

JAMES McMANIS (40958)
WILLIAM FAULKNER (83385)
SHARON KIRSCH (157157)
McMANIS FAULKNER & MORGAN
A Professional Corporation
50 West San Fernando Street, 10th Floor
San Jose, California 95113
Telephone: 408-279-8700
Facsimile: 408-279-3244

Attorneys for Defendant
DOROTHY M. HIURA TRUST

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ERNESTINA SALDANA-NEILY,

Plaintiff,

vs.

TACO BELL OF AMERICA, INC.;
DOROTHY M. HIURA TRUST; and DOES
1-25; HEDIA PETROLEUM, INC., dba
CAMPBELL UNION 76;
BOZORGHADAD TRUST; and, DOES 26-
50, Inclusive,

Defendants.

DOROTHY M. HIURA TRUST,

Cross-Claimant,

vs.

TACO BELL CORPORATION; and DOES
1-20, inclusive,

Cross-Defendant

C04-4571 MJJ

**DEFENDANT, DOROTHY M. HIURA
TRUST'S, ANSWER TO PLAINTIFF'S
COMPLAINT, AND CROSS CLAIM
AGAINST TACO BELL
CORPORATION**

Hon. Martin J. Jenkins
Action Filed: October 28, 2004
Trial Date: Not Yet Set

Jury Trial Demanded

ANSWER

Defendant, DOROTHY M. HIURA TRUST (“Defendant”), on behalf of itself, by and through its attorneys, answers the allegations set forth in Plaintiff, Ernestina Saldana-Neily’s (“Plaintiff”) Complaint (the “Complaint”), and admits, denies, and alleges as follows:

1. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1, Page 1:28-2:9 of the Complaint and on that basis denies the allegations. Defendant responds that the allegations contained in Paragraph 1, Page 2:9-2:13 of the Complaint set forth legal conclusions and therefore no response is required. Finally, Defendant responds that Paragraph 1, Page 2:13-2:22 of the Complaint constitutes a prayer for relief and therefore no response is required.

2. Defendant responds that the allegations contained in Paragraph 2 of the Complaint set forth legal conclusions and therefore no response is required.

3. Defendant responds that the allegations contained in Paragraph 3 of the Complaint set forth legal conclusions and therefore no response is required.

4. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint, and on that basis denies the allegations. Defendant further responds that the allegations contained in Paragraph 4 of the Complaint set forth legal conclusions and therefore no response is required.

5. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 5, Page 3:10-12 and certain portions of Page 3:14-25 of the Complaint and on that basis denies the allegations. Defendant further responds that the allegations contained in Paragraph 5 of the Complaint set forth legal conclusions and therefore no response is required. Defendant admits that it is the owner and lessor of the real property located at 1546 Camden Avenue, Campbell, California (“the Restaurant”). Defendant further admits that the Restaurant is a public accommodation.

6. Defendant responds that the allegations contained in Paragraph 6 of the Complaint set forth legal conclusions and therefore no response is required.

1 7. Defendant responds that the allegations contained in Paragraph 7 of the
2 Complaint set forth legal conclusions and therefore no response is required, except that
3 Defendant admits that it is the owner and lessor of the Restaurant. Defendant is informed and
4 believes that Taco Bell Corp., a California corporation, is the lessee of the Taco Bell restaurant
5 located at 3145 S. Bascom Avenue, Campbell, California. Defendant lacks sufficient knowledge
6 or information to form a belief as to the truth of the allegations contained in Paragraph 7 relating
7 to Defendant, Taco Bell of America, Inc., or to Defendants, Hedia Petroleum, Inc. and
8 Bozorghadad Trust (hereafter jointly "Union 76), and on that basis denies the allegations. To the
9 extent a further response is required, Defendant denies the allegations contained in Paragraph 7
10 of the Complaint.

11 8. Defendant lacks sufficient knowledge or information to form a belief as to the
12 truth of the allegations contained in Paragraph 8 of the Complaint and on that basis denies the
13 allegations.

14 9. Defendant responds that the allegations contained in Paragraph 9 of the
15 Complaint set forth legal conclusions and therefore no response is required. Defendant lacks
16 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
17 Paragraph 9 relating to Union 76 and on that basis denies the allegation. To the extent a further
18 response is required, Defendant denies the allegations contained in Paragraph 9 of the
19 Complaint.

20 10. Defendant lacks sufficient knowledge or information to form a belief as to the
21 truth of the allegations contained in Paragraph 10 of the Complaint and on that basis denies the
22 allegations. To the extent a further response is required, Defendant denies the allegations
23 contained in Paragraph 10 of the Complaint.

24 11. Defendant lacks sufficient knowledge or information to form a belief as to the
25 truth of the allegations contained in Paragraph 11 of the Complaint and on that basis denies the
26 allegations. To the extent a further response is required, Defendant denies the allegations
27 contained in Paragraph 11 of the Complaint.

28 ///

1 12. Defendant lacks sufficient knowledge or information to form a belief as to the
2 truth of the allegations contained in Paragraph 12 of the Complaint, and on that basis denies the
3 allegations. To the extent a further response is required, Defendant denies the allegations
4 contained in Paragraph 12 of the Complaint.

5 13. Defendant responds that the allegations contained in paragraph 13 of the
6 Complaint set forth legal conclusions and therefore no response is required. Defendant further
7 responds that the allegations contained in Paragraph 13, Page 8:15-19 of the Complaint
8 constitute a prayer for relief and therefore no response is required.

9 14. Defendant responds that the allegations contained in Paragraph 14 of the
10 Complaint set forth legal conclusions and therefore no response is required. Defendant further
11 responds that the allegations contained in Paragraph 14, Page 8:23-27 of the Complaint
12 constitute a prayer for relief and therefore no response is required.

13 15. Defendant lacks sufficient knowledge or information to form a belief as to the
14 truth of the allegations contained in Paragraph 15 of the Complaint, and on that basis denies the
15 allegations. To the extent a further response is required, Defendant denies the allegations
16 contained in Paragraph 15 of the Complaint. Defendant further responds that the allegations
17 contained in Paragraph 15 of the Complaint constitute a prayer for relief and legal conclusion
18 and therefore no response is required. Defendant lacks sufficient knowledge or information to
19 form a belief as to the truth of the allegations contained in Paragraph 15 relating to Union 76 and
20 on that basis denies the allegations.

21 16. Defendant responds that the allegations contained in Paragraph 16 of the
22 Complaint constitute a prayer for relief and legal conclusions and therefore no response is
23 required; to the extent a response is required, Defendant denies that Plaintiff is entitled to seek
24 attorneys' fees under California Health and Safety Code Section 19953, California Civil Code
25 Sections 54.3 and 55, California Code of Civil Procedure Section 1021.5, or any other laws.

26 17. Defendant responds that the allegations contained in Paragraph 17 of the
27 Complaint constitute a prayer for relief and legal conclusions and therefore no response is
28 required.

1 18. Defendant responds that the allegations contained in Paragraph 18 of the
2 Complaint set forth legal conclusions and therefore no response is required. Defendant further
3 responds that the allegations contained in Paragraph 18 of the Complaint constitute a prayer for
4 relief and therefore no response is required; to the extent a response is required, Defendant
5 denies that Plaintiff is entitled to seek attorneys' fees under California Civil Code Sections 54.3
6 and 55 or California Code of Civil Procedure Section 1021.5.

7 19. Defendant repeats, realleges, and incorporates herein by this reference, each of its
8 respective statements, admissions and/or denials, as the case may be, to Paragraphs 1 through 18,
9 inclusive, of the Complaint.

10 20. Defendant responds that the allegations contained in Paragraph 20 of the
11 Complaint set forth legal conclusions and therefore no response is required.

12 21. Defendant responds that the allegations contained in Paragraph 21 of the
13 Complaint set forth legal conclusions and therefore no response is required. Defendant further
14 responds that the allegations contained in Paragraph 21 of the Complaint constitute a prayer for
15 relief and therefore no response is required; to the extent a response is required, Defendant
16 denies that Plaintiff is entitled to seek attorneys' fees under California Civil Code Section 52(a).

17 22. Defendant repeats, realleges, and incorporates herein by this reference, each of its
18 respective statement, admissions and/or denials, as the case may be, to Paragraphs 19 through 21,
19 inclusive, of the Complaint.

20 23. Defendant responds that the allegations contained in Paragraph 23 of the
21 Complaint, set forth legal conclusions and therefore no response is required.

22 24. Defendant responds that the allegations contained in Paragraph 24 of the
23 Complaint set forth legal conclusions and therefore no response is required.

24 25. Defendant responds that the allegations contained in Paragraph 25 of the
25 Complaint set forth legal conclusions and therefore no response is required.

26 26. Defendant responds that the allegations contained in Paragraph 26 of the
27 Complaint set forth legal conclusions and therefore no response is required.

28 ///

1 27. Defendant responds that the allegations contained in Paragraph 26 of the
2 Complaint set forth legal conclusions and therefore no response is required.

3 28. Defendant lacks sufficient knowledge or information to form a belief as to the
4 truth of the allegations contained in Paragraph 28 of the Complaint, and on that basis denies the
5 allegations. To the extent a further response is required, Defendant denies the allegations
6 contained in Paragraph 28 of the Complaint. Defendant further responds that the allegations
7 contained in Paragraph 28 of the Complaint set forth legal conclusions and therefore no response
8 is required.

9 29. Defendant lacks sufficient knowledge or information to form a belief as to the
10 truth of the allegations contained in Paragraph 29 of the Complaint, and on that basis denies the
11 allegations. To the extent a further response is required, Defendant denies the allegations
12 contained in Paragraph 29 of the Complaint. Defendant further responds that the allegations
13 contained in Paragraph 29 of the Complaint constitute a prayer for relief and therefore no
14 response is required.

15 30. Defendant lacks sufficient knowledge or information to form a belief as to the
16 truth of the allegations contained in Paragraph 30 of the Complaint, and on that basis denies the
17 allegations contained Paragraph 30 of the Complaint. Defendant further responds that the
18 allegations contained in Paragraph 30 of the Complaint constitute a prayer for relief and legal
19 conclusions and therefore no response is required.

20 31. Defendant lacks sufficient knowledge of information to form a belief as to the
21 truth of the allegations contained in Paragraph 31 of the Complaint, and on that basis denies the
22 allegations. To the extent a further response is required, Defendant denies the allegations
23 contained in Paragraph 31 of the Complaint. Defendant further responds that the allegations
24 contained in Paragraph 31 of the Complaint constitute a prayer for relief and legal conclusions
25 and therefore no response is required.

26 **ANSWER TO PRAYERS FOR RELIEF**

27 1. In response to pages 16-17 of the Complaint, paragraphs 1-5, these paragraphs
28 constitute prayers for relief and therefore no response is required. Nonetheless, Defendant

1 denies Plaintiff is entitled to any injunctive relief, preventative relief, or any other relief pursuant
 2 to 42 U.S.C. Section 12205, California Civil Code Section 52, California Civil Code Section 55,
 3 or California Health and Safety Code Section 19953, or any other statute; Defendant denies
 4 Plaintiff is entitled to any damages, statutory damages, general damages, or treble damages;
 5 Defendant denies Plaintiff is entitled to attorney's fees, litigation expenses and/or costs of this
 6 suite; and Defendant denies Plaintiff is entitled to any other relief under his Complaint.

7 **AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

8 Defendant alleges the following affirmative defenses with respect to the claims alleged in
 9 the Complaint, without assuming the burden of proof where the burden of proof rests on
 10 Plaintiff:

11 **FIRST AFFIRMATIVE DEFENSE**

12 1. This court lacks subject matter jurisdiction over this matter because there is no
 13 actionable wrong arising under the Americans with Disabilities Act of 1990 , 42 U.S.C. § 12101
 14 et seq.

15 **SECOND AFFIRMATIVE DEFENSE**

16 2. This court lacks pendant jurisdiction over all claims arising under California state
 17 law, including, but not limited to, claims under California Health and Safety Code § 19955 et
 18 seq., California Civil Code §§ 51, 51.5, 54 et seq., and California Business and Professions Code
 19 § 17200 et seq., because there is no actionable wrong arising under the Americans with
 20 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

21 **THIRD AFFIRMATIVE DEFENSE**

22 3. This court lacks subject matter jurisdiction over this matter because there is no
 23 actionable wrong arising under California Health and Safety Code § 19955 et seq.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 4. This court lacks subject matter jurisdiction over this matter because there is no
 26 actionable wrong arising under California civil Code §§ 54, 54.1, 54.3 et seq.

27 ///

28 ///

FIFTH AFFIRMATIVE DEFENSE

5. This court lacks subject matter jurisdiction over this matter because there is no actionable wrong arising under the Unruh Civil Rights Act, Cal. Civ. Code §§ 51, 51.5 et seq.

SIXTH AFFIRMATIVE DEFENSE

6. Defendant is performing all readily achievable architectural barrier removal, within its control, required by law, and therefore Plaintiff's Complaint against Defendant is barred.

SEVENTH AFFIRMATIVE DEFENSE

7. Defendant is performing all repairs to any architectural barrier with alternative methods of access as required by law, and therefore Plaintiff's Complaint against Defendant is barred.

EIGHTH AFFIRMATIVE DEFENSE

8. Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel, waiver, laches, and unclean hands.

NINTH AFFIRMATIVE DEFENSE

9. Some or all of Plaintiff's claims for relief are moot, and are therefore barred.

TENTH AFFIRMATIVE DEFENSE

10. Plaintiff has failed to state a claim upon which relief may be granted with respect to all counts alleged in the Complaint.

ELEVENTH AFFIRMATIVE DEFENSE

11. Plaintiff has not suffered any loss or harm as a result of any act or omission of Defendant and, therefore, Plaintiff's Complaint against Defendant is barred.

TWELFTH AFFIRMATIVE DEFENSE

12. Plaintiff has failed to mitigate her damages, if any, and therefore Plaintiff's Complaint against Defendant is barred.

THIRTEENTH AFFIRMATIVE DEFENSE

13. At all relevant times, Defendant has met all federal and state statutory and regulatory obligations owed to Plaintiff and all other individuals with disabilities, including

1 individuals in wheelchairs, if any, and therefore Plaintiff's Complaint against Defendant is
2 barred.

3 FOURTEENTH AFFIRMATIVE DEFENSE

4 14. At all relevant times, Defendant has complied with all of the Americans with
5 Disabilities Act final rules and Accessibility Guidelines, 28 C.F.R. Ch. 1, Part 36, and therefore
6 Plaintiff's Complaint against Defendant is barred.

7 FIFTEENTH AFFIRMATIVE DEFENSE

8 15. Plaintiff lacks standing to sue for alleged violations that were not directly
9 experienced by Plaintiff.

10 SIXTEENTH AFFIRMATIVE DEFENSE

11 16. As a separate and additional affirmative defense, Defendant alleges and avers that
12 the imposition of any punitive or exemplary damages in this matter would violate Defendant's
13 right to due process of law in violation of the California Constitution and of the United States
14 Constitution.

15 SEVENTEENTH AFFIRMATIVE DEFENSE

16 17. Plaintiff's claims for injunctive and monetary relief under the Americans with
17 Disabilities Act, 42 U.S.C. §12101 et seq., California Civil Code §§ 54, 54.1, 54.3 et seq., and
18 the Unruh Civil Rights Act, Cal. Civ. Code §§ 51, 51.5 et seq. (collectively, the "ADA Claims"),
19 are duplicative of the claims asserted in the first-filed action entitled Moeller v. Taco Bell Corp.,
20 Case No. C02 5849 MJJ (N.D. Cal. Dec. 17, 2002) (the "Moeller Action"), a certified mandatory
21 class action of which Plaintiff is a class member, and therefore Plaintiffs' ADA Claims against
22 Defendant are barred.

23 EIGHTEENTH AFFIRMATIVE DEFENSE

24 18. The court lacks federal question jurisdiction over all claims arising under
25 California state law, including, but not limited to, claims under California Health and Safety
26 Code § 19955 et seq., California Civil Code §§ 51, 51.5, 54 et seq., because Plaintiff's claims
27 under the Americans with Disabilities Act of 1990, 42. U.S.C. §12101 et seq., are barred by the
28 first-filed Moeller Action.

NINETEENTH AFFIRMATIVE DEFENSE

19. Plaintiff is a member of the certified mandatory class in the Moeller Action and her ADA Claims against Defendant are duplicative and substantially identical to the claims asserted against Defendant in the Moeller Action, and therefore Plaintiffs' ADA Claims against Defendant should be dismissed or stayed in favor of the Moeller Action.

RESERVED

20. Defendant presently has insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. Defendant hereby gives notice that it intends to rely upon any other defenses that may become available or apparent during the discovery proceedings in this matter and hereby reserve its right to amend the Answer and to assert any such affirmative defenses(s).

CROSS-CLAIM

PARTIES

1. Cross-claimant DOROTHY M. HIURA TRUST ("the Hiura Trust") is, and at all times herein mentioned was, a trust organized and existing under the laws of the State of California. Dorothy M. Hiura ("Ms. Hiura") is the trustor of the Hiura Trust.

2. Cross-claimant is informed and believes, and thereon alleges, that cross-defendant Taco Bell Corporation ("Taco Bell") is, and all times herein mentioned was, a corporation organized and existing under the laws of the State of California with its principal place of business in Irvine, Orange County, California, and that Taco Bell of America, Inc., a named defendant in the complaint, is a subsidiary of Taco Bell Corporation.

3. Cross-claimant is ignorant of the true names and capacities of cross-defendants DOES 1-20, inclusive, and therefore cross-claims against these cross-defendants by such fictitious names. The Hiura Trust will amend this cross-claim to allege their true names and capacities when ascertained.

GENERAL ALLEGATIONS

4. The Hiura Trust is the current owner of real property located at 1546 Camden

1 Avenue, County of Santa Clara, California (“the Restaurant” or “the Property”). The Hiura Trust
2 obtained ownership of the property in or about 1990. Up until that time, the property was owned
3 by Ms. Hiura.

4 5. On March 18, 1969, Ms. Hiura and Taco Bell entered into a lease agreement for
5 the Property. A copy of the lease agreement is attached hereto as Exhibit A and incorporated by
6 reference. The parties understood that Taco Bell would use the property for a Taco Bell retail
7 food outlet. The lease was to run for twenty (20) years, beginning on the day that Taco Bell
8 opened the store for business to the public.

9 6. Pursuant to paragraph 5 of the lease, Taco Bell has the right to make
10 “improvements, additions, or alterations to the premises as it desires[.]”

11 7. Pursuant to paragraph 6 of the lease, Taco Bell will, at its own expense, will
12 “maintain and keep in an orderly condition and in good state of repair all drive-in restaurant
13 areas, both interior and exterior of demised premises and parking areas[.]”

14 8. There have been a total of five (5) amendments to the original lease agreement.
15 None of these amendments altered or modified the provisions of paragraphs 5 or 6 as set forth in
16 the original lease agreement.

17 9. The Complaint alleges that the Restaurant fails to comply with provisions of the
18 laws of the State of California and the United States, relating to disabled persons access.

19 10. Taco Bell is a corporation with numerous retail food outlets throughout
20 California, as well as the United States. As a national company, Taco Bell should be well aware
21 of the requirements, mandates, and prohibitions, of the applicable law.

22 11. During the period that Taco Bell has leased the property, it has undertaken
23 upgrades, improvements, and remodels of the retail food outlet located on the property.

24 12. Taco Bell, as the lessee, had the right to made alterations to the property.

25 13. Taco Bell, as the lessee, was required to maintain and keep in a good state of
26 repair, both the interior and exterior locations of the property, including the parking lot.

27 14. Maintaining the property in a good state of repair and keeping it in an orderly
28 condition required Taco Bell to comply with applicable law.

1 WHEREFORE, Cross-claimant prays for judgment as set forth below.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Defendant and The Hiura Trust, prays for judgment as follows:

- 4 1. That the Court dismiss Plaintiff's Complaint with prejudice, orders that Plaintiff
5 take nothing by this action, and enters judgment in Defendant's favor;
- 6 2. For an amount, according to proof, as indemnity by Cross-defendant for liability
7 incurred as alleged above;
- 8 3. For attorney's fees and costs incurred in defending and resolving the claim of
9 Ernestina Saldana-Neily;
- 10 4. For attorney's fees and costs herein incurred for the prosecution of the cross-claim
11 against Taco Bell; and
- 12 5. For such other and further relief such other and further relief as the Court deems
13 just and equitable.

14 DATED: January 21, 2005

McMANIS FAULKNER & MORGAN

16 
17 WILLIAM FAULKNER

18 Attorneys for Defendant
19 DOROTHY M. HIURA TRUST

20 **DEMAND FOR JURY TRIAL**

21 To the extent permitted by law, defendant and cross-claimant, Dorothy M. Hiura Trust,
22 respectfully demands a trial by jury in the above-entitled cause.

24 DATED: January 21, 2005

McMANIS FAULKNER & MORGAN

25 
26 WILLIAM FAULKNER

27 Attorneys for Defendant
28 DOROTHY M. HIURA TRUST

EXHIBIT A

TACO BELL, A CALIFORNIA CORPORATION

STANDARD FORM LEASE AGREEMENT

This Lease is made this 18th day of March19 69, by and between Dorothy M. Hiura

_____, hereinafter referred to as "Lessor", and TACO BELL, a California Corporation, hereinafter referred to as "Lessee".

1. **DESCRIPTION OF DEMISED PREMISES:** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, that certain real property located in the City of _____, County of Santa Clara, State of California, described generally as follows: Lot No. 11, Tract No. 640, Olympia Tract Unit No. 1.

together with all appurtenances, easements, and rights-of-way thereunto pertaining and more particularly described in Exhibit "A" provided by Lessor and attached hereto and made a part hereof.

2. **TERM:** The term of this lease shall be for a period of twenty (20) years, commencing on the first day of the first calendar month next following the "date of possession". The "date of possession" shall be defined as that date upon which Lessee opens its store for business to the public.

3. **RENTAL:** Said premises are hereby leased for the above mentioned term at a monthly rental of Seven hundred twenty-five dollars (\$725.00) (See paragraph 30) payable in advance each month. The sum of \$1,450.00 1,600.00, as payment of first and last months' rent shall be paid by the Lessee to the Lessor as follows:

\$ 400.00 within 15 days of execution

\$ 1,050.00 1,200.00 upon ground breaking

CONSTRUCTION:

a. Lessor agrees to construct improvements on the said premises to include, but not limited to a building, driveways, paved area, and signs in accordance with the Final Plans and Specifications approved by Lessor and Lessee and referred

to be Exhibit "C", and the specifications of the Plot Plan attached to Exhibit "C". In the event that Exhibit "C" is not prepared and ready to be included as a part of this agreement, then this agreement will nevertheless be effective, and Lessee will furnish the said Plot Plan to Lessor prior to the commencement of construction herein provided for. The Plot Plan will be prepared by the Lessee and furnished to the Lessor, and shall be initialed by each of the parties hereto and attached to this lease agreement as Exhibit "C". The cost of the buildings and improvements shall include the cost of the building permit, a reasonable charge for the plans and specifications, a reasonable charge for the cost of preparation of the Plot Plan, and a contractor's completion bond.

b. Lessor agrees to construct and pay for the cost of bringing all utilities to the premises, pay for any necessary street improvement costs including curbs and gutters, drainage fees, assessments, bonds required in connection with the performance of the foregoing items, and for any preparation of the soil or any other cost necessary to put the said lot in a condition whereby the buildings and driveways may be constructed as provided in the previous paragraph.

c. Lessor shall first obtain Lessee's written approval of the construction contract entered into by Lessor for the construction of said buildings and improvements and shall obtain Lessee's written approval of any change orders under the said contract. Lessor shall pay for the entire cost of the construction of said buildings and improvements and shall require the contractor to furnish a completion bond. In the event that the cost of the construction of the buildings and improvements exceeds the sum of thirty-five thousand dollars dollars (\$ 35,000.00), after deducting all of the costs and expenses described in sub-paragraph (b) above, then the said rental in Paragraph 3 shall be increased monthly by an amount equal to 1/12th of 10% of said excess for the entire term of this lease. Lessee shall not be bound to any increase in rental unless it has approved the construction contract and all change orders in writing, nor shall it be bound to any increase in the event the construction costs exceed the contract price through no fault of Lessee.

d. Lessee shall at all times have the right to inspect the progress of construction of improvements as provided herein. If Lessee shall give Lessor notice

of faulty construction or any other deviation from the Plans and Specifications and Final Plot Plan, Lessor agrees to cause its contractors or subcontractors to promptly make corrections. However, neither the privilege herein granted to Lessee to make such inspections, nor the making of such inspections by Lessee, shall operate as a waiver of any right of Lessee to require good and workmanlike construction and improvements erected in accordance with the said plans and specifications. Lessor agrees that it will perform or cause to be performed all work upon the premises and take such steps as may be requisite to deliver the premises to Lessee in a fully completed condition ready for the lawful use and occupancy of a restaurant in accordance with all applicable laws, ordinances and licensing and consent requirements and the standards established by Lessee for its restaurant and in compliance with covenants and restrictions of record.

e. Lessor shall proceed with all diligence to obtain a building permit for the construction of the TACO BELL restaurant building. However, in the event Lessor does not obtain a building permit within ⁹⁰ ~~60~~ days of execution of this lease, Lessee shall have the option to cancel this lease. Lessor agrees that he will commence said construction within 30 days after obtaining a building permit, and will with reasonable diligence continuously carry on construction to completion. In the event that said building is not completed within 120 days from the date that a building permit is issued, Lessee shall have the option to cancel this lease upon written notice to Lessor. Lessor shall have the right to extend the completion date of the construction of said TACO BELL restaurant when such delays are occasioned by acts of God, industry-wide strikes, or acute material shortages.

f. In the event that the building or improvements cannot be built as provided by the approved plans and specifications as a result of the requirements of the local governing authorities or local zoning regulations, or reasons beyond the control of Lessee, Lessee shall have the right at its option, to cancel this lease.

g. Within 15 days after the execution of this lease, Lessor shall provide Lessee at Lessor's expense a preliminary title report showing the legal description of the premises, and any easements, encumbrances or other matters affecting the title to said property. Within 30 days after the execution of this lease, Lessor shall provide Lessee at ^{Lessee's} ~~Lessor's~~ expense a Survey of said premises by

a licensed surveyor and shall show the location, area boundaries and dimensions of the premises to be in conformity with the foregoing recitals, their relative locations with respect to the streets or highways in the vicinity of the premises, the location of all utility lines, the location of any easements or reservations, the elevations of the corner and center points of the leased premises, and that there are no encroachments of any improvements adjoining the premises. If any utilities are to be brought into the premises or any access between the premises and a public highway or over either Lessor's or other's property beyond the confines of the premises, said survey shall also show the locations, area and dimensions of any easement rights required. If any survey or preliminary title report discloses that title is not vested in Lessor named, unsuitable easements or encumbrances, or that the locations, area dimensions and shape of the premises in question are not as represented by the Lessor, then Lessee shall have the right to terminate this lease and declare same null and void and of no force and effect.

h. Lessee shall provide at its expense kitchen equipment and exterior and interior signs required by Lessee. However, Lessor shall pay for the installation thereof as part of his construction contract.

5. USE OF DEMISED PREMISES: Lessee may use the demised premises for any commercial purpose. It is understood that Lessee shall use the premises for a TACO BELL retail food outlet and Lessor warrants that the property may be used for this purpose and is suitable for this use as provided in all applicable zoning ordinances or other governmental regulations. Lessee shall have the right to make such improvements, additions, or alterations to the premises as it desires, and shall have the right to remove them from the premises upon the termination of this lease major provided they have not been made a substantial part of the building and can be removed without damage. Lessee shall keep the demised premises free from any liens arising out of any work performed, material furnished, or obligations incurred by Lessee.

6. MAINTENANCE AND REPAIRS: Lessee covenants and agrees at its sole cost and expense, at all times during the term of this lease to maintain and keep in an orderly condition and in good state of repair all drive-in restaurant areas, both interior and exterior of demised premises and parking areas; provided however, that Lessor agrees to correct any defects in construction which appear within one year after completion of the improvements herein described.

7. COVENANT OF TITLE AND QUIET ENJOYMENT: Lessor covenants that Lessor is well seized of and has good title to lease the premises, does warrant and will defend the title thereto, and will indemnify Lessee against any damage and expense which Lessee may suffer by reason of any lien, encumbrance, restriction or defect in the title or description herein of the premises. If at any time Lessor's title or right to receive rent hereunder is disputed, or there is a change of ownership of Lessor's estate by act of the parties or operation of law, Lessee may withhold rent thereafter accruing until Lessee is furnished proof satisfactorily as to the party entitled thereto.

8. TAXES, REAL AND PERSONAL: Lessee shall pay during the term hereof all real property taxes and assessments levied upon the leased premises which are included as a part of the regular county tax bill upon the real property. Lessee shall also pay all taxes levied against personal property, trade fixtures and inventory placed by Lessee in, on or about the leased premises.

9. INSURANCE: Lessee hereby covenants and agrees at all times during the term hereof to obtain and maintain and keep in force for the mutual benefit of Lessor and Lessee general public liability insurance against claims for personal injury, death or property damage occurring in, on or about the leased premises or sidewalks or premises adjacent to the leased premises in the following amounts; one bodily injury per accident, \$100,000; one or more bodily injury per accident, \$300,000; property damage per one accident, \$25,000. Lessee shall provide fire insurance and extended coverage in amount equal to 100% value of improvements, copy provided to Lessor. In event of cancellation, Lessor shall be notified 30 days prior to cancellation in writing.

10. PUBLIC UTILITIES: Lessee agrees to pay all charges for water, gas, electricity, or other public utilities incurred by it in connection with the demised premises.

11. MECHANICS LIENS: Lessee agrees to keep the premises free and clear of any lien or encumbrance of any kind whatsoever created by Lessee's acts or omissions.

12. SUBLETTING AND ASSIGNMENT: It is understood that Lessee is in the business of franchising TACO BELL locations to franchisees for their individual operation. Lessee shall have the right to assign or sublet the said premises to other parties; however, in the event said leased premises are sublet, or this lease

is assigned, Lessor hereina shall not be relieved of the obligation to perform any of the terms and conditions of this lease.

13. CONDEMNATION: If, without Lessee's fault, the operation of the premises of a restaurant, or the use of the premises therefor, is prevented, limited or impaired in whole or in part, by any act or omission of any governmental authority, or becomes illegal, and such condition continues for thirty (30) days; or if such operation or use is at any time materially impaired or affected by the closing, relocation, alteration or improvement of any street adjoining the premises; or if all or any part of the premises is condemned for public or quasi-public use, Lessee may terminate this lease by giving Lessor at least thirty (30) days written notice.

In the event that Lessee does not exercise its right to terminate this lease, the ~~Said loss of business shall be substantiated by the Lessee~~ rent shall be reduced proportionate to the resulting loss of business. The proceeds of any condemnation award shall ~~belong to the~~ Lessor ~~but~~ Lessee ~~may negotiate for~~ its own interests, said negotiation and any resultant compensation being separate and aside from any reduced rent provided for above.

14. BINDING ON SUCCESSORS AND ASSIGNS: The terms, conditions, and covenants of this lease shall be binding upon and shall inure to the benefit of each of the parties hereto, their heirs, personal representatives, successors, or assigns and shall run with the land; and where more than one party shall be Lessors under this lease, the word Lessor whenever used in this lease shall be deemed to include all parties herein-jointly and severally.

15. HOLDING OVER: Any holding over after the expiration of the term of this lease with the consent of the Lessor shall be construed to be a tenancy from month to month on the same terms and conditions herein specified so far as applicable, and at the last prevailing rental.

16. FIRST RIGHT OF REFUSAL: In the event Lessor shall negotiate a sale of the demise premises during the term of this lease, Lessor shall first offer in writing the said premises to Lessee upon the same terms and conditions as the proposed sale. Lessee shall have the right to purchase the said premises upon the terms and conditions offered. In the event that Lessee does not exercise this right to purchase within 15 days, Lessor may then sell the said premises to such other person as he may desire upon those same conditions and terms.

17. NO COMPETITION CLAUSE: In the event the leased premises are a part of a shopping center, Lessor agrees it will not lease to or permit to operate any portion of the said shopping center to a Lessee, or otherwise engage in the business of operating a retail food outlet.

18. TRADE FIXTURES: Lessor shall have the right to remove any trade fixtures and equipment from the premises upon the termination of this lease or at any time prior to termination if not in default. It is understood that Lessor under no circumstances use or acquire any interest in fixtures bearing the TACO

BELL name, or symbol, registered or otherwise. Lessee shall reimburse Lessor for cost of repairing any physical injury to building upon removal of said trade fixtures and equipment.

19. SUBORDINATION: Lessee shall subordinate this lease to any loan on said property provided, however, that the terms and conditions of said loan are approved by Lessor. Lessee shall not withhold approval unreasonably.

20. SHORT FORM LEASE: A short form of this lease shall be executed by the parties and recorded with the county recorder in the county wherein the premises are located.

21. TOTAL OR PARTIAL DESTRUCTION: In case the demised premises or the building or buildings wherein the demised premises are located shall at any time during the term of this lease be damaged by fire, flood, tornado, or by the elements, or otherwise, the Lessee shall give prompt notice thereof to the Lessor who shall at its own expense, as speedily as circumstances permit, repair said damage and restore the demised premises and such building or buildings to their original condition, provided, however, that in the event the Lessor shall fail to commence said repairs within thirty days and complete said repairs within ninety days of said destruction, the Lessee may at its option, terminate this lease. Lessee shall be entitled to an abatement of rent for the period during which the demised premises are rendered untenable or incapable of use as a TACO BELL restaurant. In the event that a part only of the demised premises is rendered untenable or incapable of such use, the rent shall be reduced in the proportion which the floor area of said part of the demised premises bears to the floor area of the entire demised premises. In the event that the damage shall be such as to make it impractical to conduct the normal operation of business, this lease shall thereupon cease and expire at the election of the Lessee.

22. OPTION TO EXTEND: Lessor does hereby grant to Lessee the right, privilege and option to extend this lease for a period of five (5) years from the date of expiration hereof, upon the same terms and conditions as herein contained, upon notice in writing to the Lessor of Lessee's intention to exercise said option, given at least ninety (90) days prior to the expiration of the term hereof.

23. DEFAULT OF LESSEE: If Lessee shall make default with respect to any obligations, covenants or agreements to be performed by Lessee, as set forth herein, and if such default be not cured by Lessee within thirty (30) days after Lessor has notified Lessee in writing of such default Lessor may forthwith re-enter upon said premises and exercise any right or remedy provided by law on herein provided for or permitted. **No waiver of any breach shall affect or alter any term or condition in this lease, and each such term or condition shall continue in full force and effect with respect to any other existing or subsequent breach thereof.**

24. ATTORNEY'S FEES: In the event that either party commences an action to enforce any of the provisions of this lease, the prevailing party shall be entitled to his reasonable attorney's fees incurred in connection with such action.

25. NOTICES: All notices and demands of any kind which Lessor or Lessee may require to or desire to give to or serve upon the other may be given by depositing one copy of it in the United States Mail, postage prepaid, registered mail addressed as follows:

TO LESSOR: Dorothy M. Hume
1167 Janis Way, San Jose, California 95125

TO LESSEE: 2124 Koreton Street
Torrance, California 90505

The place to which said notice shall be sent may be changed by either of the parties hereto by written notice given as hereinabove provided.

26. REFUNDS: In the event this lease is terminated by either of the parties hereto, Lessor shall return to Lessee all deposits and any other consideration paid to Lessor under the terms of this agreement.

27. MISCELLANEOUS: The interpretation of this lease shall be governed by the laws of the State of California.

In the event that any portion of this lease is found to be invalid or unenforceable, the remainder of the lease shall still be an enforceable agreement between the parties.

28. GROSS RENT: Anything to the contrary notwithstanding, additional rental for the leased premises shall be 5% of the amount of Lessee's gross sales less the minimum guaranteed monthly rental previously paid by Lessee, less amounts paid by Lessee for taxes and assessments. Said amount shall be paid quarterly and adjusted annually. In the event, after gross sales are averaged for the lease year, Lessee has paid Lessor more additional rental than called for in this lease, Lessee shall apply said overage against the next minimum rental payments. In the event, after gross sales are averaged for the lease year, Lessee owes Lessor additional rental, same shall be paid with the next rental payment.

29. CONDITION. The obligation of the Lessor to lease the property herein described shall be specifically contingent upon satisfactory Lessor obtaining a release and surrender of the premises prior to commencement of construction of the improvements thereon.

30. ESCALATION OF RENT. The monthly rental provided in Paragraph 3 hereinabove shall be adjusted every five (5) years by an increase increment of FIFTY DOLLARS (\$50.00) each at the expiration of every five (5) years so that the first escalation in rent shall be effective five (5) years from date of commencement of this lease and each five (5) years thereafter there shall be an increment of FIFTY DOLLARS (\$50.00) over and above the previous rental amount.

LESSOR:

LESSEE:

Mr. Dorothy M. Hanna

TACO BELL, A CALIFORNIA CORPORATION

Robert L. McKay, President

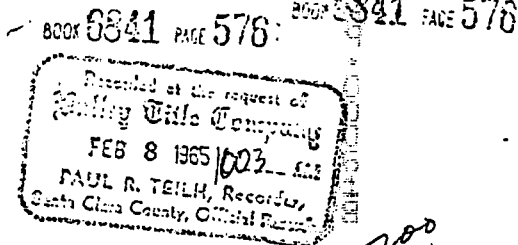
Date: 2-28-69

Date: March 11, 1969

RECORDING REQUESTED BY
Escrow No. WG 06963 THK/sl
Receipt No. 413-22-3247
Code Area 61-7

WHEN RECORDED MAIL TO

RETURN TO WILLOW GLEN



VALLEY TITLE COMPANY

GRANT DEED

By this instrument dated January 20, 1965, for a valuable consideration,
YASUTO KATO AND TOMIKO DOROTHY KATO, his wife, and
HENRY Y. KATO AND MAY U. KATO, his wife

Affix
IRS
none

hereby GRANT (S) to

THOMAS A. HIURA and DOROTHY M. HIURA, his wife, as community property

The following described Real Property in the State of California, County of Santa Clara

All of Lot 11, as shown upon that certain Map entitled,
"Tract No. 640", which Map was filed for record in the
office of the Recorder of the County of Santa Clara,
State of California, on January 30, 1950 in Book 26 of
Maps, at page 15.



X Henry Y. Kato
HENRY Y. KATO

X Yasuto Kato
YASUTO KATO

X Mary U. Kato
MAY U. KATO

X Tomiko Dorothy Kato
TOMIKO DOROTHY KATO

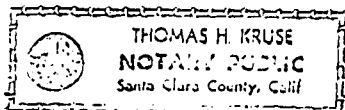
STATE OF CALIFORNIA
COUNTY OF
Santa Clara

ss.

On February 4, 1965, before me, a Notary Public, in and for said
County and State, personally appeared HENRY Y. KATO, MAY U. KATO,
YASUTO KATO AND TOMIKO DOROTHY KATO

known to me to be the persons whose names are subscribed to the within instrument
and acknowledged to me that they executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in
the County of Santa Clara the day and year in this
certificate first above written.



Notary Public in and for Said County and State

My Commission Expires

Thomas H. Kruse

My Commission Expires September 3, 1965

ADDENDUM TO LEASE AGREEMENT

Concerning that certain lease dated March 18, 1969,
between GORDON M. MIUSA hereinafter referred to as Lessor,
and TACO BELL, hereinafter referred to as Lessee, regarding
that certain devised premises located at 1946 Camden, San
Jose, California.

As set forth in Paragraph 4-c of said lease, the
minimum monthly rental payments shall be increased in an amount
equal to 1/12th of 10% on all funds contributed in excess of
\$35,000.00.

It is hereby agreed by and between Lessor and Lessee
that said excess to be considered in this lease amounts to
\$13,066.46, and said sum shall be paid by Lessor. In considera-
tion of said payment by Lessor, it is understood that the monthly
rental shall be increased from \$725.00 to \$833.89 first five
years; \$775.00 to \$883.89 second five years; \$825.00 to \$933.89
third five years; \$875.00 to \$983.89 fourth five years,
effective as of date lease term commenced.

LESSOR:

Phyllis G. Hansen
Phyllis G. Hansen

LESSEE:

TACO BELL, a California corporation

By Robert L. McKay
Robert L. McKay, President

Date: 5-7-70Date: May 12, 1970

LEASE AMENDMENT

THIS LEASE AMENDMENT is made on this 4th day of December, 1889, by and between DOROTHY M. HIURA, hereinafter referred to as "Lessor", and Taco Bell Corp., a California corporation, hereinafter referred to as "Lessee".

WITNESSETH:

WHEREAS, Lessor and Lessee entered into that certain Lease Agreement dated March 18, 1969 (the "Lease") in which Lessee leased from Lessor that certain real property in the City of Campbell, County of Santa Clara, State of California, generally described as 1546 Camden Avenue.

WHEREAS, the prime term of the Lease expires February 28, 1990, and allows for one (1) five-year renewal option, the Lessor and Lessee desire to amend the Lease.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, Lessor and Lessee hereby agree as follows:

1. Term Term of lease shall be an additional two year period, from March 1, 1990 to February 28, 1992.
2. Option Further, Lessor shall provide Lessee with the right to renew the Lease for three (3) additional one year option periods.
3. Rent Lessee shall pay to Lessor a fixed monthly rent of \$1,200.00, vs. 5% of gross sales, throughout the term, and any option period thereafter.
4. Notice Lessee must notify the Lessor of its desire to exercise any one of the one (1) year option periods at least one hundred fifty (150) days prior to the expiration of the term being extended.
5. Modifications
Except as expressly provided in the Lease Amendment, the Lease shall remain unmodified and in full force and effect.

LESSOR:

DOROTHY M. HIURA

By Dorothy M. Hiura
Dorothy M. Hiura

LESSEE:

TACO BELL CORP.
a California Corporation

By Petrick Flanagan
Petrick Flanagan
Its: Division Vice President

THIRD AMENDMENT
TO
STANDARD FORM LEASE AGREEMENT

This Third Amendment To Standard Form Lease Agreement (the "Third Amendment"), dated the 19th day of December, 1994, is made and entered into by and between **DOROTHY M. HIURA**, a married woman ("Lessor") and **TACO BELL CORP.**, a California corporation ("Lessee"), and amends that certain Standard Form Lease Agreement dated March 18, 1969, as amended by Addendum to Lease Agreement executed May 7, 1970 and May 13, 1970 by Lessor and Lessee, respectively, as further amended by Lease Amendment dated December 4, 1989 (hereinafter collectively referred to as the "Lease"), with reference to the following:

RECITALS:

A) Pursuant to the terms of the Lease, Lessee leases from Lessor that certain real property and improvements situated thereon commonly known as 1546 Camden Avenue, City of Campbell, County of Santa Clara, State of California (the "Demised Premises"); for a term that commenced March 1, 1970 and after exercise of all granted renewal options, will expire February 28, 1995; and

B) Lessor and Lessee mutually desire to (i) extend the Term of the Lease, (ii) provide for one (1) renewal period of five years, (iii) grant to Tenant an option to terminate the Lease, and (iv) eliminate payment of percentage rents.

NOW THEREFORE, with reference to the foregoing Recitals, all of which are incorporated herein and made a part of this Third Amendment, Lessor and Lessee hereby agree as follows:

I. EXTENSION OF TERM

Article 2 of the Lease is amended in its entirety to read as follows:

The term of the Lease shall be deemed automatically extended for a period of five (5) years, commencing March 1, 1995 through and including February 28, 2000 (the "Extended Term").

II. OPTION TO RENEW

Article 22 of the Lease has expired and shall be deemed to be deleted in its entirety to read as follows:

"22. Provided Lessee is not then in default under any terms and conditions of the Lease, and provided Lessee has **NOT** notified Lessor, in writing, on or before **December 28, 1999** to the contrary, the Extended Term shall be deemed

automatically extended for a period of five (5) years commencing on March 1, 2000 through and including February 28, 2005 (the "Option Period").

III. RENT

Percentage Rent
Commencing March 1, 1995, Articles 3, ~~28~~ and 30 of the Lease shall be deemed deleted in their entirety, and Article 3 of the Lease shall be deemed to read as follows:

"3. Lessor and Lessee acknowledge and agree that the fixed base rent ("Rent") payable during the Extended Term (as defined in Article I above) and during the Option Period (as defined in Article II above), if exercised, shall be payable in advance on the first day of each calendar month, without setoff, deduction or offset of any kind whatsoever, at such place as may be designated from time to time by Lessor, as follows:

3.1 The Rent payable during the Extended Term shall be at the rate of **Four Thousand Eight Hundred Sixty-Five Dollars (\$4,865)** per month.

3.2 The Rent payable during the Option Period, if so exercised, shall be at the rate of **Five Thousand Three Hundred Fifty Dollars (\$5,350)** per month

If the Extended Term or the Option Period, if exercised, commences other than on the first day of the month, or ends other than on the last day of the month, the Rent for such month(s) shall be prorated on a thirty (30) days basis."

IV. RIGHT OF EARLY TERMINATION

Provided Lessee is not then in default of any term or provision of this Lease, Lessee shall have the right to terminate this Lease upon Lessee's delivering to Lessor its **sixty (60)** days' written notice of Lessee's election to so terminate the Lease and the stated date of vacating the Property.

V. RIGHT OF FIRST REFUSAL

Article 16 of the Lease is hereby amended in its entirety to read as follows:

"16. If Lessor elects to offer to transfer the Demised Premises by sale or exchange ("Offer"), Lessor shall notify Lessee of the terms of the proposed Offer. Lessee shall have forty-five (45) days within which to accept the Offer on all terms stated in the notice to Lessee, or such other terms to which Lessor and Lessee agree. If Lessee fails to accept the Offer within the 45-day period, Lessor shall be free to make the Offer available to others and conclude a sale or exchange on the terms stated in the Offer. If Lessor desires to change a material term of an Offer, Lessor shall again notify Lessee and Lessee shall have 45-days within which to accept the changed offer or such other terms to which Lessor and Lessee agree to sell or convey the Demised Premises.

VI. NOTICES

Article 25 of the Lease is hereby amended in its entirety to read as follows:

"25. All notices and demands of any kind which Lessor or Lessee may require to be served upon the other shall be given by depositing one copy of same in the United States mail, postage prepaid, certified or registered mail, return receipt requested, addressed as follows, or by personal delivery or a national overnight delivery service, addressed:

TO LESSOR:

Mrs. Dorothy M. Hiura
1167 Janis Way
San Jose, CA 95125

TO LESSEE:

Taco Bell Corp.
c/o PepsiCo Real Estate RE#567
17901 Von Karman
Irvine, CA 92714-6212

The place to which said notices shall be sent may be changed by written notice given as hereinabove provided. All such mailed notices shall become effective on the third (3rd) day after the date of postmark. Personally delivered notices shall become effective immediately upon delivery.

VII. NO FURTHER MODIFICATION

Except as specifically modified herein, all terms and conditions set forth in the Lease shall remain in full force and effect. Any conflict between the Lease and this Third Amendment shall be resolved in favor of this Third Amendment.

IN WITNESS WHEREOF, the parties have executed this Third Amendment as of the dates set forth below their respective signatures to be effective as of March 1, 1995.

LESSOR:

Dorothy M. Hiura
Dorothy M. Hiura

Date: 12-28-94

LESSEE:

TACO BELL CORP. a
California corporation

By: ART EVERSON

Its National Vice President
of Development

Date: 1-24-95

Reviewed by: JO ANN COWNIE
Date: 1-23-95



Tricon Global Restaurants, Inc.
PO Box 32220
Louisville, KY 40232-2220
Tel 502 874 1000

November 30, 1999

Mrs. Dorothy M. Hiura
1167 Janis Way
San Jose, CA 95125

Re: Taco Bell #567
1546 Camden Avenue
Campbell, CA

Dear Mrs. Hiura:

The Lease Agreement dated March 18, 1969 and any amendments thereto ("Lease Agreement") for the above referenced restaurant expires on February 28, 2000. This letter is to advise you that Taco Bell Corp., a California corporation, as Lessee, would like to extend said Lease Agreement subject to your agreement, as Lessor, of the following terms and conditions:

1. Lessor and Lessee, by execution hereof, agree that the five (5) year option to extend said Lease Agreement is hereby exercised and the Lease is extended for a period of five (5) years commencing March 1, 2000 and ending February 28, 2005 ("Extension Period").
2. Fixed Base Rent payable during the Extension Period will be \$48,000 annually paid in monthly installments of \$4,000.
3. It is hereby acknowledged that all other terms and conditions of said Lease and of any previous modifications thereof shall remain unchanged and in full force and effect.

This letter constitutes an amendment to the Lease Agreement which will be binding upon both parties' mutual execution ("Letter Amendment"). Please confirm your agreement to the aforementioned by executing the signature line below on both of the enclosed originals. Upon full execution of both of the enclosed originals please return one fully executed original Letter-Amendment to the undersigned.

Should you have any questions or comments please call me at (502) 874-2189.

Sincerely,

TACO BELL CORP.


Cathy Bishop
Portfolio Manager

ACKNOWLEDGED and AGREED this

3 day of DECEMBER 1999.

By: Dorothy M. Hiura

Name: DOROTHY M. HIURA

Title: OWNER





Yum! Brands, Inc.

1900 Colonel Sanders Lane

Louisville, KY 40213

Phone 502-874-8300

Fax 502-874-8848

November 18, 2004

Mrs. Dorothy M. Hiura
1167 Janis Way
San Jose, CA 95125

Re: Taco Bell Restaurant #567
1546 Camden Avenue
Campbell, CA

Dear Lessor:

The Lease Agreement dated March 18, 1969 and any amendments thereto ("Lease Agreement") for the above referenced restaurant expires on February 28, 2005. This letter is to advise you that Taco Bell Corp. a California corporation, as Lessee, would like to extend said Lease Agreement subject to your agreement, as Lessor, of the following terms and conditions:

1. Lessor and Lessee, by execution hereof, agree that the Lease Agreement is extended for a period of five (5) years commencing March 1, 2005 and ending February 28, 2009 ("Extension Period").
2. Fixed Base Rent payable during the Extension Period will be \$50,400 annually paid in monthly installments of \$4,200.
3. It is hereby acknowledged that all other terms and conditions of said Lease and of any previous modifications thereof shall remain unchanged and in full force and effect.

This letter constitutes an amendment to the Lease Agreement which will be binding upon both parties' mutual execution ("Letter Amendment"). Please confirm your agreement to the aforementioned by executing the signature line below on both of the enclosed originals. Upon full execution of both of the enclosed originals please return



November 18, 2004
Page 2

one fully executed original Letter Amendment to the undersigned in the enclosed self-addressed envelope.

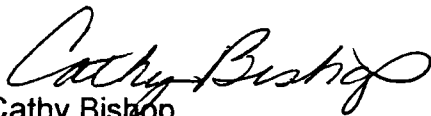
Should you have any questions or comments please call me at (502) 874-2189.

Sincerely,

ACKNOWLEDGED and AGREED this

Taco Bell Corp, a California corporation

29 day of NOVEMBER 2004.


Cathy Bishop
Asset Manager

By: Dorothy M. Huija
Name: DOROTHY M. HUIJA
Title: LESSOR
"Lessor"