is an expressed condition of the within Lease and the Landlord and the Tenant agree that the subdivision control provisions of The Planning Act, 1983 (Ontario), and amendments thereto, must be complied with if applicable.

Schedule "C"

Other uses permitted in the operation of the Demised Premises as a mini-market are sale and/or preparation of confectionary, chocolate and chocolate products, savory snacks, nuts, pastry, cakes, frozen desserts, packaged foods, bulk foods, health foods, prepared meals (cooked, partly cooked, prepared but uncooked).

It is hereby acknowledged and agreed that there is to be no restaurant, cafe or other similar use on the Demised Premises and that all foods, meals and uses of any kind are to be restricted to "take-out" only.

37. ACKNOWLEDGMENT BY TENANT

The Tenant acknowledges that nothing contained in this Lease fetters the rights of the Landlord in its capacity as a municipality.

38. ACKNOWLEDGMENT BY LANDLORD

The Landlord and the Tenant acknowledge that each is respectively the Sub-Tenant and the Sub-Landlord under a certain sublease in respect of the Demised Premises and accordingly hereby further acknowledges that no default on the part of the Sub-Tenant or the Sub-Landlord under the Sub-Lease shall constitute or be deemed in any way to be a default on the part of the Landlord or the Tenant insofar as this Lease and the Landlord and the Tenant each acknowledges that neither shall have any right of termination or set-off under this Lease in respect of such default.

39. RIGHTS, OBLIGATIONS AND CAPACITY OF THE LANDLORD

All rights and benefits and all obligations of the Landlord under this Lease shall be rights, benefits and obligations of the Landlord in its capacity as a party to this Lease and shall not derogate from or interfere with the rights, benefits and obligations of the Landlord in its function as a municipal corporation.

40. COMMUNICATION OR DEALING WITH THE LANDLORD

No communication or dealing between the Tenant and any department, committee or body functioning under the administration of the Landlord shall be deemed to be a communication or dealing under the provisions of this Lease between the Tenant and the Landlord as parties to this Lease or to affect the Landlord with notice of any such communication or dealing; it being intended and agreed that any communication or dealing between the Landlord and the Tenant as parties to this Lease shall only be effective if in the manner provided by Section 27. No communication or dealing between the Tenant as a party to this Lease and pursuant to the provisions of this Lease and the Landlord as a party to this Lease, shall relieve the Tenant from the responsibility of discharging its lawful obligations to the Landlord imposed by statute, regulation, by-law or by any other lawful manner separate and apart from the obligations of the Tenant imposed by this Lease.



IN WITNESS WHEREOF the Parties hereto have hereunto executed these presents.

SIGNED, SEALED AND DELIVERED) in the presence of

THE CORPORATION OF THE CITY OF TORONTO

APPROVED AS TO FORM

CITY SOLICITOR

per: [Signature]  
A Member of the Executive Committee  
c/s

per: [Signature]  
Deputy City Treasurer

QUEEN-ST. PATRICK MARKET INC.

per: [Signature]  
George Friedmann c/s  
President

L/STPST1A/HFADLBAC/JULY 11, 1989

Item No. <sup>57</sup> ~~75~~ 54  
AUTHORIZED by Report No. 15  
of the EXECUTIVE COMMITTEE  
adopted in COUNCIL on the 4 & 5  
day of May 1989

(with amendments) [Signature]  
for City Clerk  
19/7/89

SCHEDULE "A"

In the City of Toronto, in the Municipality of Metropolitan Toronto and Province of Ontario, being composed of part of Park Lot 13 in Concession 1 from the Bay in the original Township of York designated as PARTS 12 and 13 on a plan of survey deposited in the Land Registry Office for the Land Titles Division of Metropolitan Toronto (No. 66), as 66R-14419.

TOGETHER WITH a Right-of-way for access purposes in, over, along and upon that part of the said Park Lot 13 in Concession 1 FROM the Bay designated as PARTS 9, 10, 11, 14, 15, 17 and 18 on the said Plan 66R-14419 until such time as the said PARTS 9, 10, 11, 14, 15, 17 and 18 have been dedicated for public highway purposes.

The northerly limit of Queen Street West as confirmed under the Boundaries Act by Plan BA-1157 registered on May 9, 1978, as Plan D-471 (see A-687876).

Being part of parcel 13-15 in the Register for Section Y-2.

Schedule "C"

Other uses permitted in the operation of the Demised Premises as a mini-market are sale and/or preparation of confectionary, chocolate and chocolate products, savory snacks, nuts, pastry, cakes, frozen desserts, packaged foods, bulk foods, health foods, prepared meals (cooked, partly cooked, prepared but uncooked).

It is hereby acknowledged and agreed that there is to be no restaurant, cafe or other similar use on the Demised Premises and that all foods, meals and uses of any kind are to be restricted to "take-out" only.

JULY 11, 1989 08:49:58 AM

STANDARD FORM OF SUB-LEASE

THIS SUB-LEASE made the 16th day of June, 1989.

IN PURSUANCE OF THE SHORT FORMS OF LEASES ACT

BETWEEN:

QUEEN - ST. PATRICK MARKET INC.  
(hereinafter called the "Sub-Landlord")

OF THE FIRST PART

- and -

THE CORPORATION OF THE CITY OF TORONTO  
(hereinafter called the "Sub-Tenant")

OF THE SECOND PART

1. DEMISED PREMISES

WITNESSETH that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the said Sub-Tenant, to be paid, observed and performed, the said Sub-Landlord has demised and leased and by these presents does demise and sub-lease unto the said Sub-Tenant, and the Sub-Tenant does sub-lease from the Sub-Landlord the basement portion only consisting of approximately 4,380 square feet of finished space and excluding storage space for the Sub-Landlord as agreed to by the parties hereto (subject to confirmation by a BOMA survey) in the building currently situate on lands municipally known as No. 238 Queen Street West, being the above-described portion of the basement of ALL THOSE CERTAIN PREMISES shown on a plan attached hereto designated as "A" (the "Demised Premises"). It is understood and agreed that a portion of the basement consisting of stairwells, washrooms, hallways and the elevator, shall be a common space for the common benefit of the Sub-Landlord, its tenants, and the Sub-Tenant.

2. TERM

TO HAVE AND TO HOLD the Demised Premises for and during the term to be computed not later than the first (1st) day of March, 1991, which date is hereinafter referred to as the "Commencement Date", and from thenceforth ensuing and to be fully completed and ended on the thirtieth (30th) day of August, 2039 (hereinafter called the "Term").

3. NET SUB-LEASE

The Sub-Tenant acknowledges and agrees that it is intended that this Sub-Lease is a completely carefree Sub-Lease to the Sub-Landlord, that the Sub-Landlord is not responsible during the Term or any renewal thereof, for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Demised Premises, or the use and occupancy thereof, or the contents thereof or the business carried on therein, and the Sub-Tenant shall pay all charges, impositions, costs and expenses of every nature and kind relating to the Demised Premises as if it were the owners.

4. RENT

(a) Covenant to Pay Rent

The Sub-Tenant agrees to pay annual rent of ONE (\$1.00) DOLLAR (the "Basic Rent") and Additional Rent as herein provided.

- 2 -

(b) Rent Past Due

If the Sub-Tenant fails to pay, when the same is due and payable, any Basic Rent, Additional Rent or any other amount payable by the Sub-Tenant under this Sub-Lease (hereinafter called "Rent"), such unpaid amounts bear interest at the Prime Rate at such time charged by the Canadian Imperial Bank of Commerce plus four per cent (4%) from the due date thereof to the date of payment, subject to monthly compounding.

(c) Waiver of Set-Off by Sub-Tenant

The Sub-Tenant hereby waives and renounces any and all existing and future claims and rights of set-off against any Rent and other monies payable hereunder to the Sub-Landlord and agrees to pay such Rent and other monies payable hereunder to the Sub-Landlord regardless of any claim or set-off which may be asserted by the Sub-Tenant or on its behalf.

5. ADDITIONAL RENT(a) Taxes, Utility and Other Charges

The Sub-Tenant agrees to pay when due at the Sub-Tenant's sole expense and for its own account from and after the Commencement Date the Sub-Tenant's Proportionate Share of or, where assessed or calculated and billed separately (it being understood and agreed that every effort will be done to effect separate meters where it is cost effectively possible and that no common meters shall be used until discussed with the Sub-Tenant) in respect of the Demised Premises, all of:

- (i) each and every installment of Real Property Taxes applicable to the Demised Premises, if any, or any part thereof; and
- (ii) all utility charges and rates and similar taxes, rates, charges and assessments including payments in lieu thereof which are properly charged, levied or assessed in connection with the Demised Premises, or any part thereof (including such taxes which may be levied, rated, charged or assessed against improvements, equipment and facilities or other leasehold, interest or personal property of any kind of the Sub-Tenant) or which are properly levied or assessed against the Sub-Tenant or which would, if unpaid, become a lien on the Demised Premises or the Sub-Tenant's leasehold interest therein or where such lien will, at any time, affect the interest of the Sub-Landlord; and
- (iii) any business taxes or licence fees and similar taxes which may be charged, levied or assessed in connection with the Demised Premises or any part thereof or in respect of their use or occupancy by the Sub-Tenant and any and every assignee, sub sub-tenant, concessionaire, licensee and other person making any use of, on or from the Demised Premises, or which are levied or assessed against the Sub-Tenant or which would, if unpaid, become a lien on the Demised Premises, or the Sub-Tenant's leasehold interest therein, where such lien will, at any time, affect the interest of the Sub-Landlord;
- (iv) all services used on the Demised Premises including all charges for water, gas, electricity, phone, heat, air conditioning, janitorial services, repairs and maintenance of the Demised Premises, and any related equipment or facilities;
- (v) all other charges and expenses which are the responsibility of the Sub-Tenant pursuant to this Sub-Lease including the cost of all required insurance;

- 3 -

For the purpose of this section "Proportionate Share" means:

- (a) for Real Property Taxes, that portion assessed the Demised Premises; and
- (b) for other matters not separately metered, that cost per square foot of the usable area of the Demised Premises as set out in the BOMA Exchange for office use in the downtown area of Toronto for that particular item Base Year 1989 plus the lesser of actual increase and CPI all items Canada;
- (vi) the Sub-Tenant will not install equipment that will exceed or overload the capacity of utility facilities and agrees that if equipment installed by the Sub-Tenant requires additional facilities, they will be installed at the Sub-Tenant's expense in accordance with the plans and specifications approved by the Sub-Landlord prior to installation;
- (vii) the parties hereto agree that all sums of money or charges required to be paid by the Sub-Tenant under this Sub-Lease (except Rent), whether or not same are designated as Additional Rent or whether or not same are payable to the Sub-Landlord or otherwise, shall be Additional Rent for the Demised Premises and shall be deemed to be and be collectable as Rent and the Sub-Landlord shall have the same remedies in respect of arrears of Additional Rent as it has in respect of arrears of Rent. If such amounts or charges are not paid at the time provided in this Sub-Lease, they shall nevertheless if not paid when due, be collectable as Additional Rent with the next instalment of Rent thereafter falling due hereunder, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder, or limit any other remedy of the Sub-Landlord.

(b) Sub-Landlord to Provide Notices

The Sub-Landlord shall forward to the Sub-Tenant any bills and notices with respect to the payments which are the responsibility of the Sub-Tenant pursuant to this Sub-Lease and received from third parties by the Sub-Landlord.

(c) Sub-Landlord May Pay Taxes, etc.

If the Sub-Tenant fails to pay when due any Additional Rent required to be paid by the Sub-Tenant pursuant to this Sub-Lease and is not contesting the same, the Sub-Landlord shall have the right to pay the same at the expense of the Sub-Tenant after thirty (30) days' prior notice to the Sub-Tenant and the Sub-Tenant covenants to pay to the Sub-Landlord forthwith upon demand as Rent any amount so paid by the Sub-Landlord. No notice shall be required to be given by the Sub-Landlord if the Demised Premises or the Sub-Landlord's or Sub-Tenant's interest in the Sub-Lease is subject to forfeiture by reason of such non-payment prior to the expiry of such notice period. This is a statement of the Sub-Landlord's right, not a Sub-Landlord duty or obligation.

(d) Adjustment of Rent

If applicable, sums paid by the Sub-Tenant under this paragraph shall be subject to adjustment to reflect any partial billing periods encountered at the commencement or termination of this Sub-Lease.

- 4 -

(e) Payments of Rent.

All payments of Rent are payable in lawful money of Canada without deduction, abatement, set-off or compensation whatsoever. Additional Rent is due and payable as specifically provided in this Sub-Lease or otherwise with the next instalment of Basic Rent.

6. INDEMNITY6.A. Non-Liability of Sub-Landlord

The Sub-Landlord shall have no liability whatsoever with respect to claims or damages resulting from the use or occupation of the Demised Premises.

6.B. Tenant's Indemnity

The Sub-Tenant covenants to indemnify and save harmless the Sub-Landlord, in its capacity as Sub-Landlord under this Sub-Lease from any and all claims, liabilities, damages, costs, expenses, suits or actions resulting from:

- (a) any breach, violation or non-performance of any covenant, obligation or agreement of the Sub-Tenant contained in this Sub-Lease;
- (b) any damage to property, either real or personal and either owned by the Sub-Landlord or others, howsoever occasioned by the repair and/or use or occupation of the Demised Premises by the Sub-Tenant or those for whom the Sub-Tenant as Sub-Tenant is at law responsible;
- (c) any personal or bodily injury to any person or persons, including death resulting at any time therefrom, howsoever occasioned by the use or occupation of the Demised Premises by the Sub-Tenant or those for whom the Sub-Tenant as Sub-Tenant is at law responsible; and/or
- (d) any contract, lien privilege, mortgage, charge or encumbrance on the Demised Premises arising from or occasioned by the act, default or negligence of the Sub-Tenant or those for whom the Sub-Tenant as Sub-Tenant is at law responsible; and
- (e) against payment for all loss, costs, charges, expenses arising from all the taxes, rates, duties, assessments and licence fees referred to and all taxes which may be in the future levied in lieu of those taxes and any loss, costs, charges, and expenses, suffered by the Sub-Landlord as a result of non-payment by the Sub-Tenant.

This Section shall survive the termination or expiry of this Sub-Lease, any provisions in this Sub-Lease to the contrary notwithstanding.

7. ACCEPTANCE OF THE DEMISED PREMISES

The Sub-Tenant acknowledges and agrees that,

- (a) it accepts the Demised Premises as finished, clean, unimproved space and otherwise in an "as is" condition with all common areas completely finished, improved and ready for use including fully functional and improved washrooms and an elevator; for the purpose of this clause finished means to BOMA operating standards for office use class "B" building and is to include drywalling of the exterior and demising walls (i.e. all walls that define the limits of the Demised Premises), T-Bar ceiling and a level floor capable of being carpeted or vinyl tiled;

- 5 -

- (b) subject to clause (a) above, the Sub-Landlord has no obligations with respect to any alterations, improvements, renovations and repairs to any portion of the Demised Premises, all of which shall be completed by the Tenant at its own sole cost and expense and where applicable, in accordance with the provisions of this sublease. The Sub-Landlord will permit access prior to the Commencement Date to make such improvements.

8. ALTERATIONS, RESTORATION, IMPROVEMENTS, ETC.

- (a) That if the Sub-Tenant shall during the said Term desire to affix or erect partitions, counters or fixtures in any part of the walls, floors or ceilings of the Demised Premises, or make any other alterations, replacements, improvements or demolition therein, it may do so at its expense at any time and from time to time provided that the Sub-Tenant's rights to do such work to the Demised Premises shall be subject to the following conditions:
- (1) That before undertaking any such work, the Sub-Tenant shall submit to the Sub-Landlord plans sufficient to show the proposed alterations. The Sub-Tenant acknowledges that the building is declared to be of historical significance and that any repairs or replacements to any of the historically relevant portions of the Demised Premises will have to be approved by the Toronto Historical Board. Within fifteen (15) days after receiving the drawings and other material from the Sub-Tenant, the Sub-Landlord will advise the Sub-Tenant in writing whether or not it approves of the Changes, and if not, suggesting modifications to the drawings and other items, and within fifteen (15) days after the Sub-Tenant receives the Sub-Landlord's request, the Sub-Tenant will submit revised drawings and other similar materials for the Sub-Landlord's approval, and the parties agree to negotiate in good faith to modify the proposed Changes in order to obtain the Sub-Landlord's consent thereto;
  - (2) That all such alterations shall conform to all building by-laws and building codes, if any, then in force affecting the Demised Premises and the Sub-Tenant shall not suffer or permit any construction or other liens to be filed or placed against the Demised Premises or against title to the lands on which they are situate and if so filed, the Sub-Tenant shall forthwith discharge same at its expense and if not so discharged within twenty (20) days, then the Sub-Landlord may, but shall not be obligated to, discharge such liens and any and all costs incurred in doing so shall be treated as Additional Rent and shall forthwith be paid to the Sub-Landlord by the Sub-Tenant.
  - (3) That such alterations will not be of such kind or extent as to in any manner alter, weaken or endanger the integrity of the structure of the said building after the alterations are completed or reduce the value of the said building.
- (b) That except as herein provided, the Sub-Tenant will not make alterations or replacements or demolish or erect or affix or remove or change the location or style of any part of the exterior of the building or affix or change any sign without the written consent of the Sub-Landlord being first had and obtained.
- (c) That at the expiration of the Term hereby granted, or any renewal thereof, all fixtures, alterations, additions and improvements shall remain upon the Demised Premises until the Sub-Landlord shall advise the Sub-Tenant to remove the same from the Demised Premises and make good all damage occasioned to the Demised Premises by the taking down or removal thereof. If the Sub-Tenant fails or is not required by the Sub-Landlord to remove



- 6 -

such fixtures, alterations, additions and improvements, then upon the Sub-Tenant giving up occupancy of the Demised Premises, all such fixtures, alterations, additions and improvements shall at the option of the Sub-Landlord, become the property of the Sub-Landlord or be removed by the Sub-Landlord at the expense of the Sub-Tenant.

- (d) At the expiration of the Term or the earlier termination of this Sub-Lease, the Sub-Tenant agrees to peaceably surrender and yield up to the Sub-Landlord the Demised Premises in the state of repair required of the Sub-Tenant pursuant to this Sub-Lease, reasonable wear and tear excepted together with the Sub-Tenant's possession thereof and together with all the rights of the Sub-Tenant under this Sub-Lease and thereupon the rights of the Sub-Tenant under this Sub-Lease shall terminate.

#### 9. LIENS

The Sub-Tenant shall at all times throughout the Term and any renewal thereof, promptly pay all its contractors, material men, suppliers and workmen and all charges incurred by or on behalf of the Sub-Tenant for any work, materials or services which may be done, supplied or performed at any time in respect of the Demised Premises and the Sub-Tenant shall do any and all things necessary so as to ensure that no construction or other lien is registered against the Demised Premises or any part thereof or against the Sub-Landlord's or the Sub-Tenant's interest in the Demised Premises and if any lien is made, filed or registered, the Sub-Tenant shall discharge it or cause it to be discharged forthwith at the Sub-Tenant's expense, provided that if the Sub-Tenant wishes to contest the validity of such claim for lien, and has so notified the Sub-Landlord or paid into court to the credit of the lien action the amount of the lien plus a reasonable amount for costs, it shall commence such contestation within thirty (30) days of notice thereof provided that it complies with all laws or orders to contest. The Sub-Tenant shall use its best efforts to ensure that its Sub-Tenants and all other persons occupying portions of the Demised Premises comply with the provisions of this Section to the extent relating to work performed or material supplied by them or on their behalf.

If the Sub-Tenant fails to discharge or cause any such lien to be discharged or comply with laws upon contestation as aforesaid, then, in addition to any other right or remedy of the Sub-Landlord, the Sub-Landlord may elect to discharge the same by paying the amount required for its discharge into court and the amount paid by the Sub-Landlord and all costs and expenses including reasonable solicitor's fees (on a solicitor and client basis) incurred as a result of the registration and discharge of the lien shall be immediately due and payable by the Sub-Tenant to the Sub-Landlord as Additional Rent.

#### 10. REPAIRS

- (a) The Sub-Tenant covenants to maintain and repair the Demised Premises at its cost throughout the Term of this Sub-Lease. Without limiting the generality of the foregoing, the Sub-Tenant agrees that it will at all times keep the Demised Premises (including entrances and all glass and windows) and all partitions, doors, fixtures, equipment and appurtenances thereof (including exclusive lighting, heating and plumbing fixtures,) in good order, condition and repair (including periodic painting or re-decorating and preventative maintenance as required by the Sub-Landlord and including such repairs or replacements as are required to keep the Demised Premises in good repair and condition).
- (b) All aforesaid repairs, restorations and replacements shall be made in a good and workmanlike manner and of a first class quality.

- 7 -

- (c) In addition to the obligations set out aforesaid, the Sub-Tenant shall effect all repairs for which it is obligated hereunder according to notice in writing from the Sub-Landlord, who may enter the Demised Premises at any reasonable time and view the state of repair, but failure to give notice shall not relieve the Sub-Tenant from its obligation to repair.
- (d) The Sub-Tenant shall not make any repairs or replacements, or demolition related thereto ("Changes") of or to any part of the Demised Premises or the improvements thereon without first obtaining the Landlord's written approval, which will not be unreasonably withheld.

The Sub-Tenant shall forward evidence and assurances to the Sub-Landlord satisfactory to him to allow him to approve thereof and all changes:

- (A) will comply with all applicable by-laws, zoning regulations, other governmental requirements and the requirements of the Sub-Tenant's fire insurance underwriters;
- (B) will not weaken or endanger the integrity of the existing structure of the Demised Premises, diminish its value or restrict the Landlord's coverage for zoning purposes; and

The Sub-Tenant will provide the Sub-Landlord with security acceptable to the Sub-Landlord that all proposed Changes will be duly completed in accordance with the provisions hereof.

- (e) The Sub-Landlord and its agents have the right to enter the Demised Premises to examine the state of repair and replacement thereof, and to service and maintain the existing facilities and services pertaining to hydro, water and gas on reasonable notice during normal business hours and provided there is no unreasonable interference with the Sub-Tenant or any sub-tenant. Further the Sub-Landlord and its agents have the right to enter the Demised Premises to inspect any repairs and if not repaired as required by this agreement, to enter without notice to repair any damage to the existing facilities and services located in the Demised Premises or any damages which occur as a result of an emergency. This would then be billed to the Sub-Tenant on the basis of Additional Rents pursuant to the terms of Section 5.
- (f) If the Sub-Tenant refuses or neglects to repair properly as required hereunder and to the reasonable satisfaction of the Sub-Landlord as soon as reasonably possible after written demand, the Sub-Landlord may make such repairs without liability to the Sub-Tenant for any loss or damage that may accrue to the Tenant's merchandise, fixtures or other property or to the Sub-Tenant's use by reason thereof, and upon completion thereof, the Sub-Tenant shall pay the Sub-Landlord's costs for making such repairs plus twenty per cent (20%) for overhead, upon presentation of a bill therefor, as Additional Rent. Said bill shall include interest as set out in the invoice.
- (g) The Sub-Tenant covenants that it will leave the Demised Premises in the state of repair required by the terms of this Sub-Lease. And, without limiting the generality of the foregoing, it is agreed that at the expiration or earlier termination of the tenancy hereby created, the Sub-Tenant shall surrender the Demised Premises in as good conditions and repairs as the Sub-Tenant is required to maintain the Demised Premises throughout the Term and any renewal hereof, and all rights of the Sub-Tenant and any sublease or occupancy agreement shall thereupon terminate. The Sub-Tenant's obligation to observe or perform this covenant shall survive the expiration of the Term of this Sub-Lease.

- 8 -

**11.(A) ASSIGNMENT**

The Sub-Tenant shall have the right to assign its interest in this sublease provided that the Sub-Tenant shall have obtained the prior consent of the Sub-Landlord, which consent may not be unreasonably withheld provided the use is as set out in Section 12 of this sublease. The Sub-Tenant acknowledges that the Sub-Landlord shall have the right to withhold consent if the use is other than specified in this sublease. No assignment by the Sub-Tenant shall be effective until the assignee has entered into an agreement directly with the Sub-Landlord, in a form satisfactory to the Sub-Landlord, agreeing to assume the obligations of the Sub-Tenant in this sublease. No assignment by the Sub-Tenant relieves it of liability under this sublease. No consent by the Sub-Landlord applies to any subsequent transaction.

**11(B) Subletting by Sub-Tenant**

The Sub-Tenant shall not have the right to sublet any space in the Demised Premises except as hereinafter set out. The Sub-Tenant may sublet any portion of the Demised Premises for a non-profit office-educational uses provided the Sub-Tenant has obtained the written prior consent of the Sub-Landlord, which consent may not be unreasonably withheld.

In the event that the Sub-Tenant proposes to alter the use of all or part of the Demised Premises from a non-profit office or educational use to permit commercial-retail enterprises or uses the Sub-Tenant shall deliver to the Sub-Landlord ninety (90) days notice in writing of same, setting out the proposed use, sub-subtenant or other changes under this sublease, and the proposed effective date in respect of same. The Sub-Landlord shall have forty-five (45) days to exercise its right of first refusal by notice in writing to the Sub-Tenant setting out that proportion of the Demised Premises which it intends to assume pursuant to this right at the rental agreed to by the Sub-Tenant and its proposed sub Sub-Tenant. The said assumption shall take place on the effective date set out in the Sub-Tenant's notice, without prejudice to the rights of the Sub-Landlord. In the event that the Sub-Landlord exercises its right of first refusal in respect of only a portion of the Demised Premises, this sublease shall remain in force and effect for the remaining portion of the Demised Premises occupied by the Sub-Tenant or its tenants. No consent by the Sub-Landlord applies to any subsequent transaction.

**11(C) Surrender**

It is hereby agreed that the Sub-Tenant has the right on ninety (90) days' written notice to the Sub-Landlord to surrender any portion of the Demised Premises to the Sub-Landlord and the Sub-Landlord will accept the Demised Premises provided that the Demised Premises are in a state of repair as required by this sublease. This will effectively release the Sub-Tenant from all further expenses required to be paid by it pursuant to this Lease for that portion of the Demised Premises, and this Sub-Lease is effectively amended to delete said portions from the operation of this Sub-Lease.

**12. USE**

That the Demised Premises will not, during the said Term, at any time be used for any purpose other than for non-profit office or educational use, or for such other non-profit uses as are approved in writing by the Sub-Landlord. No change shall be commenced prior to receipt of approval of the Sub-Landlord. Such use shall be carried on continuously and diligently throughout the Term of this sublease.

- 9 -

**13. FIXTURES**

And that no fixtures, goods or chattels will, except in the ordinary course of business, be removed from the Demised Premises during the Term hereby demised without the written consent of the Sub-Landlord, its successors or assigns, being first had and obtained, until all Rent in arrears or to become due during the remainder of the Term hereby granted shall have been fully paid, or the payment thereof secured to the satisfaction of the Sub-Landlord or its assigns.

**14. GOVERNMENTAL REGULATIONS**

The Sub-Tenant shall, at the Sub-Tenant's sole cost and expense, comply with all laws, by-laws and ordinances and the orders, rules and regulations of all county, municipal, provincial, federal and other applicable governmental authorities, now in force or which may hereafter be in force, pertaining to the Demised Premises, and shall faithfully observe in the use and occupation of the Demised Premises all municipal and county ordinances and provincial and federal statutes now in force or which may hereafter be in force.

**15. DISTRESS AND DEFAULT****(i) Right to Re-Enter**

If and whenever:

- (a) the Sub-Tenant fails to pay any Rent or other sums due hereunder on the day or dates appointed for the payment thereof; or
- (b) the Sub-Tenant fails to observe or perform any other of the terms, covenants or conditions of this Sub-Lease to be observed or performed by the Sub-Tenant, other than those terms, covenants or conditions set out below in subparagraphs (c) or (d) for which no notice is required, provided the Sub-Landlord first gives the Sub-Tenant thirty (30) days' written notice of any such failure to perform and the Sub-Tenant within the thirty (30) day period fails to commence diligently and thereafter to proceed diligently to cure the failure to perform; or
- (c) the Sub-Tenant abandons or attempts to abandon the Project; or
- (d) the Sub-Tenant effects an assignment or change in control except in a manner permitted by this Sub-Lease; or
- (e) re-entry is permitted under any other terms of this Sub-Lease;

and in every such case the then current instalment of Rent and all other sums for such period as are and shall be due under the terms of this Sub-Lease as Rent or otherwise shall accelerate and immediately become due and payable.

Notwithstanding the foregoing and without limiting any other remedies the Sub-Landlord may have arising out of this Sub-Lease or at law, upon the happening of a default by the Sub-Tenant under this Sub-Lease, the Sub-Landlord shall have the right, without any re-entry or termination of this Sub-Lease, to enter upon the Project and can attempt to cure such default. This shall not obligate the Sub-Landlord to cure or attempt to cure any default or after having commenced to cure or attempt to cure such default, to continue to do so.

- 10 -

**(ii) Expenses**

If legal action is brought for recovery of possession of the Demised Premises, for the recovery of any other amount due under the Sub-Lease, or because of the breach of any other terms, covenants or conditions herein contained on the part of the Sub-Tenant to be kept or performed, and a breach is established, the Sub-Tenant shall pay to the Sub-Landlord all reasonable expenses incurred therefor, unless a court shall otherwise award.

**(iii) Landlord's Rights**

If the Sub-Tenant fails to pay, when due, any amounts or charges required to be paid pursuant to this Sub-Lease, the Sub-Landlord, after giving twenty (20) days' prior written notice to the Sub-Tenant, may at its option pay all or any part of the same. If the Sub-Tenant is in default in the performance of any of its covenants or obligations hereunder (other than the payment of Rent or other sums required to be paid pursuant to this Sub-Lease), the Sub-Landlord may from time to time after giving twenty (20) days' prior written notice perform or cause to be performed any of such covenants or obligations and for such purpose may do such things as may be required including, without limitation, entering upon the Demised Premises and doing such things upon or in respect of the Demised Premises or any part hereof as the Sub-Landlord reasonably considers requisite or necessary. All expenses incurred and expenditures made pursuant to this Section 15(iii) plus a sum equal to twenty per cent (20%) thereof representing the Sub-Landlord's overhead shall be paid by the Sub-Tenant as Additional Rent forthwith upon demand. The Sub-Landlord shall have no liability to the Sub-Tenant for any loss or damages resulting from any such action or entry by the Sub-Landlord upon the Demised Premises under Section 16 and same is not a re-entry or a breach of any covenant for quiet enjoyment contained in this Sub-Lease.

**(iv) Right to Relet**

Subject to Section 15(i) if the Sub-Landlord elects to re-enter the Project as herein provided, or if it takes possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Sub-Lease or it may from time to time without terminating this Sub-Lease make such alterations and repairs as are necessary in order to relet the Project or any part thereof for such term or terms (which may be for a term extending beyond the Term) and at such Rent and upon such other terms, covenants and conditions as the Sub-Landlord in its sole discretion considers advisable. Upon each such reletting all rent received by the Sub-Landlord from such reletting shall be applied first, to the payment of any indebtedness other than Rent due hereunder from the Sub-Tenant to the Sub-Landlord; second, to the payment of any costs and expenses of such reletting, including brokerage fees, and solicitor's fees and of costs of such alterations and repairs; third, to the payment of Rent due and unpaid hereunder; and the residue, if any, shall be held by the Sub-Landlord and applied in payment of future rent as the same becomes due and payable hereunder. If such Rent received from such reletting during any month is less than that to be paid during that month by the Sub-Tenant hereunder, the Sub-Tenant shall pay any such deficiency which shall be calculated and paid monthly in advance on or before the first day of each and every month. No such re-entry or taking possession of the Project by the Sub-Landlord shall be construed as an election on its part to terminate this Sub-Lease unless a written notice of such intention is given to the Sub-Tenant. Notwithstanding any such reletting without termination the Sub-Landlord may at any time thereafter elect to terminate this Sub-Lease for such previous breach. If the Sub-Landlord at any time terminates this Sub-Lease for any

- 11 -

breach, in addition to any other remedies it may have, it may recover from the Sub-Tenant all damages it incurs by reason of such breach, including the cost of recovering the Project, solicitor's fees (on a solicitor and his client basis) and including the worth at the time of such termination of the excess, if any, of the amount of Rent and charges equivalent to Rent required to be paid pursuant to this Sub-Lease for the remainder of the stated Term over the then reasonable rental value of the Project for the remainder of the stated Term, all of which amounts shall be immediately due and payable by the Sub-Tenant to the Sub-Landlord.

(v) Remedies of Sub-Landlord Cumulative

The remedies of the Sub-Landlord specified in this Sub-Lease are cumulative and are in addition to any remedies of the Sub-Landlord at law or equity. No remedy shall be deemed to be exclusive, and the Sub-Landlord may from time to time have recourse to one or more or all of the available remedies specified herein or at law or equity.

16. INSURANCE

(a) The Sub-Tenant shall, during the entire term hereof, keep in full force and effect:

(1) Public Liability and Property Damage Insurance with respect to the Demised Premises, and the business operated by the Sub-Tenant and any licensees, concessionaires and sub Sub-Tenants of the Sub-Tenant in the Demised Premises, in which the limits of public liability shall not be less than Two Million Dollars (\$2,000,000.00) for bodily injury to any one or more persons and in which the property damage liability shall be not less than Five Hundred Thousand Dollars (\$500,000.00). All such policies shall contain a severability of interests clause and a cross-liability clause.

(11) Insurance upon the Demised Premises, the improvements and all property owned by the Sub-Tenant or for which the Sub-Tenant is legally liable, or installed by or on behalf of the Sub-Tenant, and which is located within or upon the Demised Premises, at full replacement cost with coverage against, the peril of fire, sprinkler leakage and all other perils covered by "All Risks" insurance coverage with a "by-law" endorsement, and including earthquake, flood and collapse. If there is a dispute as to the amount which comprises full replacement cost, the decision of an independent insurance advisor acceptable to both parties shall be conclusive.

(b) Notwithstanding any other terms, covenants and conditions contained in this Sub-Lease, the Sub-Tenant will indemnify the Sub-Landlord, its employees, agents or servants and save them harmless from and against any and all loss (including loss of all Rent payable by the Sub-Tenant pursuant to this Sub-Lease), claims, actions, damages, liability and expenses in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever (collectively, the "Damage") arising from or out of this Sub-Lease, or any occurrence in, upon or at the Demised Premises, or the occupancy or use by the Sub-Tenant or any other person for whom it is at law responsible of the Demised Premises or any part thereof, or occasioned wholly or in part by any act or omission of the Sub-Tenant or by any other person for whom it is at law responsible on the Demised Premises. The Sub-Tenant's obligation pursuant to this Section 16(b) to indemnify and save harmless the Sub-Landlord shall extend to and include, without limiting the generality of the scope of the provisions contained in this Section, damage to any portion of or otherwise relating to the Demised Premises, and

- 12 -

damage to any portion of any lands or buildings neighbouring the Demised Premises or any occupants thereof, including their respective customers, employees, agents and invitees if the said damage or injury is related to or arises from the Demised Premises. If the Sub-Landlord shall, without fault on its part, be made a party to any litigation commenced by or against the Sub-Tenant, then the Sub-Tenant shall protect, indemnify and hold the Sub-Landlord harmless and shall pay all costs, expenses and reasonable legal fees incurred or paid by the Sub-Landlord in connection with such litigation where the Sub-Tenant is held liable. Such indemnification shall survive the expiry or earlier termination of this Sub-Lease.

- (c) Except for the fault or the negligence of the Sub-Landlord or for any person for whom at law the Sub-Landlord is responsible, the Sub-Landlord shall not, be liable or responsible in any way for any personal injury or death that may be suffered or sustained by, or for any loss of or damage or injury to any property belonging to the Sub-Tenant or any employee, servant, agent, sub-lessee, licensee or invitee of the Sub-Tenant on the Demised Premises.
- (d) The Sub-Tenant shall comply and cause all persons occupying portions of the Demised Premises to comply with all requirements of the Insurer's Advisory Organization or of any insurer of the Demised Premises or any portion of it.
- (e) The Sub-Tenant agrees that if the Sub-Tenant fails to take out or to keep in force any insurance, or notice of cancellation shall be given to the Sub-Landlord respecting any insurance policy, or if any insurance policy upon the Demised Premises or any part thereof shall be cancelled or refused to be renewed by any insurers or such insurance is not available, by reason of the use or occupancy of the Demised Premises or any part thereof and should the Sub-Tenant not commence to diligently rectify (and thereafter proceed diligently to rectify) the situation within forty-eight (48) hours after written notice by the Sub-Landlord to the Sub-Tenant, the Sub-Landlord has the right without assuming any obligation in connection therewith, to effect such insurance at the sole cost of the Sub-Tenant and all outlays by the Sub-Landlord shall be immediately paid by the Sub-Tenant to the Sub-Landlord as Additional Rent and the Sub-Landlord may re-enter and take possession of the Demised Premises. The Sub-Landlord acknowledges that the Sub-Tenant is self insured and the Sub-Tenant warrants its policies will cover these insurance requirements.

17. WATER AND GAS DAMAGE

The Sub-Tenant shall be liable for any damage done by reason of water being left running from the taps in the Demised Premises or from gas permitted to escape therein or therefrom.

18. NOTICE OF ACCIDENT

The Sub-Tenant shall give the Sub-Landlord prompt written notice of any accident or other defect in the sprinkler system, water pipes, gas pipes or heating apparatus, telephone, electric or other wires on any part of the premises.

19. USE NOT TO BE A NUISANCE

Provided that the Sub-Tenant will not do or permit anything to be done on the Demised Premises or permit or keep anything therein which may be annoying to the Sub-Landlord or other occupants of the said building or which the Sub-Landlord may deem to be a nuisance or annoyance to the occupiers or owners of any lands or premises adjoining or in the vicinity of the Demised Premises and that no machinery shall be used therein which shall cause any undue vibration in or to the Demised

- 13 -

Premises and that in case of the Sub-Landlord or any other occupants of the said building reasonably complaining that any machinery or operation or process is a nuisance to it or them or which causes any undue vibration or noise in the premises, that upon receiving notice thereof, the Sub-Tenant will immediately abate such nuisance. The Sub-Tenant covenants not to obstruct or interfere with the rights of the Sub-Landlord or conflict with any of the rules and regulations of the Board of Health or with any statute or municipal by-law.

#### 20. SIGN

And it is hereby further agreed by and between the Sub-Landlord and the Sub-Tenant that no sign, advertisement or notice shall be inscribed, painted or affixed by the said Sub-Tenant on any part of the outside or inside of the Demised Premises whatever, unless of such manner, colour, size and style and in such places upon or in the Demised Premises as shall be first approved by the Sub-Landlord and the Toronto Historical Board, and furthermore, the Sub-Tenant, on ceasing to be Sub-Tenant of the Demised Premises, will, before removing his goods and fixtures from the premises, cause any sign as aforesaid to be removed or obliterated at his own expense and in a workmanlike manner, repairing all damage caused thereby, to the satisfaction of the Sub-Landlord.

#### 21. FIRE AND DESTRUCTION

Provided that if during the term herein or any renewal thereof the Demised Premises shall be destroyed or damaged by fire or the elements, then the following provisions shall apply:

- (a) If the Demised Premises shall be so badly damaged as to be unfit for occupancy, and as to be, in the opinion of the Sub-Landlord, incapable of being repaired with reasonable diligence within twelve (12) months of the happening of such damage, then the term hereby granted shall cease and be at an end to all intents and purposes from the date of such damage or destruction and the Sub-Tenant shall immediately surrender the same, and yield up possession of the Demised Premises to the Sub-Landlord, and the Rent from the time of such surrender shall be apportioned.
- (b) If, in the opinion of the Sub-Landlord, the Demised Premises shall be capable, with reasonable diligence, of being repaired and rendered fit for occupancy within twelve (12) months from the happening of such damage as aforesaid, and the Sub-Tenant shall repair the same with all reasonable speed and in accordance with Sections 8 and 10 herein.

#### 22. NO ABATEMENT OF RENT

There shall be no abatement from or reduction of the Rent due hereunder, nor shall the Sub-Tenant be entitled to damages, losses, costs or disbursements from the Sub-Landlord during the Term hereby created on, caused by or on account of fire, water, sprinkler systems, partial or temporary failure or stoppage of heat, light, elevator, live steam or plumbing service in or to the Demised Premises or building, whether due to acts of God, strikes, accidents, the making of alterations, repairs, renewals, improvements, structural changes to the Demised Premises or building or the equipment or systems supplying the said services, or from any cause whatsoever; provided that the said failure or stoppage be remedied within a reasonable time.

#### 23. PROTECTIVE INSTALLATIONS

The Sub-Tenant agrees to pay the cost of any installations, additions or alterations to the premises that the Sub-Landlord may be required to make by any Municipal, Provincial or other governing authority, or requested by any private protective system used by the Sub-Tenant, for the security and protection of the Sub-Tenant and its employees and its or their effects including but not so as to limit the foregoing



installations, additions and alterations for fire and theft protection, and all such installations, additions or alterations shall forthwith become the property of the Sub-Landlord.

24. NOTICES

Any notice which either of the parties is required or permitted to give pursuant to any provision of this Sub-Lease shall be in writing and given, if delivered personally,

(a) To the Sub-Tenants:

The Corporation of the City of Toronto  
Commissioner of City Property  
9th Floor, East Tower  
City Hall  
Toronto, Ontario  
M5H 2N2

(b) To the Sub-Landlord at:

390 Bay Street, Suite 2801  
Toronto, Ontario,  
M5H 2Y2

and such notice shall be deemed to have been given at the time it was delivered.

25. ACKNOWLEDGEMENT

The Sub-Tenant and the Sub-Landlord hereby acknowledge that each is respectively the Landlord and the Tenant under a certain head lease in respect of the Demised Premises and accordingly hereby further acknowledge that no default on the part of either the Sub-Tenant or the Sub-Landlord insofar as its or their obligations as Landlord or Tenant under the head lease shall constitute or be deemed in any way to be a default on the part of the Sub-Tenant or the Sub-Landlord insofar as this Sub-lease and Sub-Tenant and the Sub-Landlord each acknowledge that neither shall have any right of termination or set-off under this Sub-Lease in respect of any such default.

26. EXCUSE OF SUB-LANDLORD'S PERFORMANCE

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

27. NOTICE OF DEFAULT

(a) The Sub-Landlord will, simultaneously with the giving of any notice of default to the Sub-Tenant, give a duplicate of the notice of default to any user or occupier of the Demised Premises.

(b) The Sub-Landlord will, prior to exercising its rights to terminate this Sub-Lease or other rights of re-entry as a result of a default by the Sub-Tenant, provide the Sub-Tenant with the opportunity to cure the Sub-Tenant's default within the time period specified in Section 16.

- 15 -

28. ACKNOWLEDGEMENT OF TENANCY

- (a) Within ten (10) days after request therefor by the Sub-Landlord, the Sub-Tenant agrees to deliver in recordable form a certificate to any proposed mortgagee or purchaser, or to the Sub-Landlord, certifying (if such be the case) that this Sub-Lease is in full force and effect; that Rent is paid currently without any defences or offsets thereto; that the Sub-Tenant is in possession; that there are no prepaid rents or security deposits other than those set out in this Sub-Lease; that there are no uncured defaults by the Sub-Landlord or stating those claimed by the Sub-Tenant; and such other matters as the Sub-Landlord may reasonably require.
- (b) Upon the request of the Sub-Landlord, the Sub-Tenant will subordinate or postpone its rights hereunder to the lien of any mortgage or the lien resulting from any other method of financing or refinancing, now or hereafter placed upon the land of which the Demised Premises form a part, and to all advances made or hereafter to be made upon the security thereof, and the Sub-Tenant will execute promptly any instruments of postponement or subordination which may be so requested to give effect to the foregoing.

29. VOIDANCE OF SUB-LEASE FOR IMPROPER USE

It is agreed that in case the said Demised Premises or any part thereof, be used by any other person or persons, or for any other purpose than as above provided, without the written consent of the Sub-Landlord, and provided the Sub-Landlord first gives the Sub-Tenant thirty (30) days written notice of the improper use and the Sub-Tenant within the thirty (30) days period fails to commence diligently and thereafter to proceed diligently to rectify the use, this Sub-Lease shall, at the option of the Sub-Landlord, cease and be void, and the term hereby created expire and be at any end, anything hereinbefore to the contrary notwithstanding and the proportionate part of the current Rent shall thereupon become immediately due and payable, and the Sub-Landlord may re-enter and take possession of the Demised Premises as though the Sub-Tenant or other occupant or occupants of the said Demised Premises were holding over after the expiration of the term; or in such case instead of determining this Sub-Lease as aforesaid and re-entering upon the Demised Premises, the Sub-Landlord may take possession of the Demised Premises, or any part or parts thereof, and let and manage the same and grant any Sub-Lease or leases thereof upon such terms as to the Sub-Landlord or its assigns may appear to be reasonable, and demand, collect, receive and distrain for all rental which shall become payable in respect thereof, and apply the said rentals after deducting all expenses incurred in connection with the Demised Premises and in the collection of the said Rent including reasonable commission for the collection thereof and the management of the Demised Premises, upon the Rent hereby reserved, and the Sub-Landlord and its assigns and every such agent acting as aforesaid from time to time, shall in so acting be the agents of the Sub-Tenant, who alone shall be responsible for the acts, and the Sub-Landlord and its assigns shall not be accountable for any monies except those actually received, notwithstanding any act, neglect, omission or default of any such agent acting as aforesaid.

30. RIGHT OF ENTRY

- (a) The Sub-Landlord and any person authorized by the Sub-Landlord shall have the right to use, install, maintain and/or repair pipes, wires, ducts or other installations in, under or through the Demised Premises, for or in connection with the supply of any services to the Demised Premises or any other premises in

- 16 -

the said building. Such services shall include (without limiting the generality of the foregoing) gas, electricity, water, sanitation, heat, ventilation, air conditioning and security systems.

- (b) During the six (6) months prior to the expiration of this Sub-Lease, the Sub-Landlord may exhibit the Demised Premises to prospective Sub-Tenants or purchasers and place upon the Demised Premises the usual notices "To Let" or "For Sale", which notices the Sub-Tenant shall permit to remain where placed without molestation.
- (c) If the Sub-Tenant shall not be personally present to open and permit an entry into the Demised Premises at any time, when an entry therein shall be necessary or permissible, the Sub-Landlord or the Sub-Landlord's agents may enter the same by a master key, without rendering the Sub-Landlord or such agents liable therefor, and without in any manner affecting the obligations and covenants of this Sub-Lease.

### 31. SUB-LANDLORD'S COVENANT

If the Sub-Tenant pays Rent and all sums required herein and observes the terms, covenants and conditions herein, the Sub-Landlord covenants with the Sub-Tenant for quiet enjoyment in respect of the Demised Premises.

### 32. MISCELLANEOUS

- (a) The words importing the singular number only shall include the plural, and vice versa and words importing the masculine gender shall include the feminine gender, and words importing persons shall include firms and corporations and vice versa.
- (b) Unless the context otherwise requires, the word "Sub-Landlord" and the word "Sub-Tenant" wherever used herein shall be construed to include and shall mean the executors, administrators, successors and/or assigns of the said Sub-Landlord and Sub-Tenant, respectively, and when there are two or more Sub-Tenants bound by the same covenants herein contained, their obligations shall be joint and several.
- (c) This agreement shall enure to the benefit of and be binding upon the respective heirs, administrators, executors, successors and assigns of the parties hereto.
- (d) The waiver by the Sub-Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by the Sub-Landlord shall not be deemed to be a waiver of any preceding breach by the Sub-Tenant of any term, covenant or condition of this Sub-Lease, other than the failure of the Sub-Tenant to pay the particular Rent so accepted, regardless of the Landlord's knowledge of such preceding breach at the time of such acceptance of such Rent. No covenant, term or condition of this Sub-Lease shall be deemed to have been waived by the Sub-Landlord unless such waiver be in writing by the Sub-Landlord.
- (e) No payment by the Sub-Tenant or receipt by the Sub-Landlord of a lesser amount than monthly Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any cheque or any letter accompanying any cheque or payment as Rent be or be deemed to be an accord and satisfaction, and the Sub-Landlord may accept such cheque or payment without prejudice to the Landlord's right to recover the balance of such Rent or pursue any other remedy in this Sub-Lease provided.

- 17 -

- (f) This Sub-Lease and the Schedules, and Rider, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between the Sub-Landlord and the Sub-Tenant concerning the Demised Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided no subsequent alteration, amendment, change or addition to this Sub-Lease shall be binding upon the Sub-Landlord or the Sub-Tenant unless reduced to writing and signed by them.
- (g) The Sub-Landlord does not, in any way or for any purpose, become a partner of the Sub-Tenant in the conduct of its business, or otherwise, or joint adventurer or a member of a joint enterprise with the Sub-Tenant.
- (h) This Sub-Lease shall be interpreted and governed by the laws of the Province of Ontario.
- (i) If two or more individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) shall sign this Sub-Lease as the Sub-Tenant, the liability of each such individual, corporation, partnership or other association to pay Rent and perform all other obligations hereunder shall be deemed to be joint and several. In like manner, if the Sub-Tenant named in this Sub-Lease shall be a partnership or other association, the members of which, are, by virtue of statute or general law, subject to personal liability, the liability of each such member shall be deemed to be joint and several. The necessary grammatical changes required to make the provisions of this Sub-Lease apply in the plural sense where there is more than one Sub-Tenant and to either corporations, associations, partnerships or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.
- (j) The Sub-Tenant shall not register this Sub-Lease or any notice thereof or other memorandum referring to or describing this Sub-Lease or parts thereof, without the prior written consent of the Sub-Landlord.

33. COMPLIANCE WITH THE PLANNING ACT, 1983

It is an expressed condition of the within Sub-Lease and the Sub-Landlord and the Sub-Tenant agree that the subdivision control provisions of The Planning Act, 1983 (Ontario), and amendments thereto, must be complied with if applicable.

34. ACKNOWLEDGMENT BY SUB-LANDLORD

The Sub-Landlord acknowledges that nothing contained in this Sub-Lease fetters the rights of the Sub-Tenant in its capacity as a municipality.

35. RIGHTS, OBLIGATIONS AND CAPACITY OF THE SUB-TENANT

All rights and benefits and all obligations of the Sub-Tenant under this Sub-Lease shall be rights, benefits and obligations of the Sub-Tenant in its capacity as a party to this Sub-Lease and shall not derogate from or interfere with the rights, benefits and obligations of the Sub-Tenant in its function as a municipal corporation.

36. COMMUNICATION OR DEALING WITH THE SUB-TENANT

No communication or dealing between the Sub-Landlord and any department, committee or body functioning under the administration of the Sub-Tenant shall be deemed to be a communication or dealing under the provisions of this Sub-Lease between the Sub-Tenant and the Sub-Landlord as parties to this Sub-Lease or to affect the Sub-Tenant with notice of any such communication or dealing; it being intended

and agreed that any communication or dealing between the Sub-Landlord and the Sub-Tenant as parties to this Sub-Lease shall only be effective if in the manner provided by Section 24.

IN WITNESS WHEREOF the Parties hereto have hereunto executed these presents.

SIGNED, SEALED AND DELIVERED) in the presence of

THE CORPORATION OF THE CITY OF TORONTO

APPROVED AS TO FORM  
*[Signature]*  
CITY CLERK

per: *[Signature]* c/s  
A Member of the Executive Committee

per: *[Signature]* c/s  
~~Deputy~~ City Treasurer

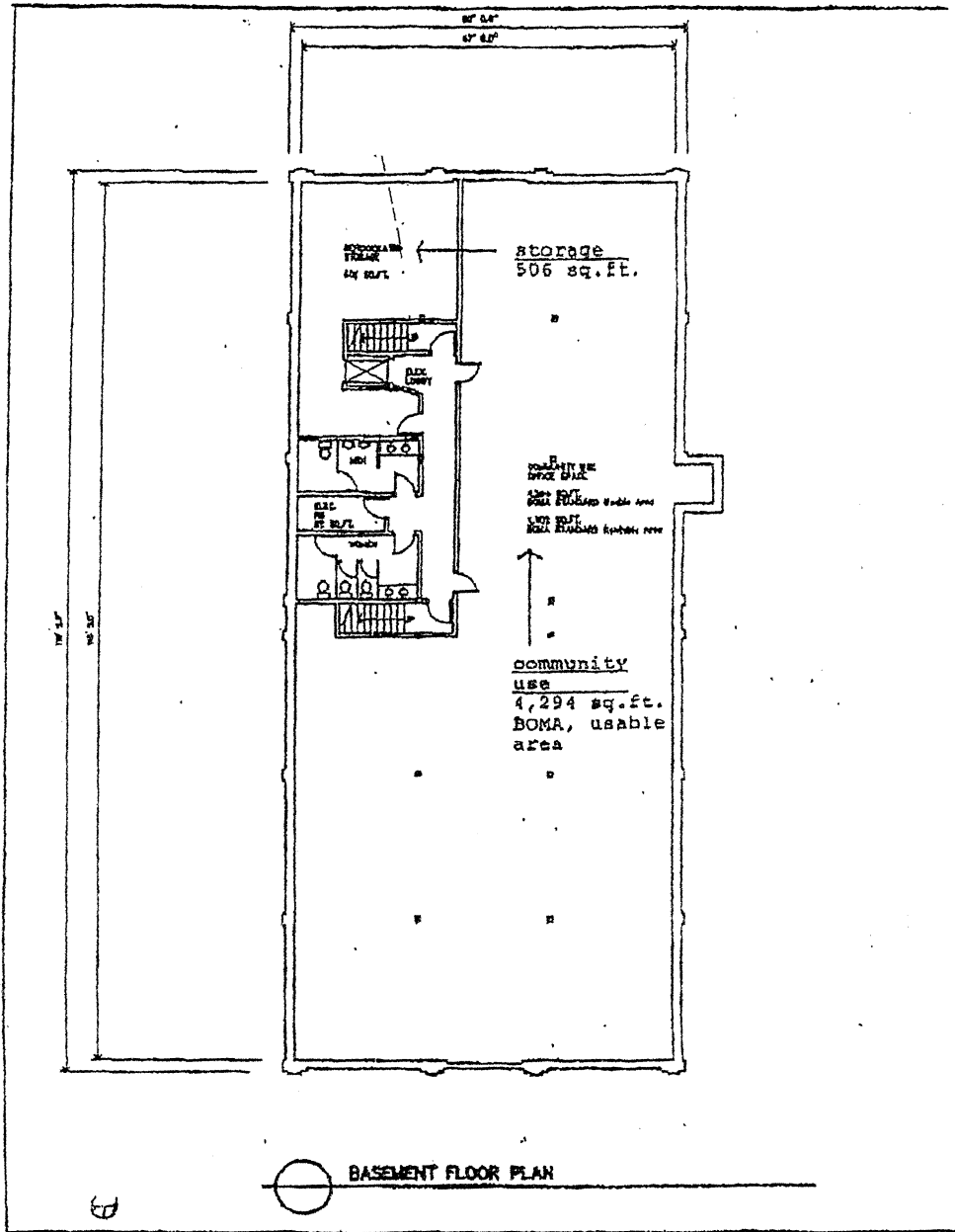
QUEEN-ST. PATRICK MARKET INC.  
per: *[Signature]* c/s  
George Friedmann  
President

per: \_\_\_\_\_ c/s  
*[Signature]*  
George Friedmann  
President

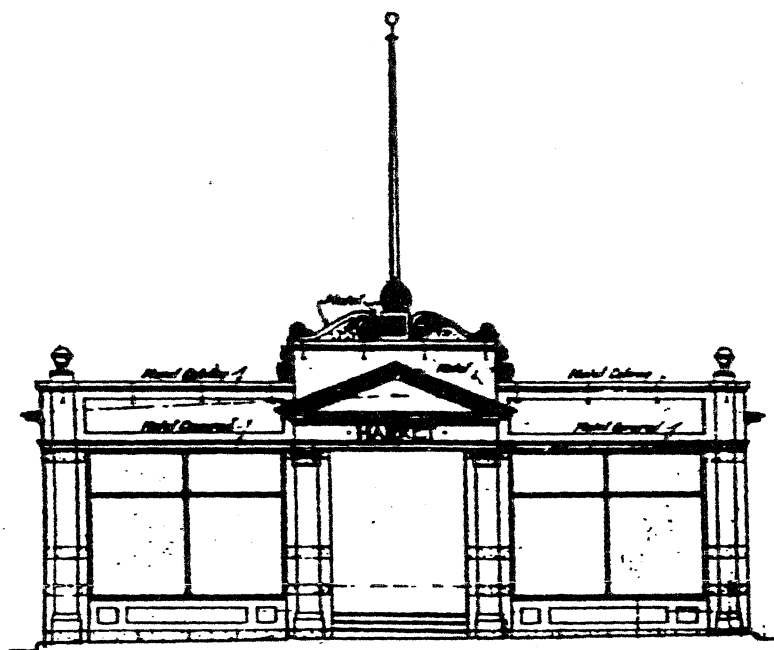
L/STP/04/W/NC/LAC/July 11, 1989

Item No. # 54  
AUTHORIZED by Report No. 15  
of the EXECUTIVE COMMITTEE  
adopted in COUNCIL on the 4<sup>th</sup> 5<sup>th</sup>  
day of May 1984  
(with amendments) *[Signature]*  
for City Clerk *[Signature]* 19/7/89

SCHEDULE "A"



# ST. PATRICK'S MARKET PROPOSAL



QUEEN-ST PATRICK MARKET INC.

APRIL 1988

QUEEN - ST. PATRICK MARKET INC.

390 Bay Street, Suite 2801  
Toronto, Ontario M5H 2Y2

Tele: (416) 861-1000  
Fax: (416) 861-9717

---

April 5, 1988.

Mr. H.E. Hodowany, A.A.C.I., F.R.I.,  
Director of Real Estate,  
City Property Department,  
8th Floor, East Tower,  
New City Hall,  
Toronto, Ontario.  
M5H 2N2

Dear Sir:

Re: St. Patrick's Market

Enclosed is our proposal for the revitalization of the St. Patrick's market. In submitting our proposal we attempted to cater to what we perceived to be the important features of this project, including:

1. Preservation of the historical and architectural qualities of the former market building;
2. Reconstitution of the building as a food market;
3. Financial return to the City.

Enclosed is our certified cheque in the amount of ten thousand dollars (\$10,000.00) which is to serve as a deposit.

. . . /2



Mr. H.E. Hodowany, A.A.C.I., F.R.I.,  
April 5, 1988

. . . /2

We would be pleased to meet with you at your convenience in order to further explain our plans for this project. Should you have any further questions, do not hesitate to contact the undersigned or any of it's professional advisors.

Solicitors:

DIAMOND, FAIRBAIRN & STEINBERG  
393 University Avenue  
Suite #2000  
Toronto, Ontario  
M5G 1E6

(416) 971-7000

Attn: Steve Diamond

Architects:

CRAVIT ORTVED ARCHITECTS  
75 Sherbourne Street  
Suite 116  
Toronto, Ontario  
M5H 2P9

(416) 364-7552

Attn: Paul Cravit

Yours very truly,

QUEEN - ST. PATRICK MARKET INC.

Per: \_\_\_\_\_

George Friedmann

I N D E X

SUMMARY OF PROPOSED DEVELOPMENT

DESCRIPTION OF THE PROPOSED DEVELOPMENT

DEVELOPMENT SCHEDULE

PARTICIPATION OF THE CITY OF TORONTO AND FINANCIAL  
SUMMARY

OFFER TO LEASE

IDENTITY OF PROPONENT AND PREVIOUS EXPERIENCE

PRINCIPAL SHAREHOLDER

APPENDIX

- LETTER FROM M.T. SELBIE
- LETTER FROM CITIBANK CANADA
- ARCHITECT'S QUALIFICATIONS
- DRAWINGS
  1. Basement Floor Plan Year 1913
  2. Ground Floor Plan Year 1913
  3. Ground Floor Plan - Changes to Existing Structure
  4. Proposed Ground Floor Plan
  5. Proposed Ground Floor Plan
  6. Basement Floor Plan - Changes to Existing Structure
  7. Proposed Basement Floor Plan
  8. Proposed Roof Plan
  9. Option - Restaurant At Roof Level
  10. Cross-Section
  11. Perspective - Exterior View
  12. Perspective - Exterior View - Restaurant Option
  13. Perspective Interior View
  14. Proposed Ground Floor Plan - Leaseable Area
  15. Proposed Basement Plan - Leaseable Area

## SUMMARY OF PROPOSED DEVELOPMENT

In proposing a design for the revitalization of St. Patrick's Market we have carefully considered and fully met what we perceive to be the key criteria. More particularly:

- (a) The site development preserves the historical and architectural qualities of the building through the renovation of the interior and a rehabilitation and restoration of the exterior.
- (b) The use of site will once again be restored to a food market. Not only is this consistent with the historical uses of this site, it also serves the need of the area and is consistent and complimentary to the other developments that are currently in existence or in the planning stages.
- (c) The proposed development provides the City with an attractive financial package. The City will receive a fixed land lease payment which is periodically adjusted to reflect the inflationary costs. In addition to this "minimum" land lease payment, the City will receive profit participation in the development. This participation will be paid to the City as additional rent without requiring any financial contribution or exposure from the City.
- (d) The development will be fully accessible to wheelchair users; the street and the lanes will be pedestrian-friendly; the shipping/receiving and storage requirements are fully addressed.

- (e) The proposed development is well within the current zoning both from a coverage as well as a height restriction and is in keeping with the existing character of the area.
- (f) The City has the right to approve all sub-tenants as well as all signage, by providing the tenant a pre-agreed to tenant and signage criteria which must be adhered to. The development is also subject to the normal City of Toronto approval process.

#### DESCRIPTION OF THE PROPOSED DEVELOPMENT

The design submission for the revitalization of St. Patrick's Market, is based on several important building and urban design principles:

- (1) Restore the exterior of the building as close as possible to the original form pictured in the archival drawings;
- Construct gable and flagpole design on Queen Street Elevation
  - Return building side elevations into glass market "bays" with exterior access where possible;
  - Repair brickwork, reconstruct fascia panels.
- (2) Activate the edges of building at street and laneways;
- Extend market presence to sidewalk and laneways with canopies, stairs, glazed walls;
  - Provide public amenities (e.g. benches, lighting, garbage containers) at laneways.

(3) Create a highly accessible and transparent building;

- Literally extend the Queen Street sidewalk into the building by dropping the floor slab at the front;
- Provide a gentle ramp up from the interior of the building for all users (handicapped, cyclists, strollers with carriages, pedestrians);
- Provide large opening glass folding doors from both Queen Street market stalls so that the market could open directly to the sidewalk "blurring" the line between inside and outside;
- Provide side access from the laneways to same market stalls and to the building in general;
- Create a glazed gallery or passage through the market from Queen Street to the proposed park beyond;
- Ensure with design controls that market stalls on the ground floor are relatively open and transparent through the building.

(4) Create a multi-level market which exploits the unique qualities of the existing structure on both levels;

- Create a large opening in the middle of the plan to attract people into the building and its skylit basement level;
- Restore, basement masonry walls as demising walls between market stalls;
- Construct an open metal stair for access to the basement;
- Provide a small hydraulic lift for access to the basement for goods and handicapped persons.

- (5) Retain and refurbish existing building shell with minimal "strategic" changes;
- Open roof with continuous glazed skylight to maximize internal light;
  - Restore lightwells to basement to provide additional light to lower level;
  - Cut large opening in main floor to physically connect to lower level;
  - Reinforce existing "bay" rhythm on west side and basement by contrasting it with irregular, more transparent pattern of east side ground floor plan;
  - Extend one large continuous concrete floor for circulation and market stalls.
- (6) Provide a framework of repetitive, light, colourful market elements which re-establish the character and image of the building;
- Interior/exterior canvas canopies (fixed and operable);
  - Signage banners;
  - Metal mesh demising screens and overhead bulkheads;
  - Steel structures, columns and column wainscoats, struts and tie rods.
- (7) Maximize leaseable space;
- Create a sufficient critical mass of market area to establish the projects presence and commercial viability;
  - Allow leaseable areas to "interrupt" the straight public circulation routes.

- (5) Retain and refurbish existing building shell with minimal "strategic" changes;
- Open roof with continuous glazed skylight to maximize internal light;
  - Restore lightwells to basement to provide additional light to lower level;
  - Cut large opening in main floor to physically connect to lower level;
  - Reinforce existing "bay" rhythm on west side and basement by contrasting it with irregular, more transparent pattern of east side ground floor plan;
  - Extend one large continuous concrete floor for circulation and market stalls.
- (6) Provide a framework of repetitive, light, colourful market elements which re-establish the character and image of the building;
- Interior/exterior canvas canopies (fixed and operable);
  - Signage banners;
  - Metal mesh demising screens and overhead bulkheads;
  - Steel structures, columns and column wainscoats, struts and tie rods.
- (7) Maximize leaseable space;
- Create a sufficient critical mass of market area to establish the projects presence and commercial viability;
  - Allow leaseable areas to "interrupt" the straight public circulation routes.

(8) Consolidate service and storage areas in the rear of the building;

- Provide refrigerated garbage holding area in rear;
- Provide service lift;
- Provide basement storage areas at rear and front of the building to serve two floors;
- Provide conveyor system to basement storage area in addition to lift.

#### OPTIONAL ROOF-TOP RESTAURANT

In addition to the design strategy described above this submission provides a possible roof option which has been examined and considered as a positive move into the revitalization of the St. Patrick's Market.

The roof top restaurant is proposed as appropriate and consistent with the present uses in the areas, and as complementary activity to the two level market below it.

The restaurant:

- Would contain approximately 1,770 gross square feet;
- Would be set back from the street a sufficient distance so as not to be visible directly from the street and only marginally visible from the side laneways;
- Would echo in form, the front building gable;
- Would be sympathetic in detailing to the existing structure and transparent on all sides as much as possible;
- Would have an outdoor roof garden for summer time use;
- Would be secured separately from the market and have independent exterior access;
- Would create an even more dramatic space to the interior of the building.



Should the City in their own discretion decide that this use is not appropriate, the proponent agrees to omit this alternative and proceed with the development regardless.

DEVELOPMENT SCHEDULE

	<u>Time Required</u>
- Prepare drawings for Development Review for Site Plan control Agreement	2 Months
- Development Review	2 Months
- Prepare drawings for building permit	2.5 Months
- Obtain building permit for complete building shell	2.5 Months
- Begin Construction	
- Prepare drawings for leasehold improvements (i.e. retail market)	
- Obtain building permit for leasehold improvements	
- Complete renovation of building including leasehold improvements for public opening	6 Months
Opening Late Fall 1989	<hr/> 15 Months

## RETAIL MARKETING

On examining the existing structure and it's previous original design the intent of the enclosed retail mini food market concept has been shaped with the certain specific criteria. More particularly, the concept develops an exciting retail mini food market that would not only serve the immediate neighbourhood but would be exciting and varied enough to attract shoppers from elsewhere. In addition, the sight would become a benchmark to creative restorations and when combined with the varied food vendors, would create an exciting shopping experience.

To ensure that appropriate tenant mix is obtainable, discussions have been held with several experienced and successful mini market grocers. One of these is a proprietor of York Farmers Market which contains over 50 different "booths".

The emphasis of the design has been to allow for up to 12 individual interior food vendors on the ground level, allowing for a possible further 12 exterior vendors seasonally during specific time periods. The concept would strive to have an onsite bakery and sweet shoppe offering varieties of breads and pastries. There would also be a green grocer with displays of vegetables, and fruits; a butcher selling various types and cuts of meat; an independant sea-food-fish retailer; a cheese and dairy store, as well as a fresh pasta outlet offering all types of freshly made pastas.

It is the intent that retailing would spill over into the two dedicated laneways so as to create more activity in and around the site. This would make the street more retail friendly attracting "farmer booths" on Saturdays.

Our plans include the appropriate treatment for receiving, storage and garbage facilities. More particularly, we will provide a refrigerated garbage facility as well as a trash compactor. In addition, access to the storage areas is enhanced through the installation of an elevator, which would also provide access to the lower level for our wheelchair patrons.

The lower level would not only contain the storage rooms needed to properly support this market, the mid section of this area can also be used for retailing certain support household items such as pots, pans, kitchen accessories, etc.

To confirm our market strategies and their commercial viability, enclosed is a letter of interest from one of the most successful and highly sought after mini market green grocers, M.T. Selbie Ltd.

#### PARTICIPATION OF THE CITY OF TORONTO AND FINANCIAL SUMMARY

Recognizing the importance of this site, the proponent is offering to the City a guaranteed base rent as well as profit participation in the development. The rent paid shall be \$75,000 per year if the City accepts the restaurant alternative. It is paid as follows:

1. \$50,000 per year as a guaranteed minimum rent for the first 5 years and \$60,000 for the second five years;
2. Up to an additional \$25,000 per year representing 10% of the operating profit to be verified annually by audited statements.

If the City rejects the restaurant alternative, the maximum annual rent is reduced to \$65,000 and the guaranteed minimum rent is reduced to \$40,000 per year for the first 5 years and \$50,000 per year for the second 5 years. In addition, up to an additional \$25,000 per year is payable, as outlined above.

To reflect inflation and increasing value, the minimum rent payable is increased based on future real estate appraisals for similar sights with similar leaseable retail space at the end of the 10th year and every 10 years thereafter.

Under this financial structure, the City is provided with a guaranteed inflation protected income stream. It will also receive a profit participation without undertaking any of the development expenses.

In accordance with the City's requirements, the lease term shall be 50 years. If available, the proponent is interested in having renewal options at rates to be negotiated at the time of expiry of the original lease term.

QUEEN - ST. PATRICK MARKET INC.  
PROFORMA - OPERATING FORECAST  
YEAR 1

---

REVENUE - NET	\$300,000
DEBT SERVICE	
\$1,050,000 @ 11%	125,000
LAND RENT	<u>50,000</u>
PROFIT	\$125,000
CITY'S PARTICIPATION	12,500
CITY'S LAND RENT	<u>50,000</u>
RETURN TO CITY *	<u><u>\$ 62,500</u></u>

\* This represents the return in Year 1. This will increase in subsequent years as a result of:

1. Percentage rent payable by the sub-tenants;
2. Increase in basic rent payable by the sub-tenants;
3. The inflation adjustment to the basic minimum rent.

Accordingly, we expect that the return to the City in the 3rd - 4th year should reach \$75,000 per year.

QUEEN - ST. PATRICK MARKET INC.  
REVENUE  
PROFORMA - FORECAST  
YEAR 1

---

REVENUE

MAIN FLOOR * 4,027 sq.ft. BASE RENT PLUS PERCENTAGE RENT	\$181,000 <sup>\$ 45</sup>
LOWER LEVEL 2,240 sq.ft. BASE RENT PLUS PERCENTAGE RENT	44,800 <sup>\$ 20.00</sup>
STORAGE 2,150 sq.ft. @ \$8	<u>17,200</u>
RESTAURANT OPTION * 1,771 sq.ft. BASE RENT PLUS PERCENTAGE RENT	<u>53,130</u> <sup>\$ 30.</sup>
TOTAL POTENTIAL	<u>\$296,130</u>

\* All leases shall be triplement with a minimum rent versus percentage rent provisions ranging from 6% - 7% of revenue per retail tenant.

QUEEN - ST. PATRICK MARKET INC.  
ESTIMATE OF COST

---

MAIN LEVEL 6,000 sq.ft. - gross @ \$85	\$510,000
LOWER LEVEL 3,000 sq.ft. - gross leaseable market @ \$40	120,000
3,000 sq.ft. - gross leaseable storage @ \$30	90,000
	<hr/>
	\$720,000
RESTAURANT ALTERNATIVE 1,771 sq.ft. @ \$100	180,000
	<hr/>
	\$900,000
SOFT COSTS	150,000
	<hr/>
	\$1,050,000
	<hr/>

PROPOSAL CALL

OFFER TO LEASE

ST. PATRICK'S MARKET

238 QUEEN STREET WEST, TORONTO

DATE: April 4, 1988

QUEEN - ST. PATRICK MARKET INC., (the "Tenant"), hereby offers to lease from THE CORPORATION OF THE CITY OF TORONTO, (the "Landlord"), lands and premises known municipally as No. 238 Queen Street West as shown hatched on the sketch attached hereto as Schedule "A" (the "Demised Premises") upon the terms and conditions set forth below:

1. TENANT

Legal Name of Tenant: QUEEN - ST. PATRICK MARKET INC.

Trade Name: \_\_\_\_\_ Contact: G. FRIEDMANN

Address: 390 Bay Street Tel: (416) 861-1000

Suite 2801

Toronto, Ontario M5H 2Y2

2. ADDRESS OF LANDLORD

The Corporation of the City of Toronto  
The Commissioner of City Property  
c/o The Director of Real Estate  
City Hall  
8th Floor, East Tower  
Toronto, Ontario  
M5H 2N2

Re: 238 Queen Street West



3. DEMISED PREMISES

The Demised Premises consist of the lands shown hatched on Schedule "A" hereto and the building and improvements constructed thereon at No. 238 Queen Street West.

4. LEASE AND AGREEMENT

Proponent to accept only one of the 4.01's - cross out or mark out the one not being used.

~~4.01 Subject to the conditions set forth in this Agreement, the Tenant agrees to execute and deliver the Landlord's form of Lease for the Demised Premises to the Landlord within twenty (20) days after receiving it and in any event prior to Lease Commencement Date.~~

or

4.01 Subject to the conditions set forth in this Agreement, the Tenant agrees to execute and deliver to the Landlord the Landlord's form of Lease for the Demised Premises subject to the revisions set out in a Schedule of Documentary Revisions submitted by the Tenant as an Appendix "F" to this Offer to Lease and as may be agreed to by the Landlord within twenty (20) days after receiving it and in any event prior to the Lease Commencement Date.

4.02 The parties acknowledge that all definitions, terms and provisions of this Agreement are dealt with in greater detail in the Lease and where there is any conflict between the terms of this Agreement and the terms of the Lease, the latter shall govern.

4.03 If the Tenant fails to execute and deliver the Lease as aforesaid, the Landlord is entitled to terminate this Agreement and all of the rights of the Tenant hereunder on written notice without

prejudice to the Landlord's rights to retain any Deposit, and to claim and prove a greater sum of damages or to avail itself of any other remedies.

5. CONDITIONAL AGREEMENT

This agreement is conditional upon the Tenant fulfilling the following on or before lease Commencement Date;

5.01 Submitting and having approved by the Landlord the detailed plans, specifications and construction timetable as required by paragraph 12 of this Agreement.

5.02 Details of the Security required by paragraph 11 of this Agreement.

5.03 If required, settlement as to the terms of the lease as requested by the Tenant pursuant to Section 4.01.

6. DESCRIPTION OF INTERIOR AND EXTERIOR PHYSICAL SPACE ALLOCATION FOR THE DEMISED PREMISES

The Proponent hereby submits the enclosed Schedule "C" detailing the description of the interior and exterior space use for the Demised Premises. This description should clearly set out how it preserves the building's historic and architectural qualities and meets the communities needs for a mini-food market. The proposal must fully address loading demands and to include recommendations as to traffic circulation and the locations of loading areas, entrances, etc.

7. BUILDING ALTERATIONS AND IMPROVEMENTS CONCEPT PLAN

The proponent hereby submits the enclosed Schedule "D" containing Concept Plans of the proposed building alterations and improvements.



10. USE CLAUSE - RESTRICTIVE USES CLAUSE

The Tenant shall use the Demised Premises during the Term only for uses related to the operation of a mini-food market and must be a combination of not less than two of the following:

BAKERY, MEAT AND SEAFOOD STORE, FLOWER SHOPPE,

FRUIT AND VEGETABLE STAND, CHEESE AND DAIRY

PRODUCT STAND

11. DEPOSITS

11.01 The Tenant hereby submits the amount of Ten Thousand (\$10,000.00) Dollars by way of a certified cheque as a deposit to be held by the Landlord pending acceptance of this Offer to Lease. If this Offer is not accepted by the Landlord within the time set out in subparagraph 25 of this Agreement, the deposit will be returned to the Tenant without interest or deduction. If the lease transaction is completed, the Landlord will retain said deposit and apply it towards the first year's rent.

11.02 The Tenant will submit to the Landlord in a form approved by the Landlord, a Letter of Credit in the amount equal to the total cost of the renovation and construction (at the time of the execution of the Lease or before the Commencement Date of the Lease), failing which the Landlord will be entitled to terminate the agreement arising out of its acceptance of this Offer and the \$10,000.00 deposit shall be forfeited to the Landlord. On completion of the aforesaid renovation as set out in the Lease, the Landlord shall return the Letter of Credit to the Tenant.

12. PLANS AND BUILDING'S ALTERATIONS AND IMPROVEMENT

The Tenant agrees that it shall have prepared and furnished to the Landlord, within three (3) months of the date, recorded hereinbelow, of execution by the Landlord of its acceptance of the Tenant's Offer and without charge to the Landlord, detailed drawings, elevations, specifications (including materials to be used) details of loading areas, cost estimates, and a Construction Time Schedule for the proposed building alterations and improvements and signs, if any, permitted to be erected. Along with the furnishing to the Landlord of all the materials specified above, the Tenant shall in writing request the Landlord approval thereof.

No approval required or contemplated shall be given by the City if the part of the work for which such approval is requested by the Tenant would not, if executed in accordance with such request, comply with the minimum requirements of the applicable law.

The approval required to be obtained from the Landlord in its capacity as owner of the Demised Premises shall not be unreasonably withheld or delayed. It is hereby acknowledged that because of the historical and architectural goals of the Landlord, the approval of the Landlord is to include approval by the Commissioner of City Property of the Landlord and the Toronto Historical Board. No such approval given or reported to be given by the Landlord shall have any effect or force whatsoever if the matter or thing to which it relates contravenes in any manner whatever the applicable laws.

13. COMMENCEMENT OF CONSTRUCTION AND RENOVATION

The date of commencement of construction of the renovations of the building shall be no later than six (6) months of the Lease Commencement Date. The date of Completion shall be no later than eighteen (18) months from the Lease Commencement Date.

The Tenant acknowledges and agrees that the restoration, alterations and improvements shall be subject to the City's usual procedures and in this instance shall include consultations and approval by the Toronto Historical Board. The provisions of this paragraph shall not merge but shall survive the closing of the transaction herein.

14. INSURANCE

The Tenant covenants with the Landlord that throughout the Term of the Lease, it shall take out and maintain at its sole cost and expense and in the names of the Tenant and the Landlord as their respective interests may appear and as more fully described in the Lease:

- (i) prior to the commencement of any construction and renovations, alterations or improvements of the Demised Premises until the completion thereof, building in course of construction insurance, insuring the Landlord, the Tenant and their employees and to all those to whom at law they are responsible (between the Landlord and Tenant), from damage to the Demised Premises, fixtures, equipment and building materials on the Demised Premises from time to time during such construction by an "all risks" form, including damage from error or design and faulty workmanship and to the extent available that will be obtained by a prudent owner of such project, to the replacement cost thereof. The insurance required shall be a "wrap up" type including all interests;
- (ii) insurance covering the Demised Premises and the contents thereof and improvements thereto with coverage against fire and standard extended coverage including sprinkler leakages, earthquake, flood and collapse;
- (iii) public liability and property damage insurance written

on a comprehensive basis with inclusive limits of not less than Five Million (\$5,000,000.00) and Two Million (\$2,000,000.00) Dollars respectively.

(iv) Tenants' legal liability insurance for the full replacement cost of the Demised Premises;

(v) loss of earnings insurance which will include provision of a payment of basic rent plus additional rent as set out in the Lease Agreement; and

(vi) any other form of insurance as the Tenant and Landlord may reasonably require from time to time in amounts for insurance risk which a prudent Tenant would protect itself, all insurance being in amounts and on terms and conditions satisfactory to the Landlord.

15. RENOVATIONS AND REPAIRS

The Tenant covenants with the Landlord that not later than six (6) months from the Lease Commencement Date, it shall effect the renovations as detailed in the Building Alterations & Improvements Schedule "D" and in so doing will be bound by all of the provisions in the Lease which pertain to the renovations.

Throughout the term of the Lease, the Tenant shall maintain in good order, first-class condition and repair and make all needed repairs and replacements with due diligence and dispatch to the whole of the Demised Premises and all signs (interior and exterior), fixtures and equipment therein and improvements thereto whether such fixtures, equipment and systems are located within or outside of the Demised Premises or are installed by or on behalf of the Tenant for the Demised Premises, so long as they are intended for the benefit of the Demised

Premises, and the heating, ventilating and air conditioning systems and equipment within the Demised Premises.

16. FINANCIAL INFORMATION

The Tenant provides the financial information contained in Schedule "E" attached. The Tenant acknowledges that the Landlord may require the covenants of the Tenant to be guaranteed by an indemnifier who shall agree to indemnify the Landlord for the Tenant's observance and performance of all terms, covenants and conditions contained in this agreement and in the Lease. The Tenant agrees that it shall, upon request, provide the Landlord with such information as to the Tenant's or any indemnifier's financial standing and corporate organization as the Landlord requires. Failure of the Tenant to comply with the Landlord's request herein constitutes a default under this Agreement and the Landlord is entitled to terminate this Agreement and all of the rights of the Tenant hereunder, by written notice.

17. NO TRANSFER OF AGREEMENT

The Tenant shall not register, assign, sublet, charge, encumber or transfer directly or indirectly, in whole or in part, this Agreement or the Lease or any notice of either, nor shall any change occur in effective voting control of the Tenant if it is a corporation, or in the membership of the Tenant if it is a partnership (a "Transfer").

18. TIME OF THE ESSENCE

Time shall be of the essence of this Agreement and each and every part hereof.

19. JOINT AND SEVERAL



The covenants by the Tenant, if more than one person, firm or corporation, are hereby declared to be joint and several. The word "Tenant" is deemed to be taken to mean each and every person or party mentioned as Tenant herein, whether one or more, and if there is more than one Tenant, any notice required under this Agreement may be given by or to any one thereof, and shall have the same force and effect as if given by or to all of them.

20. SUCCESSORS AND ASSIGNS

Subject to the restrictions of this Offer, this agreement shall be binding upon and enure to the benefit of its successors and assigns of the parties hereto.

21. NOTICE

Notice given pursuant to this Agreement must be delivered by hand to the respective parties at the addresses set out in paragraphs 1 and 2 hereof and each such notice is deemed to have been given upon the date so delivered.

22. LANDLORD'S REMEDIES

If the Tenant is in default under this Agreement, the Landlord may terminate this Agreement (and the Lease, if applicable) on five (5) days' written notice and may retain the Deposit on account of damages suffered.

23. ACKNOWLEDGMENT BY TENANT

The Tenant acknowledges that acceptance of this Offer to Lease does not constitute the municipal approval necessary for any approval the Tenant may require pursuant to other legislation with respect to the renovations and repairs of the Demised Premises.

24. ENTIRE AGREEMENT

This agreement shall constitute the entire agreement between the parties and there is no representation, warranty, collateral agreement or condition affecting this agreement other than as set out herein. This agreement shall be read with all changes of gender and number required by context.

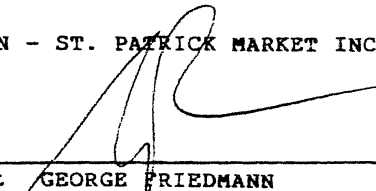
25. THIS AGREEMENT is irrevocable by the Tenant until Thursday, July 14, 1988 midnight.

Upon execution by both parties, this Agreement is binding or, if not executed by the Landlord within the time above stipulated, is null and void without any further formality, notice, delay or recourse by any party and regardless of any acts or expenditures by the Landlord or the Tenant.

If this Offer is not accepted by the Landlord, it shall be null and void and any deposit made herein shall be returned without interest or deduction.

DATED at Toronto this 4th day of April, 1988.

QUEEN - ST. PATRICK MARKET INC.

  
Per: \_\_\_\_\_  
Tenant GEORGE FRIEDMANN

\_\_\_\_\_  
Tenant  
390 Bay Street, Suite 2801  
Toronto, Ontario. M5H 2Y2  
(416) 861-1000  
Address and Telephone Number

THE LANDLORD hereby accepts this Offer to Lease at Toronto this  
\_\_\_\_\_ day of \_\_\_\_\_, 198\_\_.

THE CORPORATION OF THE CITY OF TORONTO  
(Landlord).

per: \_\_\_\_\_  
A Member of the Executive Committee  
c/s

per: \_\_\_\_\_  
City Treasurer

s/238que (v2ag1bno)

SCHEDULE "A"

(Demised Premises)

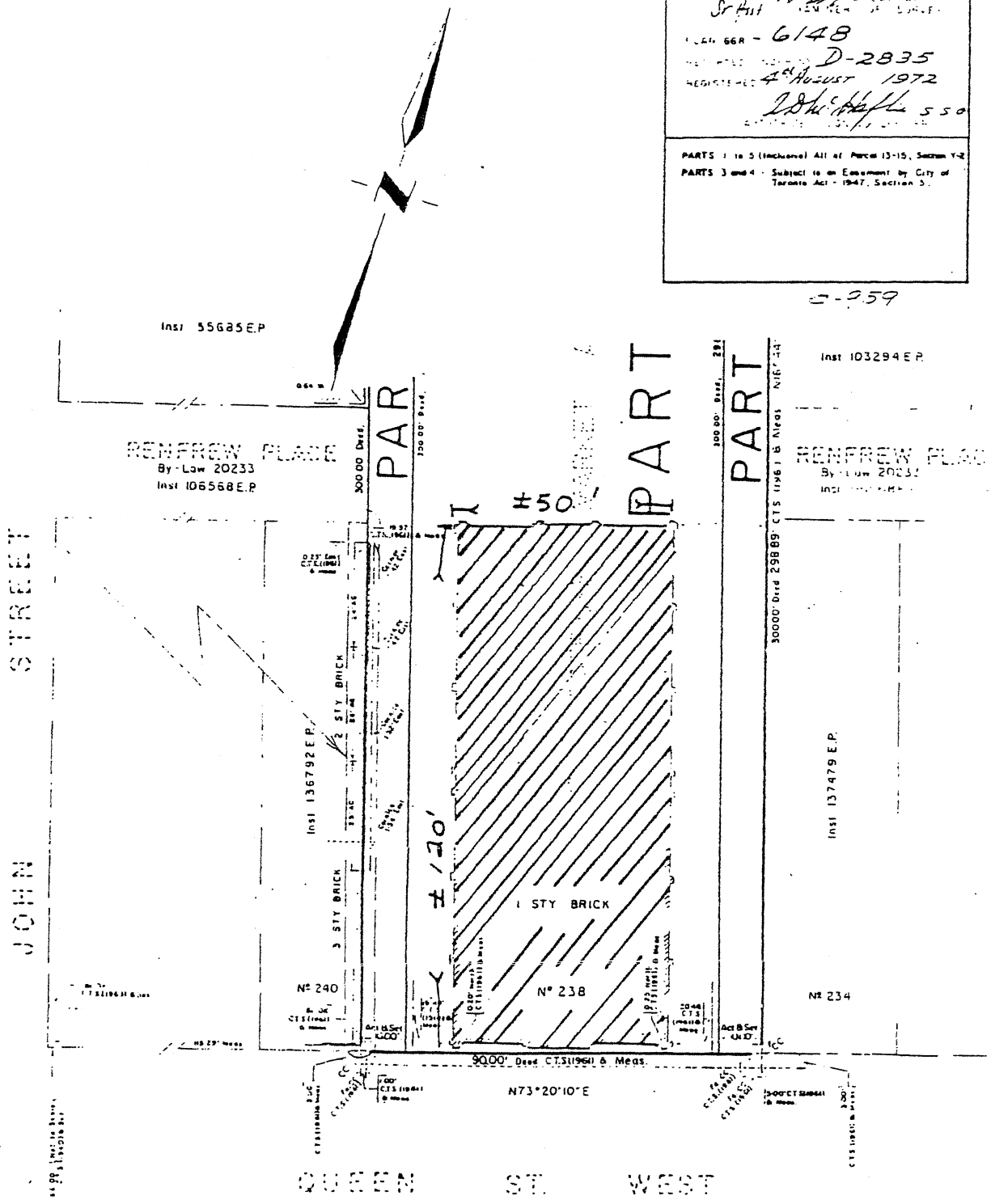
PARTIAL COPY OF PLAN

PLAN 66R-6148

31/1/1972  
 Sr. Asst. *[Signature]*  
 PLAN 66R - 6148  
 REG. NO. D-2835  
 REGISTERED 4<sup>th</sup> August 1972  
*[Signature]* 550

PARTS 1 to 5 (inclusive) All of Parcel 13-15, Section Y-2  
 PARTS 3 and 4 - Subject to an Easement by City of Toronto Act - 1947, Section 5.

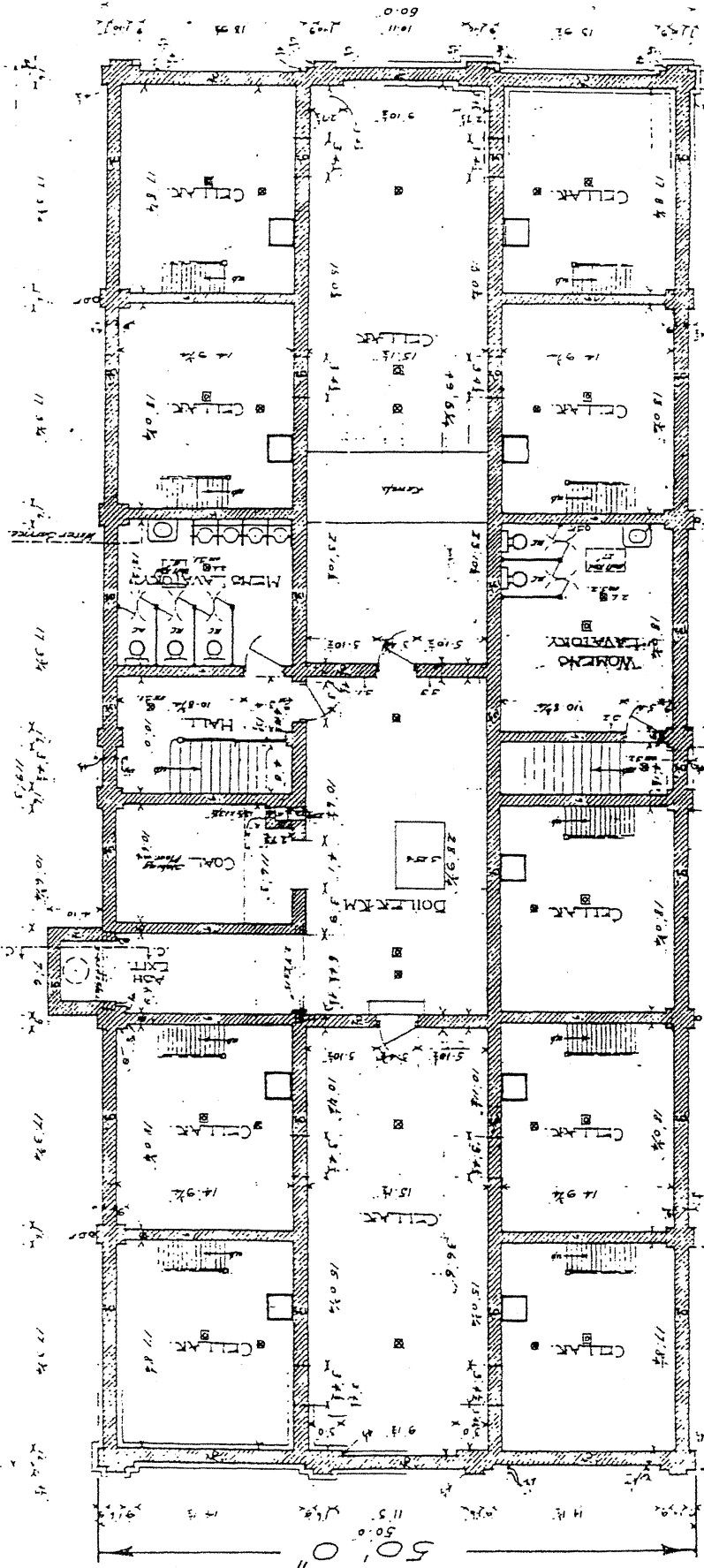
5-259



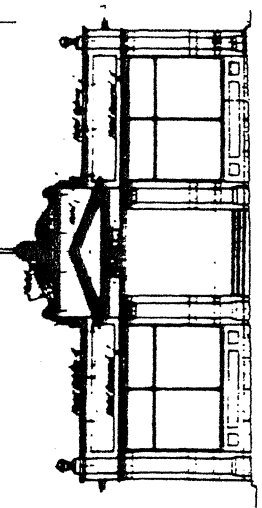
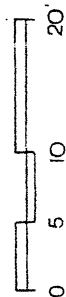
HATCHED AREA DENOTES DEMISED PREMISES



NOTE: NOT TO SCALE



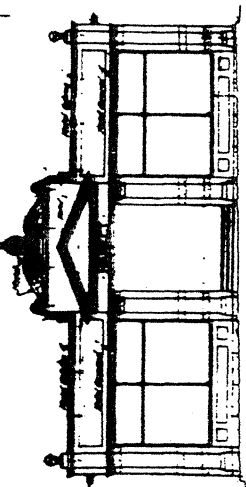
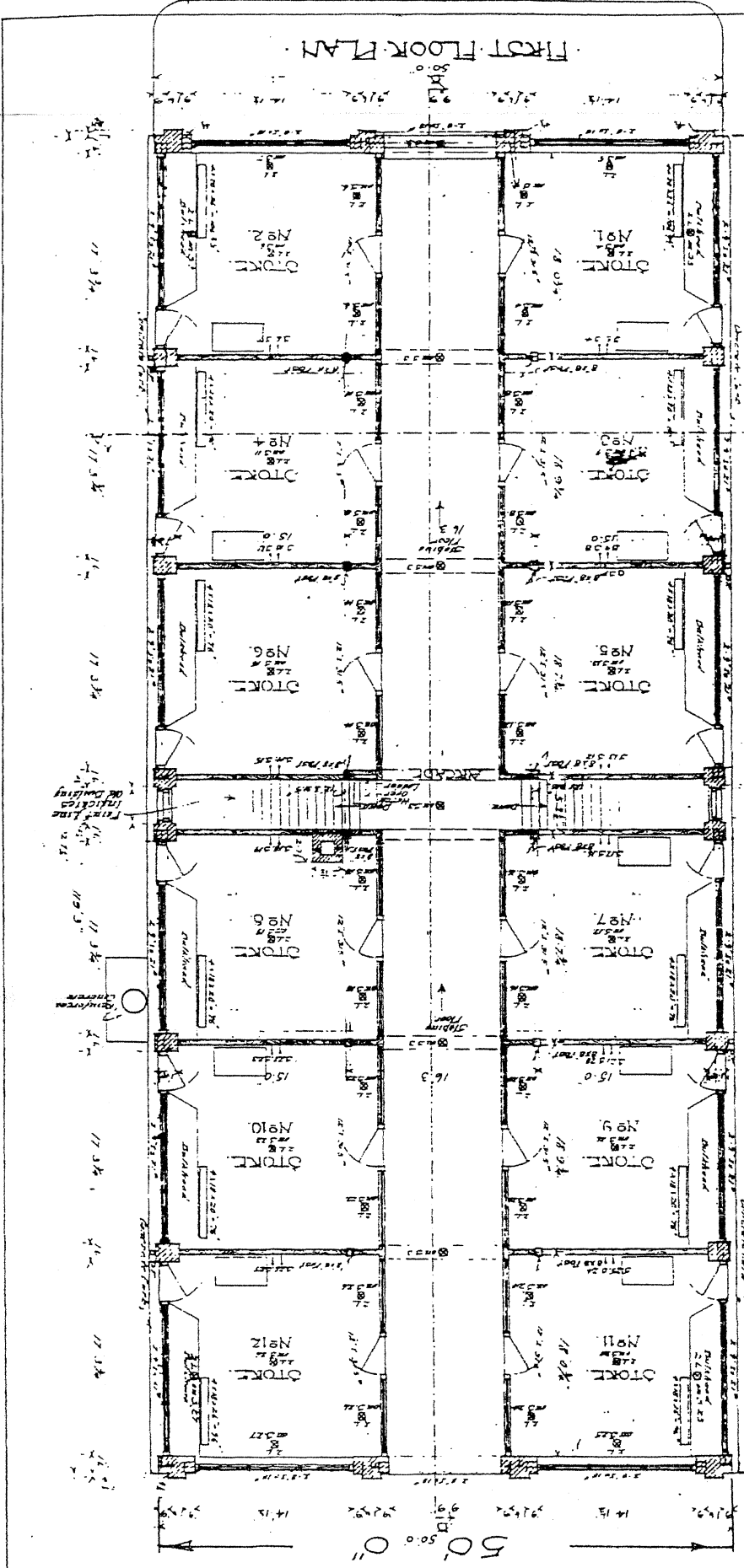
**BASEMENT FLOOR PLAN - 1913**



**SOUTH ELEVATION**  
(General Aspect)

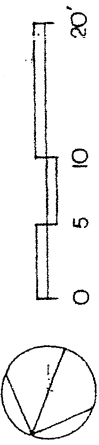
QUEEN STREET

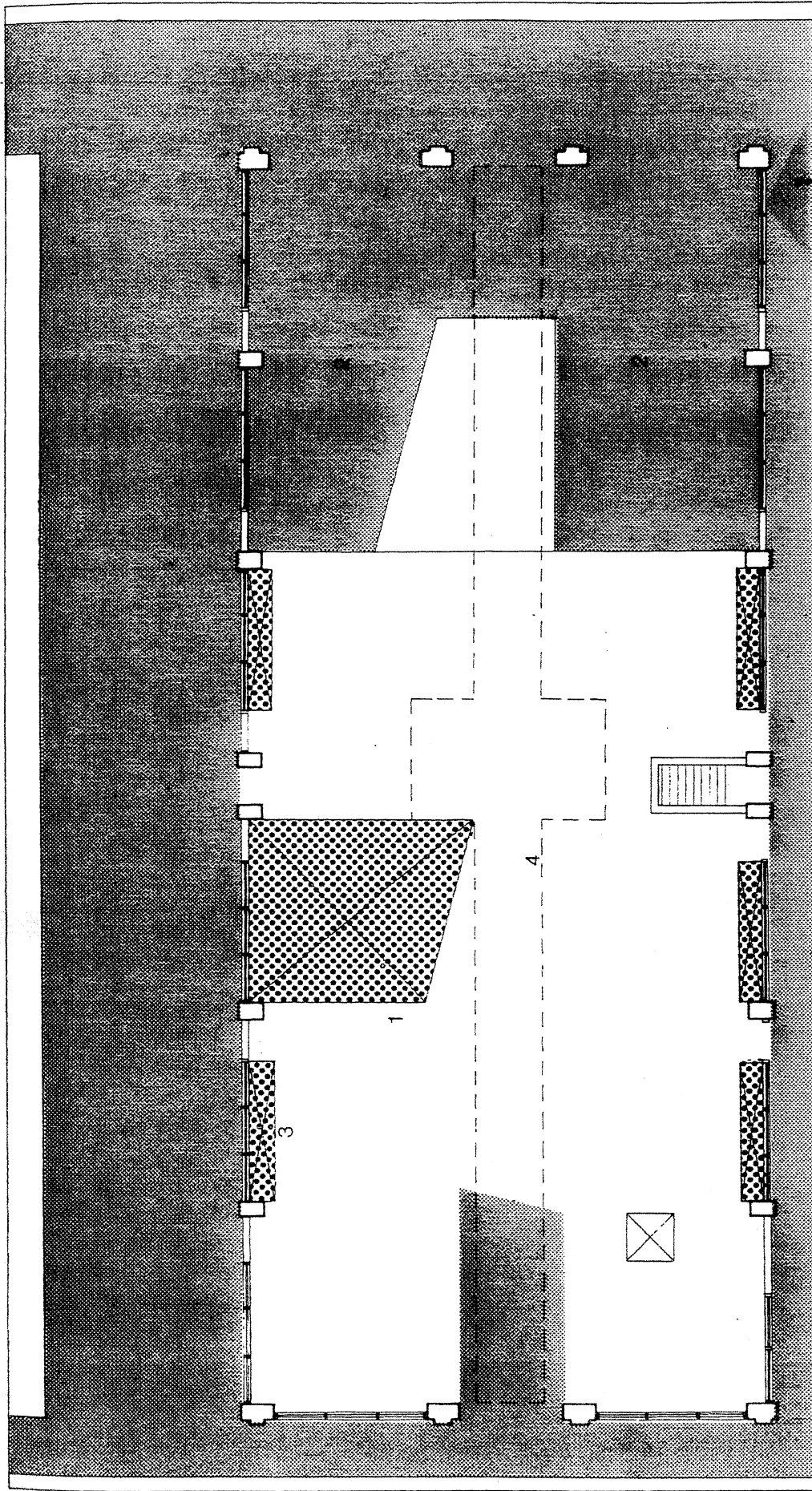
FIRST FLOOR PLAN



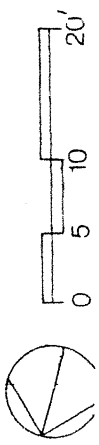
SOUTH ELEVATION (Orientation)

GROUND FLOOR PLAN - 1913



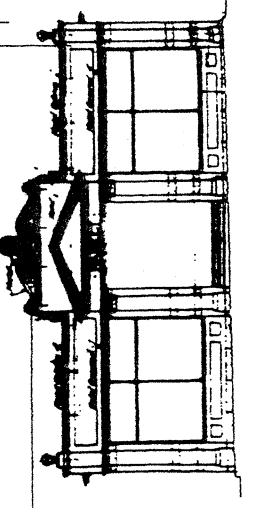


- 1 OPEN TO BELOW
- 2 SIDEWALK LEVEL
- 3 EXISTING LIGHTWELLS TO BELOW
- 4 SKYLIGHT ABOVE

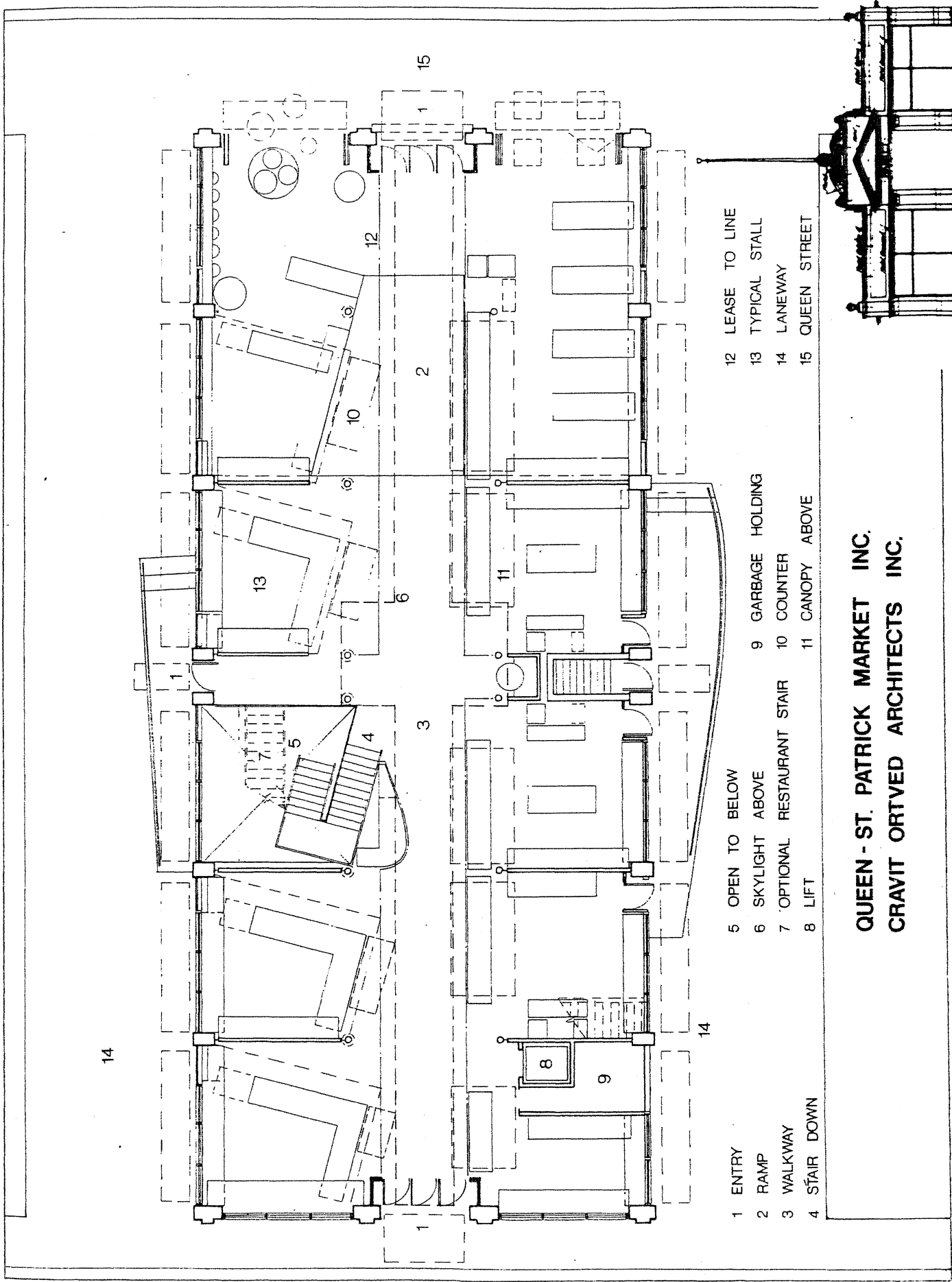


QUEEN - ST. PATRICK MARKET INC.  
 CRAVIT ORTVED ARCHITECTS INC.

GROUND FLOOR PLAN  
 CHANGES TO EXISTING STRUCTURE



SOUTH ELEVATION  
 (GENERAL PROJECT)



14

15

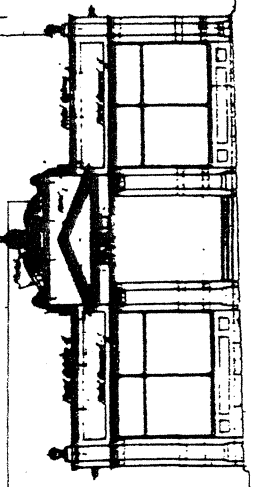
14

- 1 ENTRY
- 2 RAMP
- 3 WALKWAY
- 4 STAIR DOWN
- 5 OPEN TO BELOW
- 6 SKYLIGHT ABOVE
- 7 OPTIONAL RESTAURANT STAIR
- 8 LIFT
- 9 GARBAGE HOLDING
- 10 COUNTER
- 11 CANOPY ABOVE
- 12 LEASE TO LINE
- 13 TYPICAL STALL
- 14 LANEWAY
- 15 QUEEN STREET

**QUEEN - ST. PATRICK MARKET INC.  
CRAVIT ORTVED ARCHITECTS INC.**

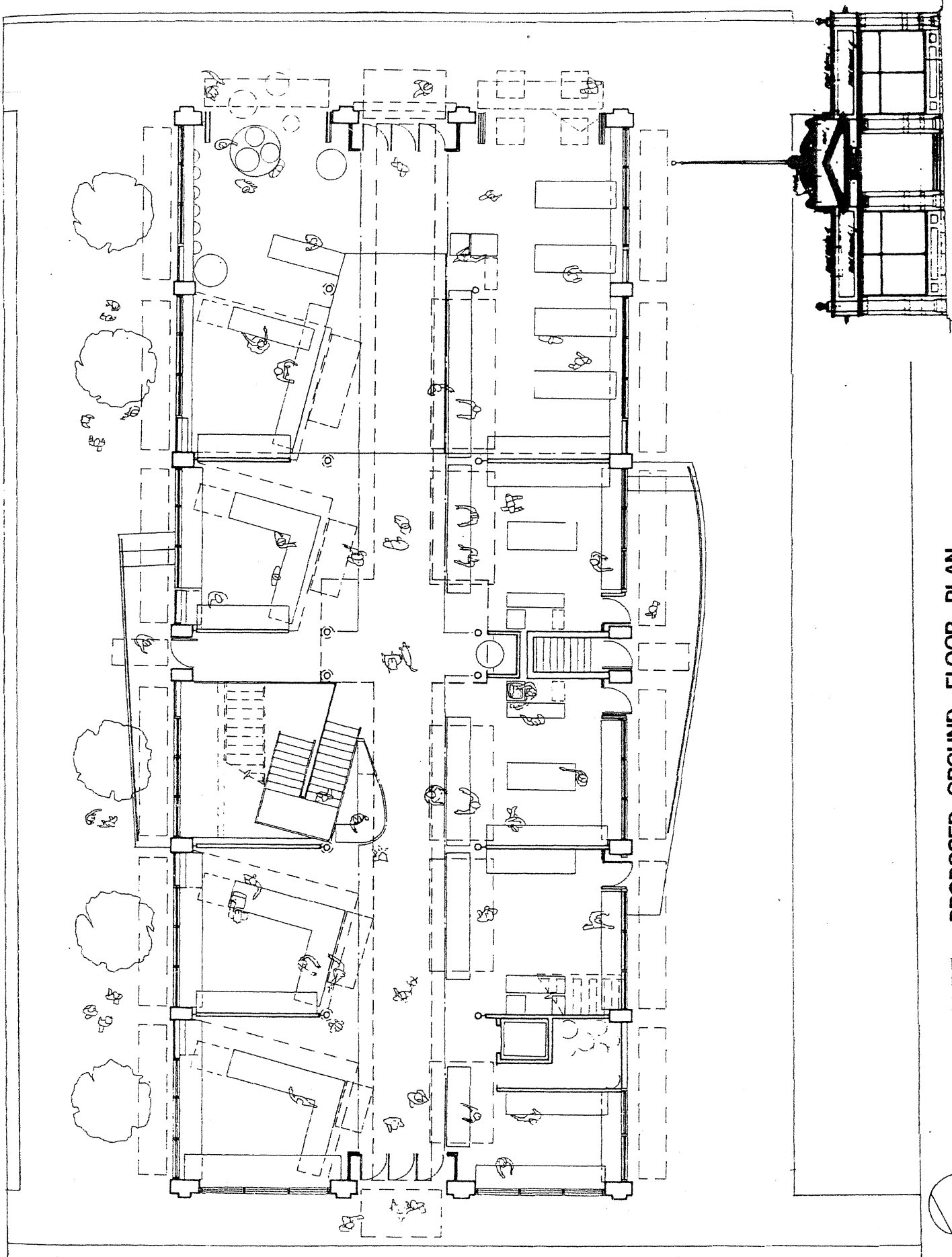


**PROPOSED GROUND FLOOR PLAN**

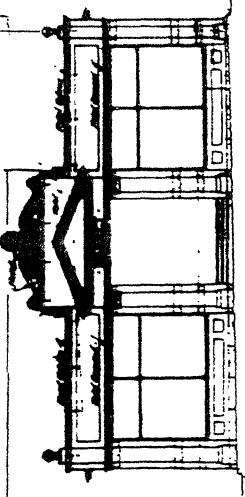


**SOUTH ELEVATION**

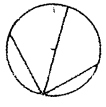
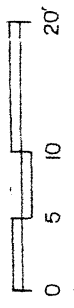


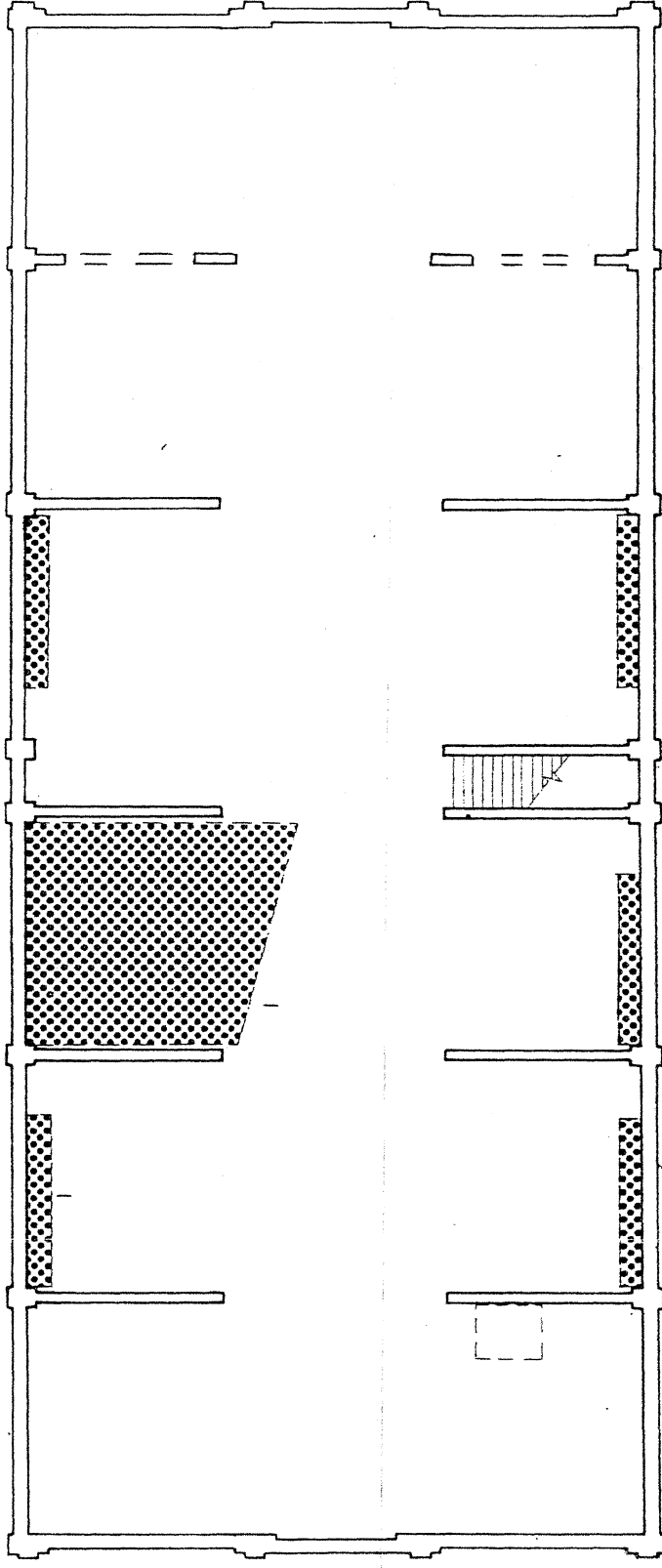


SOUTH ELEVATION  
(General Project)



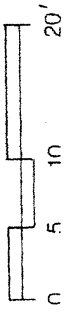
PROPOSED GROUND FLOOR PLAN



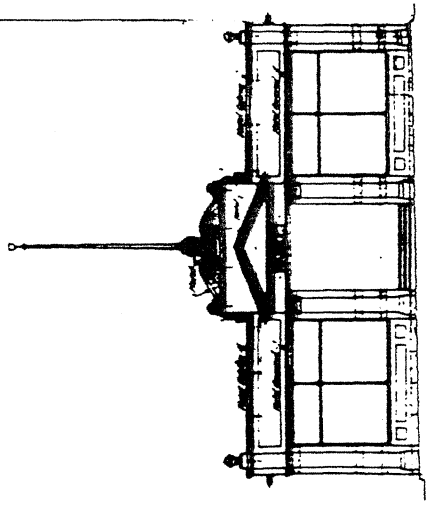


I OPEN TO ABOVE

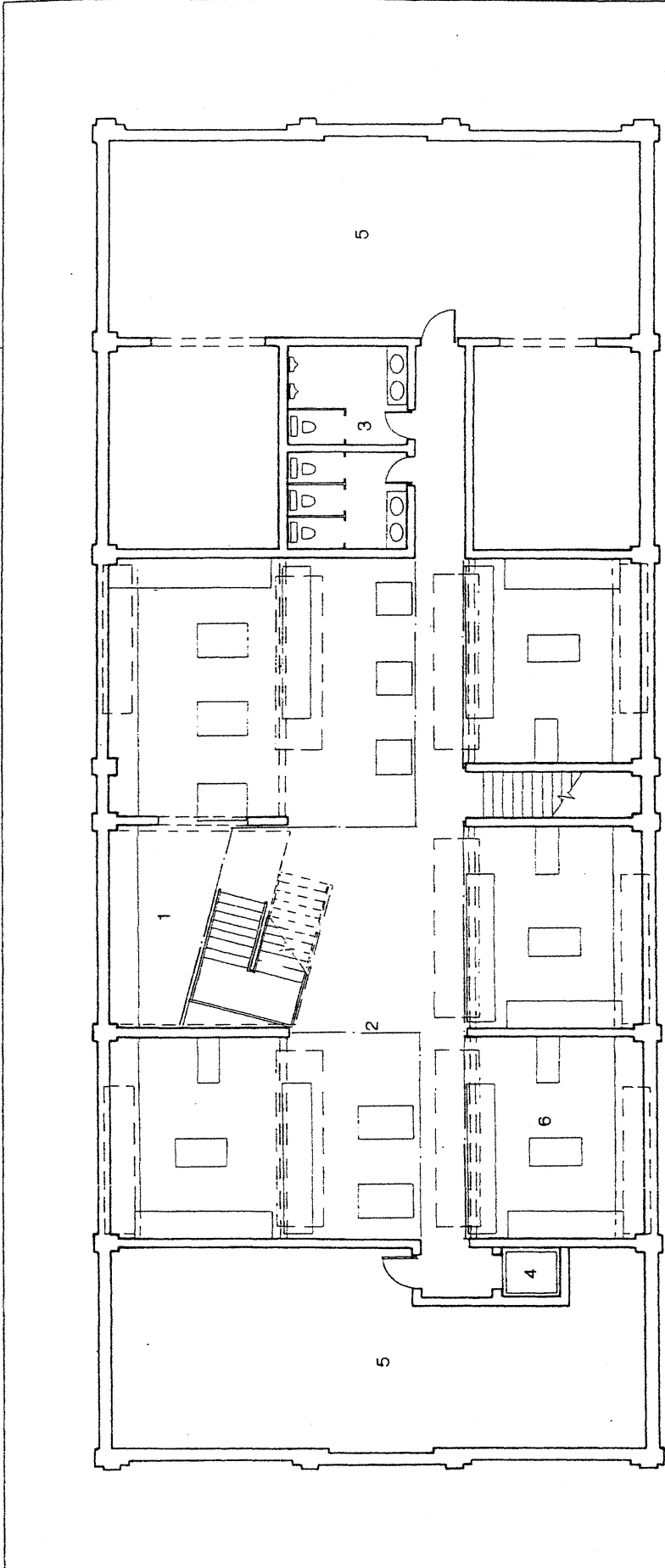
QUEEN - ST. PATRICK MARKET INC.  
 CRAVIT ORTVED ARCHITECTS INC.



BASEMENT FLOOR PLAN  
 CHANGES TO EXISTING STRUCTURE



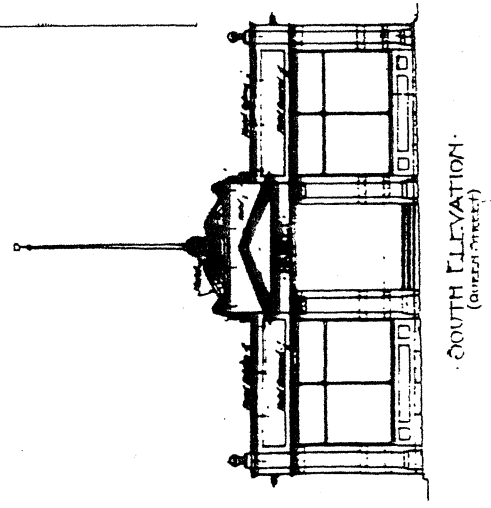
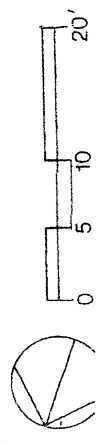
SOUTH ELEVATION



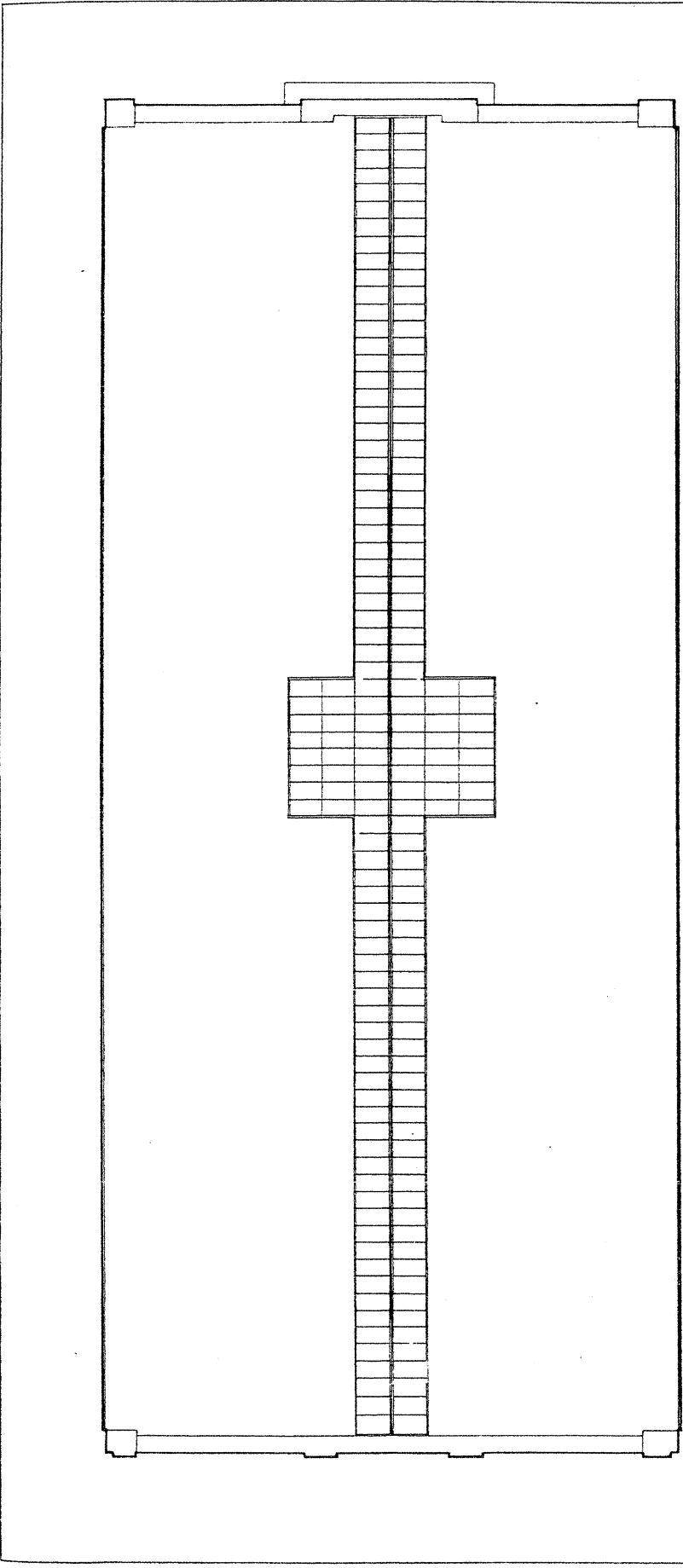
- 1 OPEN TO ABOVE
- 2 LEASE TO LINE
- 3 WASHROOMS
- 4 LIFT
- 5 STORAGE
- 6 TYPICAL LOWER MARKET STALL

QUEEN - ST. PATRICK MARKET INC.  
 CRAVIT ORTVED ARCHITECTS INC.

PROPOSED BASEMENT FLOOR PLAN

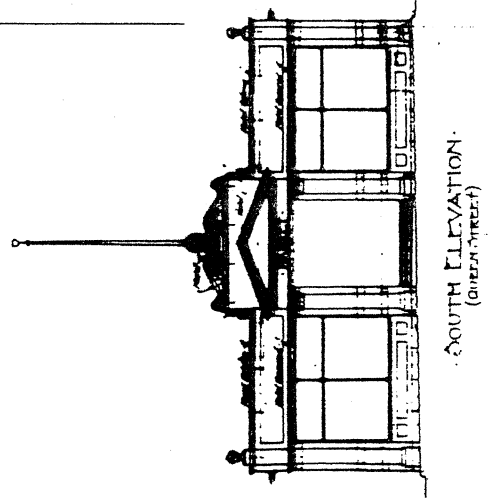
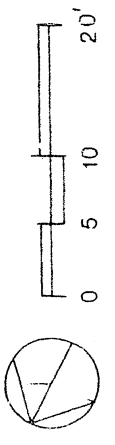


SOUTH ELEVATION  
 (OVERLOOKING)

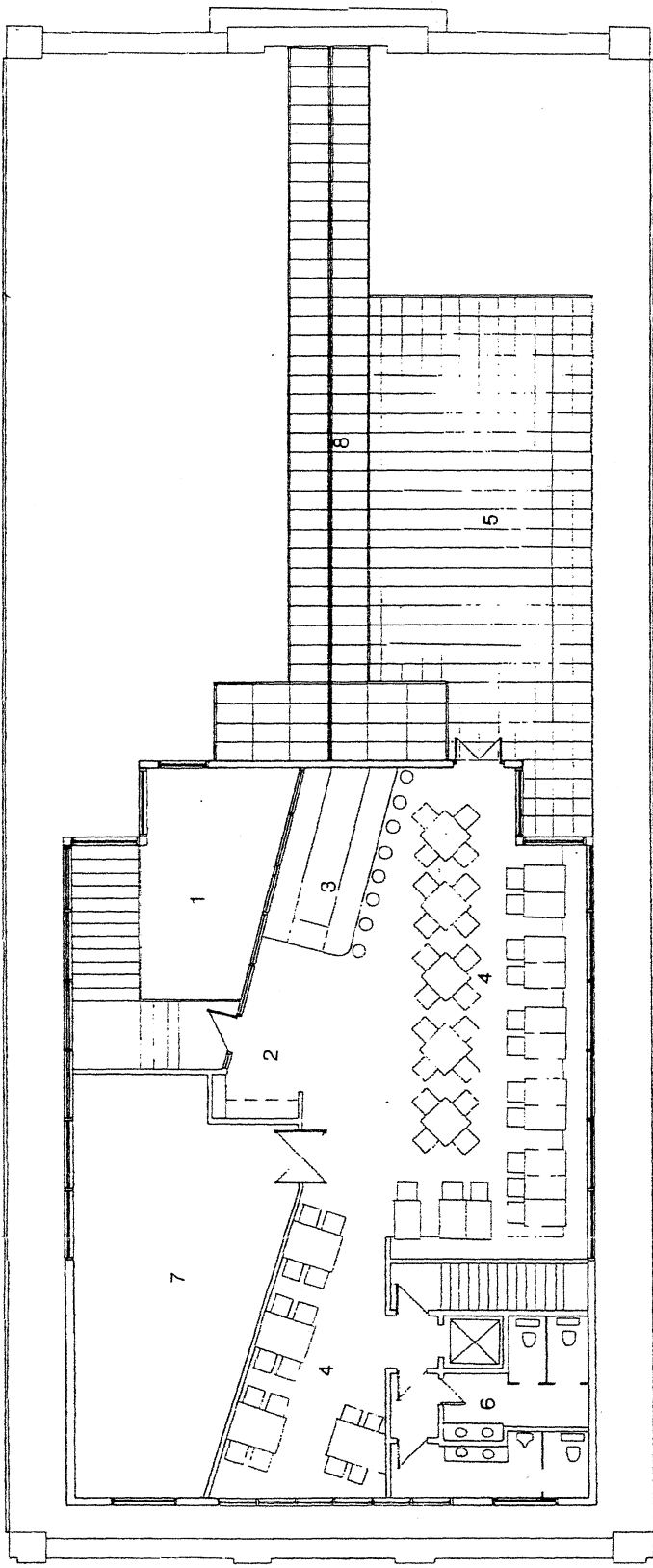


QUEEN - ST. PATRICK MARKET INC.  
 CRAVIT ORTVED ARCHITECTS INC.

PROPOSED ROOF PLAN



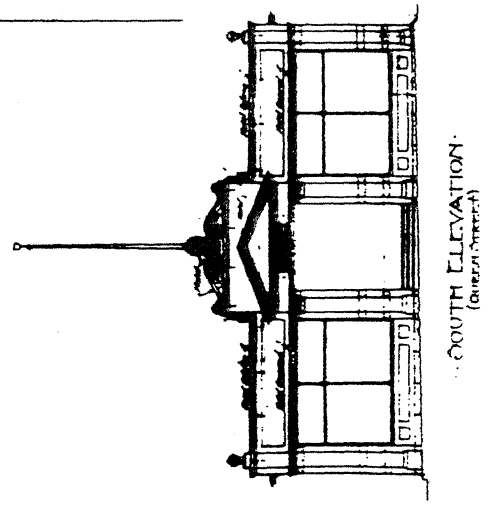
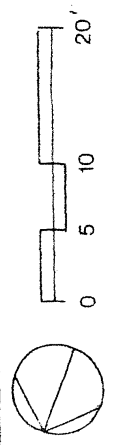
SOUTH ELEVATION  
 (OVER ST. STREET)



- 1 OPENING TO BELOW
- 2 RECEPTION
- 3 BAR
- 4 SEATING AREA
- 5 OUTDOOR DECK
- 6 WASHROOMS
- 7 KITCHEN
- 8 SKYLIGHT

QUEEN - ST. PATRICK MARKET INC.  
 CRAVIT ORTVED ARCHITECTS INC.

OPTION - RESTAURANT AT ROOF LEVEL



SOUTH ELEVATION  
 (Orientation)