

RESOLUTION
R 61-09

**A RESOLUTION AUTHORIZING SIGNATURES OF
VILLAGE PRESIDENT AND VILLAGE CLERK ON AN AGREEMENT**

WHEREAS, the Corporate Authorities of the Village of Lombard have received a Commercial Sublease, attached as Exhibit A, between the Village of Lombard and A La Mode Ice Cream, Inc., providing for vendor space in the Lombard Commuter Train Station for the purposes of establishing a coffee vendor; and

WHEREAS, the establishment of such a space will complement and support the Village's plans to improve and maintain a quality Downtown; and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DUPAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said Agreement as attached hereto.

SECTION 2: That the Village Clerk be and hereby is authorized to attest said Agreement as attached hereto

Adopted this 19th day of February, 2009.

Ayes: Trustees Gron, Tross, O'Brien, Moreau, Fitzpatrick and Soderstrom

Nayes: None

Absent: None

Approved this 19th day of February, 2009.



William J. Mueller
Village President

ATTEST:



Brigitte O'Brien
Village Clerk

COMMERCIAL SUBLEASE
(Vendor Space in Lombard Commuter Train Station)

A La Mode Ice Cream, Inc.
c/o Dimitris Nacopoulos (hereinafter "Sublessee")
132 W. St. Charles Road
Lombard, Illinois 60148

Village of Lombard, an Illinois Municipal
Corporation (hereinafter "Sublessor")
255 E. Wilson Avenue
Lombard, Illinois 60148

This Commercial Sublease (the "Sublease") is entered into by and between the Sublessor and the Sublessee this 19th day of FEBRUARY, 2009. In consideration of the mutual covenants and agreements herein stated, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the Sublessor and Sublessee agree as follows:

SUBLEASE COVENANTS AND AGREEMENTS

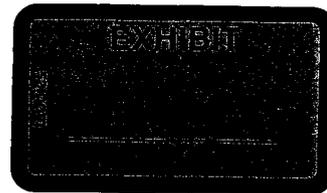
1. PREMISES. Sublessor leases a train station building, pursuant to the terms of the Agreement attached as *EXHIBIT A*, and made part hereof, consisting of an approximately one hundred and two (102) square foot vendor area within a fifteen hundred and seventy (1570) square foot train station, from the Union Pacific Railroad Company ("Lessor") and located at 9 South Main Street, Lombard, Illinois (the "Facility") commonly known as the Lombard Metra Station and situated upon a portion of the real property legally described in *EXHIBIT B* attached hereto and made part hereof (the "Property"). In consideration of the mutual promises, covenants and conditions herein set forth, Sublessor hereby subleases to Sublessee and Sublessee hereby subleases from Sublessor those certain premises in the Facility containing approximately one hundred and two (102) square feet of vendor space along with an adjacent twenty-four (24) square foot space immediately within the waiting area for ancillary and supplemental use for customers of the Sublessee as shown on *EXHIBIT C* attached hereto and made part hereof (the "Premises"). Sublessee's direct access to the Premises shall include an approximately eleven hundred (1,100) square foot waiting area, and approximately two hundred seventy five (275) square feet of restroom, corridor space and custodial/utility areas, all as shown on *EXHIBIT C* (the "Access Premises").

2. TERM.

2.1 Term. The initial term of this Sublease shall be for two (2) years, commencing on the date set forth above, with the last date of the Term being deemed to be the "Expiration Date", unless sooner terminated or extended as provided herein (the "Initial Term").

2.2 Extension. Any extension to the Term of this Sublease shall be at the sole discretion of the Sublessor. If the Sublessee desires to extend the term of the agreement or enter into a new Agreement with the Sublessor, the Sublessee shall provide written notice to the Sublessor no later than ninety (90) days prior to the expiration of the Agreement. If the Sublessor does not intend to extend the term of the agreement or enter into a new Agreement with the Sublessor, the Sublessor shall provide written notice to the Sublessee no later than ninety (90) days prior to the expiration of the Agreement.

3. RENT.



Sublessee shall not be required to provide any financial compensation for use of the Premises. However, the Sublessee shall be obligated to meet the non-monetary terms and conditions of this Sublease in lieu of any financial compensation.

4. **UTILITY CHARGES.** Sublessor will pay all water, sanitary sewer, natural gas, and electric light and power bills during the time for which this Sublease is granted. Sublessor shall also be responsible for contracting and paying for refuse removal. Notwithstanding the forgoing, if the Sublessee causes the amount of any water, sanitary sewer, natural gas, or electric charges attributable to the Sublessee's business practices to be excessive (i.e., such charges exceed fifty percent 50% or more over the bill for the same time period during the prior year of billing), as determined by Sublessor in its sole and absolute discretion, Sublessor shall have the right to demand that Sublessee participate in the payment of said charges, in a fixed amount or percentage as determined by the Sublessor. Shall the Sublessee require or desire any additional utility services (including, but not limited to, telephone and data/cable line installations, data transmission systems and equipment and other utility upgrades) to be provided and/or installed on the Premises as part of Sublessee's business space operation, the Sublessee must first secure written approval of the Sublessor prior to undertaking the installation or acquisition of same. The costs associated with any additional utilities shall be borne by the Sublessee.

5. **SUBLETTING; ASSIGNMENT.** The Premises shall not be sublet in whole or in part to any person other than Sublessee, and Sublessee shall not assign this Sublease without, in each case, the consent in writing of Sublessor and Lessor, first had and obtained.

6. **SUBLESSEE NOT TO MISUSE.** Sublessee will not permit any unlawful or immoral practice, with or without its knowledge or consent, to be committed or carried on in the Facility by its principals, agents, employees, or by any other person. Sublessee will not allow the Facility to be used for any purpose that will increase the rate of insurance thereon, nor for any purpose other than that herein specified. Sublessee will not keep or use or permit to be kept or used in or on the Facility or any place contiguous thereto any hazardous materials (as defined in all federal, state and local environmental laws, rules and regulations), flammable fluids or explosives, without the written permission of Sublessor first had and obtained. Sublessee will not load floors beyond the floor load rating prescribed by applicable Village Codes and ordinances. Sublessee will not use or allow the use of the Facility for any purpose whatsoever that will injure the reputation of the Premises, or of the Facility of which they are a part. Sublessee shall not cause or permit any waste, misuse or neglect of water, gas or electricity, or of the water, gas or electric fixtures.

Sublessee acknowledges that the Facility, of which the Premises and Access Premises are a part, will be utilized as both a commercial business establishment and public commuter rail station. The Sublessee also understands that the Sublessor, Lessor and Sublessee will need to coordinate activities and work together. Sublessee acknowledges this understanding of the public and commercial usage would require the Facility and surrounding areas to be free of offensive music, language, signage and activities.

7. **CONDITION ON POSSESSION.** Sublessee has examined and knows the condition of the Premises and has received the same in good order and repair, and acknowledges that no representations as to the condition and repair thereof, and no agreements or promises to decorate, alter, repair or improve the Premises, have been made by Sublessor or its agent prior to or at the execution of this

Sublease that are not herein expressed. Sublessee shall obtain full build out and occupancy permits prior to possession of the Premises from the Sublessor. The Fire Department of the Sublessor will be responsible for determining the maximum number of persons that can occupy the Facility, this number shall be posted and received prior to the full occupancy permit being issued.

8. REPAIRS, MAINTENANCE AND ALTERATIONS.

8.1 At Sublessee's sole cost and expense, Sublessee shall keep the Facility, and the appurtenances thereto, as well as all areas (as identified in Section 1 above) to which Sublessee has direct access in a clean, sightly and healthy condition, and in good repair, all according to the statutes and ordinances in such cases made and provided, and the directions of public officers thereunto duly authorized, all at its own expense, and shall yield the same back to Sublessor upon the termination of this Sublease, whether such termination shall occur by expiration of the Term, or in any other manner whatsoever, in the same condition of cleanliness, repair and sightliness as at the date of the execution hereof, loss by fire and reasonable wear and tear excepted. Sublessor shall be responsible for the maintenance and repair of the Premises, including: all plumbing, HVAC (heating, ventilation, and air-conditioning), electrical and lighting facilities and equipment within the Premises, as well as any store front, doors, and plate glass in relation to the Premises. Sublessor shall be responsible for maintenance and repair of those portions of the Facility not including the Premises. Sublessee agrees to provide all custodial services, daily cleanup, and maintenance of the public portion of the Facility such as sweeping, floor and interior window washing, debris cleanup, and general cleaning of its coffee shop, the waiting area, vendor space storage, and toilet areas, to an acceptable level as determined by the Sublessor and the DuPage County Health Department. Sublessee shall provide all labor, supervision, insurance, equipment and cleaning materials necessary to provide general cleaning and maintenance of the Facility.

Notwithstanding any provision to the contrary, Sublessee's obligations under this Section shall not include making any repair or improvement necessitated by the negligence or willful misconduct of Sublessor, its officers, agents, employees or assigns, or which result from construction defects caused by Lessor's building contractor and any subcontractors. Sublessee shall not be obligated to pay for or make any non-routine maintenance, repairs and/or replacements for the upkeep of the roof, roof membrane and roof systems (gutters, downspouts and the like) foundation, exterior walls, interior structural walls, and all structural components of the Facility, unless such repairs are required due to the direct negligence or actions of the Sublessee or its officers, agents or employees. Sublessee shall not be responsible for the repair and maintenance of the parking areas, sidewalks, landscaping and drainage systems on the Property and all utility systems (including mechanical, electrical and HVAC systems) and plumbing systems which serve the Facility as a whole and not the Sublessee's Premises. Sublessor shall make all necessary repairs and renewals upon Premises and replace broken globes, glass and fixtures at its own expense. Sublessee shall repair and or replace any furniture or coffee shop equipment that is damaged during the Sublease Term. If, however, the Facility shall not thus be kept in good repair and in a clean, sightly and healthy condition by Sublessee, as aforesaid, Sublessor may enter the same, by its agents, servants or employees, and Sublessor may place the same in the same condition of repair, sightliness, healthiness and cleanliness as existed at the date of execution hereof, and Sublessee agrees to pay Sublessor, the expenses incurred by Sublessor in regard to any such actions by Sublessor.

8.2 Sublessor's Rights. If Sublessee fails to perform any of its obligations under this Section 8, Sublessor and/or Lessor may, but shall not be required to, enter upon the Premises or the

Access Premises, after thirty (30) days prior written notice to Sublessee, and put the same in good order, condition and repair, and the reasonable costs thereof shall become due and payable to Sublessor within thirty (30) days due after Sublessee's receipt of an invoice for such costs. This reimbursement obligation of Sublessee shall survive the termination or expiration of this Sublease.

9. ACCESS TO PREMISES, ACCESS PREMISES, AND FACILITY. Sublessee shall allow Sublessor, Lessor, or any person authorized by Sublessor and/or Lessor free access to the Premises, Access Premises, and Facility for the purpose of examining or exhibiting the same, or to make any repairs or alterations thereof which Sublessor or Lessor may see fit to make, and Sublessee will allow Sublessor to have placed upon the Premises and/or Access Premises at all times notices of "For Sale" and "For Rent", and Sublessee will not interfere with the same. Sublessee shall have the right to use any and all appurtenances and easements benefitting the Premises, Access Premises, Facility, and parking to support its intended use of the Premises.

Sublessor and/or Lessor shall have the following rights, exercisable without notice and without liability to Sublessee for damage or injury to property, person or business, and without effecting an eviction or disturbance of Sublessee's use or possession or giving rise to any claims, except as set forth herein: to establish or change the name, designation or street address of the Property; to install and maintain signs on any part of the Property outside the Premises; to enter the Premises in an emergency, using such force as is reasonably necessary; to make such inspections and required repairs of the Premises as are reasonably necessary; and to make repairs, additions or alterations to the Property, the Facility, the Premises, or the Access Premises; to do or permit to be done any work on or about the exterior of the Premises.

Sublessor shall provide all parking (and shall apply for and obtain all variances) needed to meet all code and permitting requirements at no expense to Sublessee. Sublessor shall not vary or permit to be varied the existing means of ingress and egress to the Facility and the Property. Sublessor shall not reduce the number of parking spaces below that which is required by law for Sublessee to maintain its permit to use and occupy the Premises or realign the parking spaces in a manner that makes them substantially less accessible to the Premises.

10. USE.

10.1 Use. Sublessee may use and occupy the Premises for a food service business. Any proposed change in use must be reviewed and approved by Lessor and the Sublessor.

10.2 Compliance with Applicable Laws, Permits and Licenses. During the Term, Sublessee, at its expense, shall comply promptly with all laws, rules, and regulations made by any government authority having jurisdiction over Sublessee's use of the Premises pertaining to (a) the physical condition of any improvements in the Premises; and (b) Sublessee's specific business operations in the Premises. Compliance pursuant to this subsection 10.2 shall include, but is not limited to: the application and receipt of all Village of Lombard applicable permits, licenses, and certificates, and the proper payment of the Village of Lombard's "Places of Eating Tax," if applicable to the Sublessee or to the Sublessee's business on the Property. In the event that the Sublessee does not receive all applicable Village of Lombard permits, licenses and certificates or in the event that any of the applicable permits, licenses or certificates are terminated, cancelled or revoked by the Sublessor during the Term of the Sublease for any reason(s) other than the intentional, willful and wanton, reckless, or negligent acts of

the Sublessee in contravention of any of the Sublessee's obligations, (see Section 18.2, below), then the Sublessee and Sublessor shall have no further rights or obligations under this Sublease and this Sublease shall be of no further force and effect.

10.3 Operations. Sublessee shall operate Monday through Friday from 5:00 a.m. to 11:30 a.m. It is agreed by the parties that in the event that business warrants it, as determined by Sublessor and Sublessee in their reasonable judgment, these hours and/or days can be modified. It is expressly understood and agreed that Sublessee makes no representations or warranties, oral or written, as to the level of gross sales it may generate from the Premises or the number of customers that it will bring to the Facility. In the event that Sublessee ceases operating its business in the Premises for a period of not less than thirty (30) consecutive days, subject to *force majeure*, casualty, condemnation and remodeling, Sublessor shall have the right to terminate this Sublease upon not less than thirty (30) days prior written notice to Sublessee unless Sublessee, within such thirty (30) day period, again resumes doing business in the Premises. Sublessee's right to negate Sublessor's termination by reopening shall be a one-time-only right.

10.4 Business Operations. In addition to the obligations set forth herein, the Sublessee shall make the restroom available for use by the public during the hours in which the Sublessee is operating its business on the Premises.

The Sublessee shall have the right to enter into an agreement to allow a third party to provide cleaning services required as part of this Sublease, provided any such agreement shall be subject to review and the prior approval by the Sublessor.

Notwithstanding issues of force majeure, the Sublessee shall be expected to open its business on the days and times set forth above, and meet the obligations set forth in this Sublease. In this regard, the Sublessee shall be responsible for providing an employee staff to operate the business and meet the provisions set forth within this Sublease. Failure to do so shall subject the Sublessee to the provisions of Section 18.2 below.

10.5 Trash Removal. Sublessor shall provide a lawful location on the Property, enclosed if required by code of Sublessor, and convenient to the Premises, for sufficient trash receptacles for trash disposal and/or recycling to be installed by Sublessor at its expense and to be for Sublessee's use.

10.6 Special Events. Sublessee shall obtain prior written authorization from Sublessor for any special events held inside or outside of the Facility, not included within the scope of Sublessor's business operations within the Facility

10.7 Smoking Restrictions. Sublessee acknowledges that the Facility is both a commercial establishment and public venue and as such will exist as a non-smoking environment.

11. NON-LIABILITY OF SUBLESSOR. Except as provided by Illinois statute, Sublessor shall not be liable to Sublessee for any damage or injury to it or its property occasioned by the failure of Sublessor or Lessor to keep the Property, Premises, Access Premises, or Facility in repair, and shall not be liable for any injury done or occasioned by snow, wind, excessive heat or cold, broken glass, sprinkling, heating, ventilating or air conditioning systems, devices or equipment, flooding, or by or from any defect of plumbing, electric wiring or of insulation thereof, gas pipes, water pipes or steam

pipes, or from broken stairs, porches, railings or walks, or from the backing up of any sewer pipe or down-spout, or from the bursting, leaking or running of any tank, tub, washstand, water closet or waste pipe, drain, or any other pipe or tank in, upon or about the Facility of which they are a part nor from the escape of steam or hot water from any radiator, it being agreed that said radiators are under the control of Sublessee, nor for any such damage or injury occasioned by water, snow or ice being upon or coming through the roof, skylight, trap-door, stairs, walks or any other place upon or near the Facility, or otherwise, nor for any such damage or injury done or occasioned by the falling of any fixture, plaster or stucco, nor for any damage or injury arising from any act, omission or negligence of co-lessees or of other persons, occupants of the same Facility or of adjoining or contiguous buildings or of owners of adjacent or contiguous property, or of Sublessor's officers, agents or employees, the Lessor, or Sublessor itself, all claims for any such damage or injury being hereby expressly waived by Sublessee.

12. RESTRICTIONS (SIGNS, ALTERATIONS, FIXTURES). Sublessee shall not attach, affix or exhibit or permit to be attached, affixed or exhibited, except by Sublessor or its agent, any articles of permanent character or any sign, attached or detached, with any writing or printing thereon, to any window, floor, ceiling, door or wall in any place in or about the Facility, or upon any of the appurtenances thereto, without in each case the prior written consent of Sublessor first had and obtained; and shall not commit or suffer any waste in or about said Facility; and shall make no changes or alterations in the Facility by the erection of partitions or the papering of walls, or otherwise, without the prior consent in writing of Sublessor; and in case Sublessee shall affix additional locks or bolts on any doors or windows, or shall place in the Facility lighting fixtures or any fixtures of any kind, without the consent of Sublessor first had and obtained, such locks, bolts and fixtures shall remain for the benefit of Sublessor, and without expense of removal or maintenance to Sublessor. If granted and permitted by the Sublessee and Sublessor, exterior signage will be permissible under the Sublessor's applicable ordinances under the conditions that the proper permitting and designs meet all applicable guidelines of the Sublessor, as well as have the prior written approval of the Lessor. Notwithstanding the foregoing, the Sublessor reserves the right, in its sole and exclusive discretion, to reject or require alterations to any proposed signage on the Property or the Facility. The exterior signage is the maintenance responsibility of the Sublessee. Upon expiration of this Sublease, the Sublessor shall have the privilege of retaining the exterior signage if Sublessor desires, provided, however, that if the Sublessor retains such signage, the Sublessee's name and/or trademark shall be removed therefrom. If Sublessor does not desire to retain the same, Sublessor may remove and store the same, and Sublessee agrees to pay the expense of removal and storage thereof. The provisions of this Section 12 shall not, however, apply to Sublessee's trade fixtures, equipment and movable furniture. Sublessee shall keep the waiting area portion of the Access Premises free for the general movement / access flow for commuters and customers.

13. HEAT. Sublessor does not warrant that heating service will be free from interruptions caused by strike, accident or other cause beyond the reasonable control of Sublessor or Lessor, or by renewal or repair of the heating apparatus in the Facility. Any such interruption shall not be deemed an eviction of any kind or disturbance of Sublessee's use and possession of Premises, nor render Sublessor or Lessor liable to Sublessee in damages. All claims against Sublessor or Lessor for injury or damage arising from failure to furnish heat are hereby expressly waived by Sublessee.

14. FIRE AND CASUALTY. In case the Premises shall be rendered untenable by fire, explosion or other casualty, Sublessor may, at its option, terminate this Sublease or repair the Premises within one hundred and eighty (180) days. If Sublessor does not repair the Premises within said time, or

the Facility containing the Premises shall have been wholly destroyed, the Term hereby created shall cease and terminate.

15. TERMINATION; HOLDING OVER. At the termination of the Term of this Sublease, by lapse of time or otherwise, Sublessee will yield immediate possession of the Premises to Sublessor, in good condition and repair, loss by fire and ordinary wear excepted, and will return the keys therefor to Sublessor at the Lombard Village Hall. If Sublessee retains possession of the Premises or any part thereof after the termination of the term by lapse of time or otherwise, then Sublessor may at its option within thirty (30) days after termination of the term serve written notice upon Sublessee that such holding over constitutes creation of a month to month tenancy, upon the terms of this Sublease for the time Sublessee remains in possession. If no such written notice is served then a tenancy at sufferance shall have been created, with a per diem rental of \$1,260 a month. Sublessee shall also pay to Sublessor all damages sustained by Sublessor resulting from retention of possession by Sublessee. The provisions of this Section 15 shall not constitute a waiver by Sublessor of any right of re-entry as hereinafter set forth; nor shall any other act in apparent affirmance of tenancy operate as a waiver of the right to terminate this Sublease for a breach of any of the covenants herein.

16. PROPERTY TAXES.

16.1 Definition of "Real Property Taxes." For purposes of this Sublease, the phrase "Real Property Taxes" shall include general real estate taxes and assessments payable with respect to the Property that are imposed by any authority having the power to tax any legal or equitable interest of Sublessor or Sublessee in the Property or the Premises, specifically including any tax on the leasehold interest created under this Sublease; provided, however, that assessments shall be prorated and divided into the maximum number of installments permitted by law and only the current portion shall be included in Real Property Taxes for any year of this Sublease. Notwithstanding the foregoing, Real Property Taxes shall not include (a) any inheritance, estate, succession, transfer, gift, franchise, or capital stock tax; (b) any income taxes arising out of or related to ownership and operation of income-producing real estate; (c) any excise taxes imposed upon Sublessor based upon gross or net rentals or other income received by it; or (d) assessments lienied against the Property prior to the date hereof.

16.2 Payment of Real Property Taxes. For each year of this Sublease, if the Premises (subleasehold interest) are not assessed as a separate tax parcel then Sublessee shall pay that portion of the Real Property Taxes directly attributable to the Sublessee's use of the Premises. If the Premises are assessed as a separate tax parcel, for each year of this Sublease, Sublessor shall provide Sublessee with a copy of the tax statement and Sublessee shall pay the Real Property Taxes for the Premises directly to the taxing authority prior to delinquency. Sublessee shall pay Real Property Taxes only as such taxes become due and payable during the Term.

16.3 Personal Property Taxes. Sublessee shall pay, prior to delinquency, all personal property taxes assessed against Sublessee directly and applicable to its personal property located in the Premises.

17. INSURANCE; INDEMNITY.

This item is under review by Union Pacific Railroad and will change.

17.1 Sublessee's Insurance. During the Term of this Sublease, Sublessee shall obtain and keep in full force and effect, the following insurance which may be provided under blanket insurance policies covering other properties as well as the Premises and shall be maintained with an insurance company with an A.M. Best Company ("Best's") rating of at least A- and a Best's financial performance rating of at least 7. Upon Sublessor's request, Sublessee will provide Sublessor with a certificate(s) evidencing such insurance and a receipt indicating up-to-date payment of all premiums.

17.1.1 Liability Insurance. Personal injury, bodily injury and property damage insurance (to include without limitation contractual liability insurance covering Sublessee's indemnity obligations under Section 18.4) naming Sublessor, as well as Lessor and their respective officers, agents and employees, as additional insureds as their interest may appear from time to time, against liability arising out of Sublessee's use, occupancy, or maintenance of the Premises, the Access Premises and the Facility. Such insurance shall include an "each occurrence" limit and a general aggregate limit of not less than that which is required by the Village and the Union Pacific Railroad Sublessee's insurance shall be primary with respect to any claim arising out of events that occur in the Premises and the all areas in or near the Facility.

17.1.2 Property Insurance. Commercial property form insurance with a special form endorsement providing coverage on a replacement cost basis for Sublessee's fixtures, equipment and inventory in the Premises. During the Term, Sublessee shall use the proceeds from any such policy or policies of insurance for the repair or replacement of the insured property.

17.1.3 Each insurance policy and certificate shall contain a provision indicating that it cannot be modified, amended, canceled or non-renewed without at least thirty (30) days advance written notice to the Sublessor.

17.3 Waiver of Subrogation. Neither Sublessor nor Sublessee shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or other tangible property, or any resulting loss of income and benefits, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees if any such loss or damage is covered by insurance benefitting the party suffering such loss or damage or was required to be covered by insurance pursuant to this Sublease. Sublessee shall require their respective insurance companies to include a standard waiver of subrogation provision in its policy.

17.4 Indemnification by Sublessee. Sublessee shall defend, protect, indemnify, and hold Sublessor, Lessor, and Sublessor's and Lessor's agents, officers, directors, employees and contractors harmless against and from any and all injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) arising in connection with any and all third party claims arising directly or indirectly out of (a) injuries occurring within the Premises; (b) any intentional acts or negligence of Sublessee or Sublessee's agents, officers, employees, or contractors; (c) any breach or default in the performance of any obligation on Sublessee's part to be performed under this Sublease; or (d) the failure of any representation or warranty made by Sublessee herein to be true when made. This indemnity does not include the intentional or negligent acts or omissions of Sublessor, Lessor, or their respective agents, officers, contractors or employees. This indemnity shall survive termination of this Sublease only as to claims arising out of events that occur prior to termination of this Sublease.

17.5 Indemnification by Sublessor. Sublessor shall defend, protect, indemnify, and hold Sublessee and Sublessee's agents, officers, directors, employees and contractors harmless against and from any and all injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) arising in connection with any and all third party claims arising out of any intentional acts or negligence of Sublessor or Sublessor's agents, officers, employees, or independent contractors. This indemnity does not include the intentional or negligent acts or omissions of Sublessee or its agents, officers, contractors or employees. This indemnity shall survive termination of this Sublease only as to claims arising out of events that occur prior to termination of this Sublease. Nothing contained in this Sublease shall constitute a waiver of any privileges, defenses or immunities which the Sublessor or its officers or employees may have under the Local Governmental and Governmental Employees Tort Immunity Act.

18. SUBLESSOR'S REMEDIES.

18.1 If Sublessee shall vacate or abandon the Premises or permit the same to remain vacant or unoccupied for a period of thirty (30) days, or in the case of the breach of any covenant in this Sublease contained, Sublessee's right to the possession of the Premises thereupon shall terminate with or (to the extent permitted by law) without any notice or demand whatsoever, and the mere retention of possession thereafter by Sublessee shall constitute a forcible detainer of the Premises; and if the Sublessor so elects, but not otherwise, and with or without notice of such election or any notice or demand whatsoever, this Sublease shall thereupon terminate, and upon the termination or Sublessee's right of possession, as aforesaid, whether this Sublease be terminated or not, Sublessee agrees to surrender possession of the Premises immediately, without the receipt of any notice to quit or demand for possession of the Premises whatsoever, and hereby grants to Sublessor full and free license to enter into and upon the Premises or any part thereof, to take possession thereof with or (to the extent permitted by law) without process of law, and to expel and to remove Sublessee or any other person who may be occupying the Premises or any part thereof, and Sublessor may use such force in and about expelling and removing Sublessee and other persons as may reasonably be necessary, and Sublessor may re-possess itself of the Premises as of its former estate, but such entry of the Premises shall not constitute a trespass or forcible entry or detainer, nor a waiver of any covenant, agreement or promise in this Sublease contained, to be performed by Sublessee. Sublessee hereby waives all notice of any election made by Sublessor hereunder, notice to quit, demand for possession, and any and all notices and demand whatsoever, of any and every nature, which may or shall be required by any statute of this state relating to forcible entry and detainer, or to landlord and tenant, or any other statute, or by the common law, during the term of this Sublease or any extension thereof. After knowledge of any breach hereof by Sublessee, or the giving or making of any notice or demand, whether according to any statutory provision or not, or any act or series of acts except an express written waiver, shall not be construed as a waiver of Sublessor's rights to act without notice or demand or of any other right hereby given Sublessor, or as an election not to proceed under the provisions of this Sublease.

18.2 Sublessee's Defaults. The occurrence of any one or more of the following events shall constitute a default and breach of this Sublease by Sublessee:

(a) Except as otherwise provided in this Sublease, the failure by Sublessee to make any payment required to be made by Sublessee hereunder, as and when due, where such failure shall

continue for a period of seven (7) business days after Sublessor notifies Sublessee in writing of such failure;

(b) The failure by Sublessee to observe or perform any of the covenants, conditions, or provisions of this Sublease to be observed or performed by Sublessee, other than the payment of sums due hereunder, where such failure shall continue for a period of thirty (30) days after written notice thereof from Sublessor to Sublessee; provided, however, that if the nature of Sublessee's default is such that more than thirty (30) days are reasonably required for its cure, then Sublessee shall not be deemed to be in default if Sublessee commences such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion;

(c) If Sublessee shall make an assignment for the benefit of creditors or file a petition in any court and bankruptcy, reorganization, composition or make an application in any such proceeding for the appointment of a trustee or receiver for all or any portion of its property;

(d) If any petition shall be filed against Sublessee in any bankruptcy, reorganization or insolvency proceedings, and such proceedings are not dismissed or vacated within one hundred twenty (120) days after such petition is filed; or

(e) If a receiver or trustee shall be appointed under state law for Sublessee for all or any portion of the property of Sublessee, and such receivership or trusteeship shall not be set aside within ninety (90) days after such appointment.

18.3 Remedies in Default. In the event of any such uncured default, Sublessor may pursue the following remedies in addition to any other remedies available at law or in equity:

(a) Sublessor may terminate Sublessee's right to possession of the Premises by any lawful means, in which case this Sublease shall terminate and Sublessee shall surrender possession of the Premises to Sublessor within ten (10) days after written notice from Sublessor to Sublessee. In such event, Sublessor shall be entitled to recover from Sublessee all damages incurred by Sublessor by reason of Sublessee's default including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises. Any damage sustained by Sublessor may be recovered by Sublessor, at Sublessor's option, at the time of the reletting, or in separate actions, from time to time, as such damages shall have been made easily ascertainable by successive relettings, or at Sublessor's option in a single proceeding deferred until the expiration of the Term of this Sublease (in which event Sublessee hereby agrees that the cause of action shall not be deemed to have accrued until the date of expiration of such term) or in a single proceeding prior to either the time of reletting or the expiration of the term of this Sublease.

(b) Sublessor may maintain Sublessee's right to possession, in which case this Sublease shall continue in effect whether or not Sublessee shall have abandoned the Premises. In such event, Sublessor shall be entitled to enforce all of Sublessor's rights and remedies under this Sublease; or

(c) Nothing contained herein shall prevent the enforcement of any claim Sublessor may have against Sublessee for anticipatory breach of the unexpired term of this Sublease. In the event of a breach or anticipatory breach by Sublessee of any of the covenants or provisions hereof, Sublessor shall have the right of injunction and the right to invoke any remedy allowed by law or in equity as if

reentry, summary proceedings and other remedies were not provided for herein. Sublessee hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Sublessee being evicted or dispossessed pursuant to the terms hereof, or in the event of Sublessor obtaining possession of the Premises by reason of Sublessee's default of any of the covenants and conditions of this Sublease, as set forth herein.

18.4 Cumulative Remedies. Except where otherwise expressly provided in this Sublease, no remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity and all those specifically provided herein.

19. RIGHT TO RELET. If Sublessee's right to the possession of the Premises shall be terminated in any way, the Premises, or any part thereof, may, but need not (except as provided by Illinois statute), be relet by Sublessor.

20. COSTS AND FEES. Sublessee shall pay upon demand all Sublessor's reasonable costs, charges and expenses, including reasonable fees of attorneys, agents and others retained by Sublessor, incurred in enforcing any of the obligations of Sublessee under this Sublease or in any litigation, negotiation or transaction in which Sublessor shall, without Sublessor's fault, become involved through or on account of this Sublease.

21. SUBLESSOR'S LIEN. Sublessor shall have a first lien upon the interest of Sublessee under this Sublease, to secure the payment of all moneys due under this Sublease, which lien may be foreclosed in equity at any time when money is overdue under this Sublease; and the Sublessor shall be entitled to name a receiver of said leasehold interest, to be appointed in any such foreclosure proceeding, who shall take possession of said Premises and who may relet the same under the orders of the appointing court.

22. REMOVAL OF OTHER LIENS. In event any lien upon Sublessor's title results from any act or neglect of Sublessee, and Sublessee fails to remove said lien within ten (10) days after Sublessor's notice to do so, Sublessor may remove the lien by paying the full amount thereof or otherwise and without any investigation or contest of the validity thereof, and Sublessee shall pay Sublessor upon request the amount paid out by Sublessor in such behalf, including Sublessor's costs, expenses and counsel fees.

23. REMEDIES NOT EXCLUSIVE. The obligations of Sublessee under this Sublease, shall not be deemed to be waived, released or terminated by the service of any five-day notice, other notice to collect, demand for possession, or notice that the tenancy hereby created will be terminated on the date therein named, the institution of any action of forcible detainer or ejectment or any judgment for possession that may be rendered in such action, or any other act or acts resulting in the termination of Sublessee's right to possession of the Premises.

24. NOTICES. Whenever a provision is made under this Sublease or by law for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and served either personally or sent by United States mail, certified, postage prepaid, or by pre-paid nationally recognized overnight courier service, addressed at the addresses set forth below or at such address as either party may advise the other from time to time.

To the Sublessor at: Village of Lombard
Attention Village Manager
255 E. Wilson Avenue
Lombard, Illinois 60148
(630) 620-5700 (Telephone)
(630) 620-8222 (Fax)

with a copy to: Thomas P. Bayer
Klein, Thorpe and Jenkins, Ltd.
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606
(312) 984-6400 (Telephone)
(312) 984-6444 (Fax)

To the Sublessee: A La Mode Ice Cream, Inc.
c/o Dimitris Nacopoulos
132 W. St. Charles Road
Lombard, Illinois 60148
(630) 576-5566 (Telephone)
(630) 889-1349 (Fax)

25. GENERAL PROVISIONS.

25.1 Provisions typed on this Sublease and riders, if any, attached to this Sublease and signed by Sublessor and Sublessee are hereby made a part of this Sublease.

25.2 Sublessee shall keep and observe such reasonable rules and regulations now or hereafter required by Sublessor, which may be necessary for the proper and orderly care of the Facility of which the Premises are a part.

25.3 All covenants, promises, representations and agreements herein contained shall be binding upon, apply and inure to the benefit of Sublessor and Sublessee and their respective heirs, legal representatives, successors and assigns.

25.4 The rights and remedies hereby created are cumulative and the use of one remedy shall not be taken to exclude or waive the right to the use of another.

25.5 The words "Sublessor" and "Sublessee" wherever used in this Sublease shall be construed to mean Sublessors or Sublessees in all cases where there is more than one Sublessor or Sublessee, and to apply to individuals, male or female, or to firms or corporations, as the same may be described as Sublessor or Sublessee herein, and the necessary grammatical changes shall be assumed in each case as though fully expressed. If there is more than one Sublessee the warrant of attorney in Section 16 is given jointly and severally and shall authorize the entry of appearance of, and waiver of issuance of process and trial by jury by, and confession of judgment against any one or more of such

Sublessees, and shall authorize the performance of every other act in the name of and on behalf of any one or more of such Sublessees.

25.6 Estoppel Certificate. Sublessee shall, no more than twice in any year of this Sublease, and upon not less than thirty (30) days prior written notice from Sublessor, execute, acknowledge and deliver to any prospective purchaser or mortgagee, or to Sublessor on such party's behalf a statement in writing, (a) certifying that this Sublease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Sublease, as so modified, is in full force and effect); (b) stating the date to which the other charges are paid, if any; and (c) acknowledging that there are not, to the actual knowledge of the person executing such certificate, any uncured defaults on the part of Sublessor hereunder, or specifying such defaults, if any, which are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises.

25.7 Authority. Each of the Sublessor and Sublessee hereby represents and warrants that this Sublease has been duly authorized, executed and delivered by and on its behalf and constitutes such party's valid and binding agreement in accordance with the terms hereof.

25.8 Time of Essence. Time is of the essence to the parties executing this Sublease.

25.9 Interpretation. Paragraph and Section headings are not a part hereof and shall not be used to interpret the meaning of this Sublease. This Sublease shall be interpreted in accordance with the fair meaning of its words and both parties certify they either have been or have had the opportunity to be represented by their own counsel and that they are familiar with the provisions of this Sublease, which provisions have been fully negotiated, and agree that the provisions hereof are not to be construed either for or against either party as the drafting party.

25.10 Incorporation of Prior Agreements; Amendments. This Sublease contains all agreements of the parties as of the date hereof with respect to any matter mentioned herein. No prior agreement, correspondence or understanding pertaining to any such matter shall be effective to interpret or modify the terms hereof. This Sublease may be modified only in writing, signed by the parties in interest, at the time of the modification. Sublessor specifically acknowledges that Sublessee's employees at the Premises do not have authority to modify the Sublease or to waive Sublessee's rights hereunder.

25.11 Waivers. No waiver by Sublessor or Sublessee of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Sublessee or Sublessor of the same or any other provision. A party's consent to or approval of any act shall not be deemed to render unnecessary obtaining such party's consent to or approval of any subsequent act. No waiver shall be effective unless it is in writing, executed on behalf of Sublessor or Sublessee by the person to whom notices are to be addressed.

25.12 Sublessor's Access. Sublessor, Lessor, Sublessor's agents, and Lessor's agents shall have the right to enter the Premises upon twenty-four (24) hours prior written notice for the purpose of inspecting the same, showing the same to prospective purchasers or lenders, and making such alterations, repairs, improvements or additions to the Premises or to the Facility as Sublessor or Lessor deems necessary or desirable. Notwithstanding the foregoing, in the event of an emergency requiring such entry onto the Premises, Sublessor or Lessor may give Sublessee shorter notice in any manner that is practicable under the circumstances. Sublessor may, at any time, place on or about the Premises an

ordinary "For Sale" sign, and Sublessor may at any time during the last ninety (90) days of the Term, place on or about the Premises an ordinary "For Lease" sign.

25.13 Only Sublessor/Sublessee Relationship. Nothing contained in this Sublease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Sublessor and Sublessee. Sublessor and Sublessee expressly agree that any act of the parties hereto shall not be deemed to create any relationship between Sublessor and Sublessee other than the relationship of Sublessor and Sublessee.

25.14 Brokers. Sublessor and Sublessee each represent to the other that they have not dealt, directly or indirectly, in connection with the leasing of the Premises, with any other broker or person entitled to claim a commission or leasing fees. In no event may this Sublease be construed to create any express or implied obligation on the part of Tenant to perform this Sublease on behalf of any broker (or any person claiming a commission or leasing fee) as primary obligee or as a third party beneficiary. Sublessor and Sublessee each shall indemnify and hold each other harmless from any loss, liability, damage, or expense (including without limitation reasonable attorneys' fees) arising from any claim for a commission or leasing fee arising out this transaction made by any unidentified broker or other person with whom such party has dealt.

26. **SEVERABILITY.** If any clause, phrase, provision or portion of this Sublease or the application thereof to any person or circumstance shall be invalid, or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this Sublease nor any other clause, phrase, provision or portion hereof, nor shall it affect the application of any clause, phrase, provision or portion hereof to other persons or circumstances.

WITNESS the hands and seals of the parties hereto, as of the Date of Sublease stated above.

SUBLESSEE:

_____(SEAL) _____(SEAL)
By:

ATTEST:

_____(SEAL) _____(SEAL)
By:

SUBLESSOR:

 (SEAL) _____ (SEAL)
By: William J. Mueller, President

ATTEST:

 (SEAL) _____ (SEAL)
By: Brigitte O'Brien Village Clerk

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS
COUNTY OF DuPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that William J. Mueller, personally known to me to be the President of the Village of Lombard, and Brigitte O'Brien, personally known to me to be the Village Clerk of said municipal corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Board of Trustees of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 23RD day of FEBRUARY, 2009.

Commission expires June 10, 2009

Barbara A Johnson
Notary Public



STATE OF ILLINOIS)
) SS
COUNTY OF DuPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named _____, are personally known to me to be the _____ of A La Mode Ice Cream Inc., and also personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ respectively, and that they appeared before me this day in person and severally acknowledged that as such _____ they signed and delivered the said instrument, and caused the corporate seal of said company to be affixed thereto, pursuant to authority given by the principals of said company, as their free and voluntary act, and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this _____ day of _____, 2009.

Commission expires _____, _____.

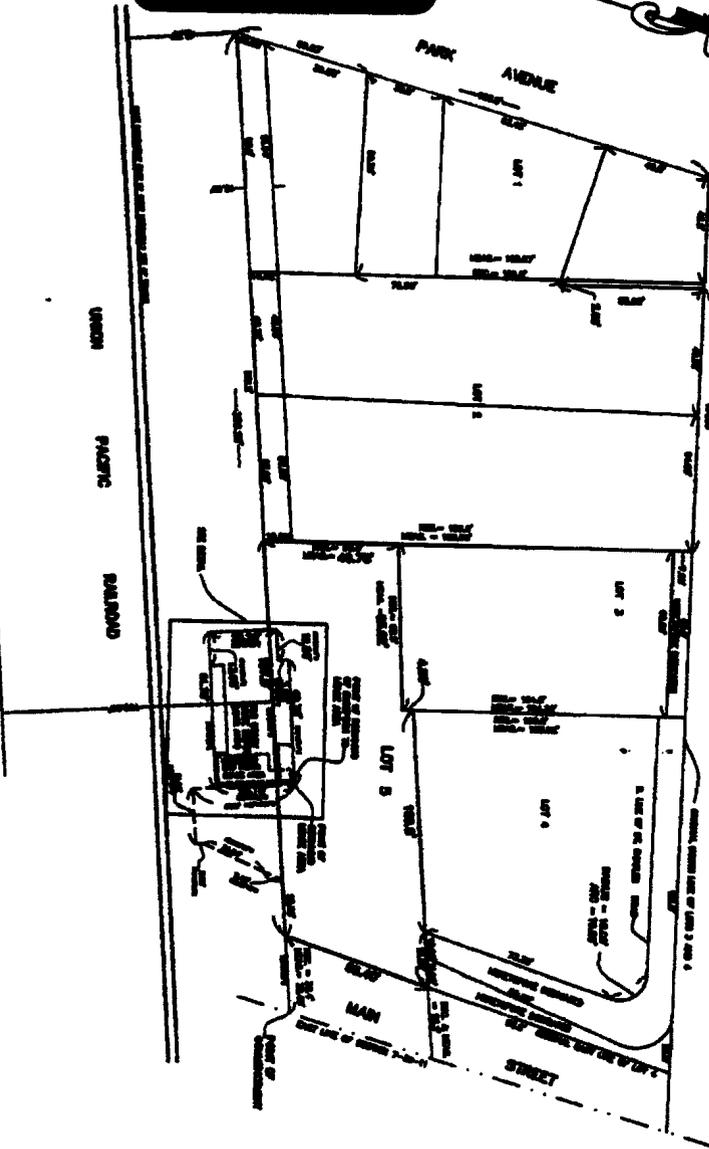
Notary Public

EXHIBIT

B

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THE INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 05/01/2014 BY 60322 UCBAW/STP

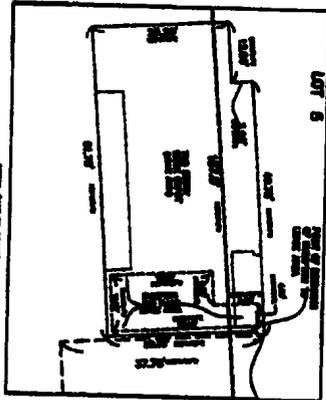


THE PROPERTY SHOWN ON THIS MAP IS THE PROPERTY OF THE CITY OF CHICAGO AND IS SUBJECT TO THE CITY'S ZONING ORDINANCES AND THE CITY'S PLANNING COMMISSION'S DECISIONS. THE CITY OF CHICAGO IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION SHOWN ON THIS MAP.

SHOWING LOT AREA AND 2ND FLOOR LOT AREA EXCEPT AT LOWLAND TRAIL STATION

EXHIBIT

LOT	AREA	2ND FLOOR AREA
LOT 1		
LOT 2		
LOT 3		
LOT 4		
LOT 5		



SCALE OF 1/8" = 1'-0"

