

**SHOPPING CENTER  
LEASE PROVISIONS**

**ARTICLE I - ABSTRACT OF LEASE**

Date of Lease: This Lease is entered into by the undersigned parties on this \_\_\_\_ day of September, 2005.

**1.1 PARTIES**

**A: LANDLORD**

Name and status: A & L Matos, L.L.C.  
Address for notices: Arcadia Management Group, Inc.  
5555 East Van Buren Street, Suite 125  
Phoenix, AZ 85008  
Phone: (602) 955-4700  
Rent payment location: Agua Caliente Shopping Plaza  
c/o Arcadia Management Group, Inc.  
5555 East Van Buren Street, Suite 125  
Phoenix, AZ 85008

**B. TENANT**

Name and status: LK Partnership, LLC an Arizona Limited Liability Company, and or nominee.  
Address for notices: 12590 N. 73rd Place, Scottsdale, AZ 85260  
Phone: (602) 418-0007  
Store Name (Trade Name): Potentially The "Deuce" however if the name is already in use or is likely to cause confusion to the consumer because of another similar name then any other trade name that is available that is not offensive, obscene, profane or illegal.

**1.2 PREMISES**

**A: SHOPPING CENTER**

Name: Agua Caliente Shopping Plaza  
Address (or location): 6990 East Shea Boulevard  
Scottsdale, AZ 85225  
Include County: Maricopa  
DESCRIPTION OF CENTER:  X  Site Plan showing the layout of Shopping Center (approximate location of Leased Premises) is attached as Exhibit "A".  
Additional: \_\_\_\_\_

**B. LEASED PREMISES**

Suite Number

**23-UP-2006**  
8-15-06

1-UP-2006  
1-23-06

(or location)  
DESCRIPTION OF  
PREMISES

Suite #101

X Approximately 4,000 square feet of gross floor area as outlined on the floor plan attached as Exhibit "A"

Additional \_\_\_\_\_

1.3 TERM OF LEASE

A Commencement of Lease Term: Upon mutual execution of this Lease

B Anticipated Rental Commencement Date: Ninety (90) days from the date Tenant is granted possession

C Termination of Lease Shall Be:  
X 5 years and 3 months after the Commencement Date indicated in 1.3B, indicated above  
\_\_\_\_ Additional: Tenant shall have the right to terminate this Lease if Tenant is not able to obtain a live music permit and a Liquor License

1.4 RENTALS AND OTHER TENANT CONTRIBUTIONS

A Minimum rent shall be

Due Diligence Period			(\$5,000.00 monthly) includes NNN, & Tax
Months 1-2	\$0.00 per foot	N/A	(\$0.00 monthly)
Months 3-14	\$24.00 per foot	\$ 96,000.00 annually,	(\$8,000.00 monthly) plus NNN, plus taxes
Months 15-26	\$24.72 per foot	\$ 98,880.00 annually,	(\$8,240.00 monthly) plus NNN, plus taxes
Months 27-38	\$25.46 per foot	\$ 101,840.00 annually,	(\$8,486.67 monthly) plus NNN, plus taxes
Months 39-50	\$26.22 per foot	\$ 104,880.00 annually,	(\$8,740.00 monthly) plus NNN, plus taxes
Months 51-62	\$27.00 per foot	\$ 108,000.00 annually,	(\$9,000.00 monthly) plus NNN, plus taxes

plus applicable rental sales taxes

B: Percentage Rent shall be \_\_\_\_\_% of Tenant's gross receipts (Section 4.2)

C: Tenant's share of common area and shopping center expenses shall begin at \$24,000.00 annually (\$2,000.00 monthly), with an annual adjustment (Section 4.3C) plus applicable rental sales taxes

1.5 SECURITY

A: Tenant's security deposit shall be \$10,000 to be paid within seven (7) days from the date this Lease Agreement is executed. If this Lease Agreement is not terminated during the Due Diligence Period then Tenant shall pay to Landlord an additional \$23,000 for a total security deposit of **\$33,000.00** (Section 5.1). Equal to Three (3) months security deposit. So long as Tenant has paid rent on time and is not in default of this Lease, Landlord shall release one month of security deposit back to Tenant at the end of year one (1) and year two (2)

B: Tenant's personalty securing this Lease (Section 5.2) (Check all applicable)

X All inventory of Tenant placed in or on the leased premises.

X All furnishings, trade fixtures, general equipment and machinery placed in or on, or attached to, the leased premises

1.6 CONSTRUCTION, ALTERATIONS, MAINTENANCE, AND REPAIRS

A: Initial construction by Landlord (Section 6.2) None

- B Improvements or alterations by Tenant require Landlord's approval (Sections 6.4 and 6.7)
- C Sign criteria (Section 6.5) are attached as Exhibit "C"
- D Restaurant equipment. Tenant shall purchase all existing restaurant equipment and furniture from Landlord for \$50,000.00. Landlord assures Tenant that equipment is free of any liens, and Landlord's attorney will provide documentation for the separate bill of sale for the restaurant equipment and furniture. Tenant shall pay Landlord \$50,000 within seven (7) days of the Tenant's election to commence with possession of the premises and forego any further Due Diligence Period as defined in Section 3.2 hereinafter.

## 1.7 USE OF PREMISES

### A Permitted Uses of Leased Premises

The Premises shall be used and occupied for the purpose of conducting therein a reputable, upscale bar and restaurant.

### B Specifically excluded uses (in addition to those excluded by Section 7.1).

~~All other uses except as permitted in writing by Landlord~~

## 1.8 ABSTRACT OF VARIABLE PROVISIONS AND STANDARD PROVISIONS

~~The previous provisions of this Article I will be referred to as the "Abstract of Lease" and the provisions of the remaining Articles of this Lease will be referred to as the "Standard Provisions". Wherever in the Standard Provisions or elsewhere the parties, effective date, premises, rentals, charges or other variable terms are defined or referred to they shall be those identified in the provisions above and the exhibits to this Lease.~~

## ARTICLE II - SHOPPING CENTER AND PREMISES

### 2.1 SHOPPING CENTER

~~The leased premises are part of a Shopping Center which Landlord owns as described in the Abstract of Lease and substantially in accordance with a site plan as outlined in the attached Exhibit "A". The purpose of the dimensions set forth and the plan attached is to show the approximate location(s) of the demised premises.~~

The term "SHOPPING CENTER" herein shall be deemed to mean the entire development, including any and all structures.

### 2.2 LEASED PREMISES

A ~~DESCRIPTION.~~ Landlord hereby leases to Tenant and Tenant leases and accepts subject to the terms and conditions of this Lease, those premises referred to as the "leased premises" or "demised premises" and described in the Abstract of Lease.

B. ~~EXCEPTION AND RESERVATION.~~ Landlord reserves and excepts from the within demised premises the roof and exterior walls of the building or buildings of which the demised premises are a part, and further reserves the right in, over and upon the demised premises as may be reasonably necessary or advisable for the servicing of the demised premises or of other portions of the Shopping Center.

### 2.3 COMMON AREA

Tenant along with its Lease of the demised premises receives the right to use, in common with others, the Common Areas of the Shopping Center. The term "COMMON AREAS" herein shall include all service roads, loading facilities, sidewalks, automobile parking areas, driveways, footways and other facilities designed for common use, as may be installed by Landlord as hereinafter provided, and of such other and further facilities as may be provided or designated from time to time by Landlord for common use, subject, however, to the terms and conditions of this Agreement and to reasonable rules and regulations for the use thereof, as prescribed from time to time by Landlord.

Common Areas of the Shopping Center The term "COMMON AREAS" herein shall include all service roads, loading facilities, sidewalks, automobile parking areas, driveways, footways and other facilities designed for common use, as may be installed by Landlord as hereinafter provided, and of such other and further facilities as may be provided or designated from time to time by Landlord for common use, subject, however, to the terms and conditions of this Agreement and to reasonable rules and regulations for the use thereof, as prescribed from time to time by Landlord

### **ARTICLE III - LEASE TERM AND POSSESSION OF PREMISES**

#### **3 1 INITIAL TERM**

The term of this Lease shall commence on the date when Landlord shall deliver possession of the premises to Tenant, as provided in Section 1 3 hereof

The term of this Lease shall end (unless sooner terminated as provided herein) on the termination date provided in the Abstract of Lease

#### **3 2 DUE DILIGENCE PERIOD**

Upon the mutual execution of this Lease Agreement, Tenant shall have a period of One Hundred Twenty (120) days to perform the necessary due diligence to determine the viability of obtaining both a Live Music Permit and Liquor License and to determine the feasibility of any other business matter related to the use of the premises. During this period Tenant shall pay to Landlord rent in the amount of \$5,000 per month inclusive of NNN charges, plus rental taxes pursuant to Section 1 4 hereof. During this Due Diligence Period Tenant shall have the right to terminate this Lease Agreement by providing Landlord with seven (7) days written notice of Tenant's intent to terminate this Lease Agreement. The \$10,000 security deposit shall be refunded in accordance with Section 5 1 hereinafter. During the Due Diligence Period Tenant agrees not to commence with any Tenant Improvements or store any materials or supplies in the Premises.

At any time during the Due Diligence Period Tenant may elect to terminate the Due Diligence Period and commence with possession of the Premises and begin Tenant Improvements. Tenant shall provide Landlord with written notice of Tenant's intent to commence possession of the Premises and proof of approved zoning and all city approvals necessary for the use of the Premises. Tenant shall have sixty (60) days of rent abatement when Tenant receives possession of the Premises from the Landlord while Tenant completes the Tenant Improvements in accordance with Section 1 4 hereof.

#### **3 3 QUIET ENJOYMENT**

Landlord agrees that if the rent is being paid in the manner and at the time prescribed and the covenants and obligations of Tenant are being all and singularly kept, fulfilled and performed, Tenant shall lawfully and peaceably have, hold, possess, use, occupy and enjoy the premises so long as this Lease remains in force without hindrance, disturbance or molestation from Landlord, subject to the specific provisions of this Lease.

#### **3 4 SURRENDER OF PREMISES**

A Upon any termination of this Lease, whether by lapse of time, cancellation pursuant to an election provided for herein, forfeiture, or otherwise, Tenant shall surrender immediately possession of the leased premises and all buildings and improvements on the same to Landlord in good and tenantable repair, reasonable wear and damage from fire or other casualty or peril excepted, and shall surrender all keys for the leased premises to Landlord at the place then fixed for the payment of rent and shall inform Landlord of all combinations of locks, safes and vaults, if any, in the leased premises.

B At any time during the 10 days before the termination date of this Lease, Tenant, if not in default hereunder at such time, shall have the right to remove, and at the end of the term, if directed to do so by Landlord, shall remove from the leased premises all furniture, furnishings, signs, and equipment then installed or in place in, on or about the leased premises provided, however, Tenant shall, and it covenants and agrees to, make all repairs to the leased premises required because of such removal. If any of such property shall remain on the leased premises after the end of the term hereof, such property shall be and become the property of Landlord without any claim therein of Tenant. Landlord may direct

Tenant to remove such property, in which case Tenant agrees to do so, and to reimburse Landlord for any expense of removal in the event Tenant shall fail to remove such property if and when directed

- C Upon termination of this Lease, Tenant shall peaceably surrender the leased premises including all fixtures and tenant improvements in a neat and broom clean condition, and Tenant shall repair any holes or openings made by Tenant in the walls, roof or floor of the building, remove any protuberance and perform any maintenance or repairs required of Tenant by this Lease. If directed to do so by Landlord, Tenant shall also remove any improvements, additions or alterations made to the leased premises by Tenant even though such improvements by the terms of this Lease become a part of the leased premises
- D Upon termination of this Lease, Tenant shall, if requested by Landlord, execute a quitclaim deed, quitclaiming all of its right, title and interest in and to the leased premises to the Landlord

### 3.5 HOLDING OVER

If Tenant, upon expiration or termination of this Lease, either by lapse of time or otherwise, remains in possession of the premises with Landlord's written consent but without a new lease reduced to writing and duly executed, Tenant shall be deemed to be occupying the premises as a tenant-at-will, subject to all the covenants, conditions and agreements of this Lease. If Tenant remains in possession without Landlord's written consent, Tenant shall be deemed to be in wrongful holdover and shall be subject to all the rights and remedies provided to Landlord under this Lease and the applicable laws, including any forcible entry and detainer actions or other eviction processes. Minimum rent for such holdover period shall be two (2) times the minimum rent due for the last month of the lease term

### 3.6 ABANDONMENT

If Tenant, prior to the expiration or termination of this Lease by lapse of time or otherwise, relinquishes possession of the premises without Landlord's written consent, such relinquishment shall be deemed to be an abandonment of the leased premises and an event of default under this Lease

## ARTICLE IV - RENTALS AND OTHER TENANT CONTRIBUTIONS

### 4.1 MINIMUM RENT

**PAYMENT OF MINIMUM RENT** Tenant shall pay to Landlord the minimum annual rent set forth in the Abstract of Lease, payable in advance in equal monthly installments on the first day of each calendar month, without prior demand therefor. Such minimum rent shall commence to serve on the earlier of (i) the date when Tenant shall open the demised premises for business, or (ii) the date which is 60 days after delivery of possession of the premises by Landlord to Tenant, as provided in Section 6.2. The first rental payment date hereunder shall be the date when rent commences, as explained above, and shall include rent for the fractional month on a per diem basis (calculated on the basis of a thirty day month), and thereafter the rent shall be paid in equal monthly installments in advance on the first day of each calendar month during the term of this Lease. The first full monthly rent payment hereunder shall be due upon execution hereof

### ~~4.2 PERCENTAGE RENT~~

~~A DEDUCTION OF MINIMUM RENT For each lease year or portion thereof during the term hereof, Tenant shall pay (on a monthly basis as provided herein), in addition to minimum rent, percentage rental which shall be in an amount equal to that percentage (set forth in the Abstract of Lease) of Tenant's gross receipts in the demised premises for such period, provided, however, that in computing percentage rental there shall be deducted from such sum the minimum rent actually paid for such period. Anything herein to the contrary notwithstanding, there shall be no abatement, apportionment or suspension of the percentage rent payable hereunder.~~

~~B LEASE YEAR The first lease year shall begin on the commencement of the lease term and shall extend~~

through the balance of the current calendar year. Thereafter, each lease year shall commence on the day following the expiration of the preceding lease year and shall end at the expiration of twelve (12) calendar months thereafter.

- ~~C — GROSS RECEIPTS — The term "GROSS RECEIPTS" as used herein defined to mean gross receipts from all business conducted upon or from the demised premises, whether such receipts be obtained at the demised premises or elsewhere, and whether such business be conducted by Tenant or by any licensees, concessionaires or tenants of Tenant, and whether such receipts be evidenced by check, credit, charge account, exchange or otherwise, and shall include, but not be limited to, the amounts received from the sale of goods, wares and merchandise and for services rendered, including the amount of all orders taken, received or filled at the demised premises, whether such orders be filled from the demised premises or elsewhere, together with any interest charged to customers on all such amounts. If any one or more departments or other divisions of Tenant's business shall be sublet by Tenant or conducted by any person, firm or corporation other than Tenant, there shall be included in gross receipts, for the purpose of fixing the percentage rent payable hereunder, all the gross receipts of such departments or divisions whether such receipts be obtained at the demised premises or elsewhere, in the same manner and with the same effect as if the business or sales of such departments and divisions of Tenant's business had been conducted by Tenant itself. Gross receipts shall also be meant to include any rents collected by Tenant from sublessees, licensees, or concessionaires. Gross receipts shall not include sale of merchandise for which cash has been refunded, or allowances made on merchandise claimed to be defective or unsatisfactory, provided they shall have been previously included in gross receipts, and there shall be deducted from gross receipts the sales price of merchandise returned by customers for exchange, provided that the sales price of the merchandise delivered to the customer in exchange shall be included in gross receipts. Gross receipts shall not include the amount of any sales or use tax levied directly on sales and collected from customers and paid by Tenant, provided that specific record is made at the time of each sale of the amount of such sales or use tax and the amount thereof is separately charged to the customer. No franchise or capital stock tax and no income or similar tax based upon income or profits as such and no gross receipts tax shall be deducted from gross receipts.~~
- ~~D — MONTHLY STATEMENT AND PAYMENT — Within 30 days after the end of each month during the term of this Lease, Tenant shall submit to Landlord an accurate, unaudited, written statement signed by Tenant, or on its behalf by a duly authorized officer or representative, showing the full amount of Tenant's gross receipts from the demised premises during such month, and shall pay to Landlord the percentage rent, if any, accrued and payable with respect to such month.~~
- ~~E — SALES TAX REPORTS — Upon the request of Landlord, Tenant shall provide copies to Landlord of all state and local sales and use tax report filed by Tenant at the time these reports are filed with the appropriate agencies.~~
- ~~F — ANNUAL STATEMENT AND ADJUSTMENT — Within 60 days after the end of each calendar year, commencing with the first lease year, Tenant shall submit to Landlord a complete statement certified by an independent certified public accountant acceptable to Landlord and also certified by Tenant, or on its behalf by a duly authorized officer or representative, showing accurately and in such detail as reasonably required by Landlord, the full amount of Tenant's gross receipts in the demised premises during the immediately preceding lease year and the percentage rental for such lease year. At the same time Tenant shall pay to Landlord the full balance of percentage rent payable for said lease year, if any. Any excess of percentage rental that Tenant may have paid for such lease year shall be remitted to Tenant within thirty (30) days of receipt by Landlord of such annual statement.~~
- ~~G — BUSINESS RECORDS — The business of Tenant and of any sublessee, licensee or concessionaire upon the demised premises shall be operated so that a duplicate sales slip, invoice or cash register receipt, serially numbered, shall be issued with each sale or transaction, whether for cash, credit or exchange.~~

Tenant shall keep at all times during the term hereof, at the demised premises or at the general office of the Tenant, full, complete and accurate books of account and records in accordance with accepted accounting practices with respect to all operations of the business to be conducted in or from the demised premises including the recording of gross receipts and the receipt of all merchandise into and the delivery of all merchandise from the demised premises during the term hereof, and shall retain such books and records as well as all contracts, vouchers, checks, inventory records, and other documents and papers in any way relating to the operation of such business, for at least three (3) years from the end of

~~the lease year to which they are applicable, or, if any audit is required or a controversy should arise between the parties hereto regarding the rent payable hereunder, until such audit or controversy is terminated.~~

~~H — RIGHT TO AUDIT — Such books and records, including all withholding, unemployment, sales and income tax reports prepared and filed by Tenant or on Tenant's behalf shall at all reasonable times during retention period referred to above be open to the inspection of Landlord or its duly authorized representatives, who shall have full and free access to the same as may be necessary for a proper examination thereof. Upon Landlord's written request Tenant shall provide and make available all such records at the demised Shopping Center. Landlord, at its discretion, may cause an audit of Tenant's books and records and, if such audit shall indicate a discrepancy in excess of 2% of the gross receipts reported, then Tenant shall pay the cost of such audit and any additional gross receipts so discovered shall be subject to the percentage rental and shall be due and payable within ten days of written notification to Tenant, while any discrepancy in Tenant's favor shall be remitted by Landlord to Tenant within 30 days of such audit. If such audit indicates a discrepancy in excess of 5% over the gross receipts reported, such discrepancy shall be deemed an event of default within the meaning of Paragraph 11.1 herein.~~

#### 4.3 TENANT'S SHARE OF COMMON AREA AND SHOPPING CENTER EXPENSES

A MONTHLY PAYMENT OF ESTIMATED CHARGE For each year of the term hereof, Tenant shall pay to Landlord, as additional rent, Tenant's "proportionate share" of (i) all "costs of operation and maintenance of the common facilities" of the Shopping Center, and (ii) all "real estate taxes" levied and assessed against the Shopping Center, (iii) all "insurance coverage upon the Shopping Center and its operations", and (iv) "Landlord's management fee" shall be the compensation and fees actually paid by Landlord to an independent managing agent or broker for management of the Shopping Center, or, if Landlord manages the center on its own behalf, such fee shall be stipulated to be and computed as five percent (5.0%) of collections, not including sales tax. As and for Tenant's proportionate share, as hereinafter defined, set forth in the Abstract of Lease, payable as additional rent in equal monthly installments at the same times as fixed minimum rent is payable hereunder, without demand and without any deduction or setoff whatsoever.

B DEFINITIONS For the purpose of this Section

- (1) Tenant's "proportionate share" shall be in the same proportion as the total area of the demised premises bears to the total number of square feet of gross leasable floor area contained within all buildings, which are erected and completed in the Shopping Center,
- (2) The "costs of operations and maintenance of the common facilities" shall include all expenditures incurred by or on behalf of Landlord in operating and maintaining the common facilities, including *without limitation*, the cost of all of Landlord's gardening and landscaping, assessments, repairs, preventive maintenance, repainting including restriping of parking lot and access ways, equipment, lighting, sanitary control, cleaning, sweeping, removal of ice, snow, trash, rubbish, garbage and other refuse, depreciation over a period of not exceeding 60 months of machinery, equipment and other assets used in the operation and maintenance of the Shopping Center so long as the maintenance expenses do not also include the cost of the equipment or machinery used, repair or replacement of on-site water lines, sanitary sewer lines, storm water lines and electrical lines and equipment serving the property, the cost of police, fire protection, security and traffic control services, reasonable reserves for anticipated expenditures, and the cost of all personnel required to supervise, implement and accomplish all of the foregoing,
- (3) All "real estate taxes" shall include all taxes, assessments and other governmental charge, general and special, ordinary and extraordinary, of any kind and nature whatsoever, including, but not limited to, assessments for public improvements or benefits, which shall, during the term hereof, be laid, assessed, levied, imposed upon or become due and payable, subject only to the following
  - (a) Franchise, estate, inheritance, succession, capital levy, transfer, federal and state income and excess profit taxes imposed upon Landlord shall be excluded, and
  - (b) If at any time during the term of this Lease, a tax or excise on rents or other tax,

however described, is levied or assessed against Landlord on account of the rent expressly reserved hereunder, as a substitute in whole or in part for taxes assessed or imposed on land and buildings or on land or buildings, such tax or excise on rents or other tax shall be included within the definition of real estate taxes, but only to the extent of the amount thereof which is lawfully assessed or imposed as a direct result of Landlord's ownership of this Lease or of the rentals accruing upon this Lease,

- (4) All "insurance coverage upon the Shopping Center and its operations" shall include the costs of all Landlord's insurance relating to the common facilities or the Shopping Center as a whole or the operations thereon, including but not limited to casualty insurance, flood insurance, rent loss insurance, fire insurance and extended coverage, as well as general liability insurance, umbrella liability insurance, bodily injury, public liability, property damage liability, ~~automobile insurance~~, sign insurance, and any other insurance carried by the Landlord in limits selected by Landlord, and
- (5) "Landlord's management fee" shall be the compensation and fees actually paid by Landlord to an independent managing agent or broker for management of the Shopping Center, or, if Landlord manages the center on its own behalf, such fee shall be stipulated to be and computed as five percent (5 0%) of collections, not including sales tax

C ANNUAL STATEMENT AND ADJUSTMENT Approximately 90 days after the end of each fiscal year of Landlord, Landlord shall supply Tenant with a statement covering all costs and expenditures as enumerated above and a determination of Tenant's proportionate share In the event the amount paid by Tenant shall be less than its proportionate share, the same shall be paid within ten (10) days after notice of such determination, or in the alternative, any payment made by the Tenant in excess of its share of the sum, shall be credited to the next rentals due from Tenant Said statement shall also contain a determination by Landlord of the monthly sum to be paid by Tenant during the succeeding months of the lease year, which determination shall be based in part of the statement of expense for the preceding year modified by any known increases in the cost of said services

#### 4 4 RENTAL PAYMENT PROCEDURES

- A PAYMENT LOCATION Tenant shall, without prior notice or demand and without any setoff or deduction whatsoever, pay all rentals and other charges and render all statements herein prescribed at the Landlord's address or other office specifically provided in the Abstract of Lease or to such other person or corporation, and at such other place, as shall be designated by Landlord, in writing at least ten (10) days prior to the next ensuing rental payment date
- B TAXES ON RENTALS Tenant shall further pay to Landlord any and all excise, privilege, rental and other taxes, levied or assessed by any governmental authority upon or measured by the rent reserved to Landlord under the provisions of this Lease Such tax shall be paid by Tenant whether or not it comprises a portion of any real property tax or taxes or real property tax bills
- C INTEREST AND LATE CHARGES Tenant covenants and agrees that all sums to be paid under this Lease, if not paid when due, shall bear interest on the unpaid portion thereof at the rate of eighteen percent (18%) per annum from the date when due but not in excess of the highest legal rates Tenant further agrees that for each calendar month, the fixed minimum rent or monthly percentage rent is not paid to Landlord within ten (10) days of the due date as provided hereinabove, Tenant shall promptly pay to Landlord a sum equal to the greater of \$50 00 or five percent (5%) of the unpaid rentals as special damages If Landlord shall pay any monies, or incur any expenses in correction of any violation of any covenant of Tenant herein set forth, the amounts so paid or incurred shall, at Landlord's option and on notice to Tenant, be considered additional rentals payable by Tenant with the first installment of rental thereafter to become due and payable, and may be collected or enforced as by law provided with respect to rentals Tenant shall pay to Landlord twenty dollars (\$20 00) for each of Tenant's checks returned to Landlord unpaid by Tenant's bank

#### 4 5 TAXES AND ASSESSMENTS ON TENANT'S PROPERTY

Tenant shall be responsible for, and shall pay before delinquency, all taxes assessed against leasehold interest or

personal property of any kind owned or placed in, upon or about the demised premises by Tenant. Tenant hereby agrees to protect and hold harmless Landlord and the leased premises from all liability for Tenant's share of any and all such taxes, assessments and charges together with any interest, penalties or other charges thereby imposed, and from any sale or other proceedings to enforce payment thereof, and to pay all such taxes, assessments and charges before same become a lien on the premises.

#### 4.6 UTILITIES CONSUMED ON LEASED PREMISES

In addition to all rentals herein specified, Tenant shall be responsible for and shall pay for all utilities used or consumed in or upon the demised premises, and all water and sewer charges, if separately metered to Tenant, as and when the charges therefor shall become due and payable, commencing on the date Landlord notifies Tenant that the demised premises are ready for occupancy. Tenant shall make all appropriate applications to the local utility companies and pay all required deposits for meters and service for all utilities prior to the delivery of possession of the premises as provided in Section 6.2.

In the event any utility or utility services (such as water or sewage disposal) are furnished to Tenant for which a lien could be filed against the demised premises or any portion thereof, Tenant shall at Landlord's request pay the cost thereof to Landlord as and when the charges therefor become due and payable, otherwise, Tenant shall deliver original receipted bills to Landlord within 30 days after the same are due and payable without interest or penalty.

In no event shall Landlord be liable for any interruption or failure in the supply of any utilities to the premises.

#### 4.7 SHOPPING CENTER PROMOTIONS

~~A. MERCHANTS' ASSOCIATION. In the event any merchants' association shall be formed in which the tenants in the center are included, Tenant agrees to maintain a membership therein, to attend meetings thereof and to pay such dues and assessments as may be required therein, provided all tenants in the center are obligated to be members thereto.~~

~~B. CENTER PROMOTIONS. Tenant agrees to participate in and to pay its pro-rata share of all center-wide promotions including cooperative advertising employed in connection with the said promotions. Tenant will include the name and location of the center in all advertising done by Tenant for its business in the premises. Landlord, at its option, may include these costs as common area and shopping center expenses under Paragraph 4.3 of this Lease.~~

### ARTICLE V - SECURITY

#### 5.1 SECURITY DEPOSIT

The Security Deposit reflected in the Abstract of Lease is due as an initial rental amount and failure to deliver such deposit to Landlord within seven (7) days from the execution of this Lease shall be an event of default for nonpayment of a rental. When delivered to Landlord, the Security Deposit shall remain on deposit with Landlord during the term of this Lease and any extensions thereof as security for the payment of rent and the full and faithful performance by Tenant of the covenants and conditions of this Lease. In the event of any default, the sum shall be retained by Landlord and may be applied toward damages arising from such default. Said deposit shall not be construed as liquidated damages. Upon yielding of said premises at the termination of this Lease, and provided no default has occurred, said sum shall be returned to the Tenant. No interest shall be payable on the deposit and Landlord shall not be obligated to keep the security deposit funds separate from the general funds of the property. It is understood that Landlord shall always have the right to apply said deposit, or portion thereof, to the curing of any default that may exist. Should Landlord convey its interest under this Lease, the deposit, or the part or portion thereof not previously applied, shall be turned over to Landlord's grantees or assignees, and Tenant hereby releases Landlord from any liability with respect to the deposit and Tenant agrees to look solely to such grantee or assignee and this provision shall also apply to subsequent grantees or assignees. Tenant agrees it will not assign, pledge, mortgage or otherwise hypothecate its interest in the Security Deposit. It is agreed that the sum is not made in payment of rent but is paid solely as a security by Tenant for the full, faithful performance of the obligations and terms of the Lease. Should the entire deposit, or any portion thereof, be appropriated and applied by Landlord for the payment of overdue rent or other sums due and payable to Landlord by Tenant, then Tenant shall, upon written demand by Landlord, remit to Landlord a sufficient amount

in cash or certified funds to restore said security to the original sum deposited, and Tenant's failure to do so shall constitute breach of this Lease

## 5.2 CHATTEL MORTGAGE

As additional security for Tenant's covenants and obligations under this Lease, Tenant hereby grants to Landlord a security interest in those items of personalty identified in the Abstract of Lease, together with all accessions to such personalty, and spare and repair parts therefor. Special tools and equipment and replacements for, as well as the proceeds together with the sale thereof

## 5.3 LANDLORD'S LIEN

Landlord shall have a general lien on the leasehold estate hereby created and on all property kept or used on the leased premises, whether the same is exempt from execution or not, to secure payment of any and all monies then due or thereafter becoming due to Landlord under the terms and conditions of this Lease, and to secure the prompt performance and fulfillment by Tenant of each and every one of said terms and conditions. Said lien as provided for in this Paragraph attaches as of the date of execution hereof and shall remain in full force and effect unless expressly waived by Landlord in writing

## 5.4 SECURITY IN ADDITION TO OTHER REMEDIES

The security given Landlord in this Article shall not limit, replace or obviate the remedies of Landlord upon a default by Tenant as described at Article XI below, including the right of Landlord to re-enter the premises, distrain for rent or pursue its general lien upon Tenant's property in the leased premises described at Section 5.3 above

# **ARTICLE VI - ALTERATIONS, MAINTENANCE AND REPAIRS**

## 6.1 LANDLORD'S DUTY TO REPAIR

Landlord shall keep and maintain the foundation, exterior walls, any plumbing or sewage main lines, or other utilities servicing more than one tenant of such building and roof of the building in which the leased premises are located and the structural portions of the leased premises which were installed by Landlord, exclusive of doors, door frames, door checks, windows, and exclusive of window frames located in exterior building walls, in good repair, provided that in each case, Tenant shall have given Landlord prior written notice of the necessity of such repairs. However, Landlord shall not be called upon to make any such repairs occasioned by the misuse or neglect of Tenant, its agents, employees, invitees, licensees or contractors. Landlord shall not be called upon to make any other improvements or repairs of any kind upon the leased premises and appurtenances. Any of the foregoing repairs required to be made by reason of the negligence of Tenant, its agents, etc., as above described, shall be the responsibility of the Tenant notwithstanding the provisions above contained in this Paragraph. Except as herein above provided, Landlord shall have no obligation to repair, maintain, alter or modify the demised premises or any part thereof or any plumbing, heating, electrical, air conditioning or other mechanical installation therein. Under no circumstances shall Landlord be obligated to repair, replace or maintain any plate glass or door or window glass

## 6.2 TENANT'S ALTERATIONS AND IMPROVEMENTS TO PREMISES

Tenant shall not make or cause to be made any alterations, additions or improvements to the building, or install or cause to be installed any interior signs, floor covering, exterior lighting, plumbing fixtures, shades or awnings, radio or television antennae, loud speakers, sound amplifiers or similar devices, or make any changes to the storefront or exterior of the building without first obtaining Landlord's written approval and consent, such consent not to be unreasonably withheld

Tenant shall present to the Landlord plans and specifications for such work at the time approval is sought. No additions, alteration, change or improvement shall be made which will weaken the structural strength, lessen the value of, or change the architectural appearance of any building or other construction. Use of the roof is reserved to Landlord, and Tenant shall not go upon the roof without Landlord's expressed consent. Landlord may condition its approval of any additions or alterations by Tenant on the requirement that Tenant or its contractor secure and bear the cost of a labor and materials payment bond for the amount of the proposed construction

reflecting Landlord as an obligee

All building materials and fixtures installed by Tenant shall be new or completely reconditioned. All alterations, improvements, additions and fixtures made or installed by Tenant as aforesaid shall remain upon the premises at the expiration or earlier termination of this Lease and shall become the property of Landlord, unless Landlord shall, prior to the expiration or termination of this Lease, have given written notice to Tenant to remove the same, in which event Tenant shall remove the same and restore the premises to the same good order and condition in which it was at the commencement of this Lease. Should Tenant fail so to do, Landlord may do so, collecting, at Landlord's option, the cost and expense thereof from the Tenant as additional rent, together with a penalty of \$500.00.

### 6.3 SIGNS

Tenant shall not place, alter, exhibit, inscribe, paint, or affix any sign, awning, canopy, advertisement, notice or other lettering on any part of the outside of the demised premises or of the building of which the demised premises is a part, or inside the demised premises if visible from the outside, without first obtaining the Landlord's written approval thereof, and Tenant further agrees to maintain such sign, awning, canopy, decoration, advertising matter, lettering, etc., as may be approved in good condition and repair at all times, and repair all damage to the demised premises that is caused by the installation, maintenance or removal of such signs, lettering, etc. All signs shall comply with the sign criteria provided by Landlord in Exhibit "C", and Tenant shall be obligated to install at least one sign in conformance with, as well as any additional signs required by, such sign criteria. All signs shall comply with applicable ordinances or other governmental restrictions, including the neighborhood association, and the determination of such requirements and the prompt compliance therewith shall be the responsibility of the Tenant.

### 6.4 FURNITURE, TRADE FIXTURES AND EQUIPMENT

Tenant shall not cut or drill into, or secure any trade fixture, apparatus or equipment of any kind to any part of the demised premises without first obtaining the written consent of Landlord. All furnishings, trade fixtures, equipment, and machines installed by Tenant in the leased premises shall be new or completely reconditioned and remain the property of Tenant subject to Landlord's security interest as defined at Section 5.2 above and shall be removable at the expiration or earlier termination of this Lease or any renewal or extension thereof, provided Tenant shall not at such time be in default under any covenant or agreement contained in this Lease, and provided further, that in the event of such removal Tenant shall promptly restore the premises to their original order and condition. Any such equipment not removed at or prior to such termination shall be and become the property of Landlord.

### 6.5 INITIAL INSTALLATION AND IMPROVEMENTS BY TENANT

Tenant shall submit to Landlord complete architectural, electrical and mechanical plans and specifications covering all work which Tenant proposes to do in the demised premises including the fixturing thereof, whether such work is to be done by Tenant or others. Such plans and specifications shall be prepared in such detail as Landlord may require, and Tenant agrees not to commence work upon any portion of the demised premises until Landlord has approved such plans and specifications in writing. Landlord agrees to act with reasonable promptness with respect to such plans and specifications. Any changes in said plans or specifications must be similarly approved by Landlord.

Upon receiving possession of the demised premises from Landlord, Tenant shall with due diligence proceed to commence work on these initial improvements and alterations to the premises and to install such furnishings, trade fixtures and equipment and to perform such other work as shall be necessary or appropriate in order to prepare the demised premises for the opening of business. In the event that Tenant does not open the demised premises for the conduct of its business within 120 days after receiving possession of the demised premises from Landlord, Landlord, in addition to all other remedies hereunder, shall have the right to terminate this Lease by giving Tenant written notice of such termination, whereupon this Lease shall be terminated unless by the date of the giving of said written notice, Tenant shall have opened the demised premises for the conduct of its business.

All of Tenant's work and installations shall be done in a first class, workmanlike manner and in compliance with all laws, rules, regulations and orders of all governmental authorities having jurisdiction thereof. Tenant's work shall

be conducted so as not to interfere with other work in progress in the demised premises or the Shopping Center and, in the performance of Tenant's work

Tenant shall, at Tenant's own expense, promptly remove from the demised premises and the Shopping Center area all trash and debris which may accumulate in connection with Tenant's work in the demised premises. Tenant, prior to delivery of possession, shall with the prior consent of Landlord be permitted to install fixtures and equipment. Any work done by Tenant prior to delivery of possession of the demised premises shall be done in a manner as will not interfere with the progress of the work by Landlord of completing construction and Landlord shall have no liability or responsibility for loss of, or any damage to fixtures, equipment or other property of Tenant so installed or placed on the premises.

## 6.6 MECHANIC'S LIENS

If Tenant makes any alterations or improvements in the premises, Tenant must pay for same when made. Nothing in the Lease shall be construed to authorize Tenant or any person dealing with or under Tenant, to charge the rents of the demised premises, or the property of which the premises form a part, or the interest of Landlord in the estate of the demised premises, or any person under and through whom Landlord has acquired its interest in the estate of the demised premises, with a mechanic's lien or encumbrance of any kind, and under no circumstances shall Tenant be construed to be the agent, employee or representative of Landlord in the making of any such alterations or improvements to the premises, but, on the contrary, the right or power to charge any lien, claim or encumbrance of any kind against Landlord's rents or the demised premises or said land is denied. So long as the laws of this state shall provide for the filing of a statutory bond to eliminate the attachment of mechanic's or materialmen's liens to real estate, Tenant shall require that its contractor or itself shall take such steps as are provided by law for the filing of said statutory bond prior to the initiation of any construction. If a mechanic's or materialmen's lien is threatened by any contractor or supplier, or in the event of the filing of a notice of any such lien, Tenant will promptly pay same and take steps immediately to have same removed. If the lien is not removed within ten (10) days from the date of written notice from Landlord, Landlord shall have the right at Landlord's option to cause the same to be discharged by record of payment, deposit, bond or other of a court of competent jurisdiction or otherwise, or to pay any portion thereof and of the amounts so paid, including attorneys' fees and expenses connected therewith and interest at the rate of 18% per annum on any sums paid or advanced shall be deemed to be additional rent due from Tenant to Landlord and shall be paid to Landlord immediately upon rendition to Tenant of bill. Tenant will indemnify and save harmless Landlord from and against all loss, claims, damages, costs or expenses suffered by Landlord by reason of any repairs, installations or improvement made by Tenant.

Except as may be expressly provided in this Lease, nothing in this Section shall be construed to permit Tenant to place any materials upon the leased premises or cause any labor or construction, or to make any alterations, additions, replacements or substantial repairs, in or about the leased premises. Landlord shall have the further right any time, and from time to time, to post and maintain on the leased premises such notices as Landlord deems necessary to protect the leased premises, and Landlord, from all liens of any nature whatsoever.

No mechanic's or materialmen's liens or mortgages, deeds of trust, or other liens of any character whatsoever created or suffered by Tenant shall in any way, or to any extent, affect the interest or rights of Landlord in any buildings or other improvements on the leased premises, or attach to or affect Landlord's title to or rights in the leased premises.

## 6.7 TENANT'S DUTY TO REPAIR AND MAINTAIN PREMISES

Landlord shall deliver the Premises to Tenant in good order, condition and repair. Landlord shall deliver the Premises to Tenant with the heating, ventilation and air-conditioning systems ("HVAC"), if any (excepting any evaporative coolers which may be installed), and the electrical systems servicing the Premises, in good working order and condition. Except for damage or destruction caused by, or repairs necessitated by any act, negligence, or omission of Tenant or Tenant's employees, agents, contractors, guests or invitees, or by the criminal or negligent acts of a third party, and except for any Alterations made by Tenant, for the first ninety (90) days following the Commencement Date, Landlord shall bear the responsibility for making any necessary repairs to the HVAC and the electrical systems, but only in the event that during such ninety (90) day period, Tenant provides to Landlord written notice of the need for repair. Tenant shall thereafter keep and maintain in good order, condition and repair (including any such replacement, periodic painting, and restoration as is required for that

purpose) the leased premises and every part thereof and any and all appurtenances hereto located, including, but without limitation, the exterior and interior portion of all doors, door checks, windows, plate glass, store front, all plumbing and sewage facilities within the leased premises including free flow up to the main sewer line, fixtures, heating and air conditioning and electrical systems (whether or not located in the leased premises), sprinkler system, walls, floors and ceilings, meters applicable to Tenant's premises, and all alterations, improvements and installations made by Tenant under the terms of this Lease and any Exhibits thereto, as herein provided, any repairs required to be made in the premises due to burglary of the premises or other illegal entry into the premises or any damage to the premises caused by a strike involving the Tenant or its employees

Tenant shall maintain and bear the expense of the light fixtures and bulbs, air conditioning units and filters, janitorial services, interior pest control, and the like. In the event that any governmental regulations from time to time shall require emergency lighting to be installed in the premises, the installation and the maintenance of the same, including providing of battery power shall be the responsibility of Tenant. Tenant will not cause or permit accumulation of any debris or extraneous matter on the roof of the premises and will be responsible for any damage caused to the roof by any acts of the Tenants, its agents, servants, employees or contractors of any type or nature

In accordance with any applicable municipal regulations, and at its own expense, Tenant shall

- ◆ place any rubbish or other matter outside the building on the leased premises only in such containers as are authorized from time to time by Landlord,
- ◆ see that there are no undue accumulations of garbage and refuse, keep the same in proper containers on the interior of the demised premises until called for collection, remove the same at Tenant's expense,
- ◆ keep the outside areas immediately adjoining the demised premises clean and free from ice and not to place or permit any rubbish, obstructions or merchandise in such areas, and
- ◆ keep the demised premises (including all exterior surfaces and both sides of all glass) clean, orderly, sanitary and free from objectionable odors, insects, vermin and other pests

If Tenant refuses or neglects to commence and to complete repairs or maintenance required herein promptly and adequately, Landlord may, but shall not be required to make and complete said repairs and Tenant shall pay the cost thereof to Landlord as additional rent upon demand. Except as provided in Section 6.3 above and except as specifically provided in Section 9.1 (Fire and Casualty damage) and Section 9.2 (Condemnation), Landlord shall not be obligated to repair, replace, maintain or alter the leased premises, and Tenant waives all laws in contravention thereof. With regard to repairs, Tenant expressly waives any right pursuant to any law now existing or which may be effective during the term hereof, to make repairs at Landlord's expense

## **ARTICLE VII - USE OF PREMISES**

### **7.1 TENANT'S USE OF LEASED PREMISES**

Tenant shall use and occupy the leased premises only for those permitted uses reflected in the Abstract of Lease and for no other purpose without Landlord's prior written consent, Landlord hereby gives its express consent for Tenant to sell or give away beer, wines or other alcoholic liquors or beverages upon or from the leased premises. Except as provided to the contrary in the Abstract of Lease, no portion of the leased premises shall be used in violation of any local, state or federal law, nor in a manner that will create any environmental or safety hazard. Additionally, except as provided to the contrary as permitted uses in the Abstract of Lease, Tenant shall not violate in any manner the exclusive use provisions granted by Landlord to other Tenants in the Shopping Center when Tenant has received written notice of such exclusive use provisions

### **7.2 USE OF COMMON AREAS**

All facilities furnished by Landlord in the Shopping Center and designated for the general use, in common, of occupants of the Shopping Center, including Tenant hereunder, their officers, agents, employees and customers, including, but not limited to, parking areas, streets, sidewalks, canopies, roadways, loading platforms, washrooms, shelters, ramps, landscaped areas and other similar facilities, shall at all times be subject to the exclusive control and management of Landlord, and Landlord shall have the right from time to time to change the

area, level, location and arrangement of such parking areas and other facilities above referred to, and make all rules and regulations pertaining to and necessary for the proper operation and maintenance of the common facilities. Tenant hereunder and any other subtenants and licensees shall comply with all rules and regulations made by Landlord pertaining to sanitation, handling of trash and debris, loading and unloading of trucks and other vehicles, and safety and security against fires, theft, vandalism, personal injury and other hazards. The parking area shall be limited to parking for customers of tenants of the Shopping Center, and Tenant and its employees may not park in any portion of the parking area, except that portion thereof designated or which may hereafter be designated as "Employees' Parking Area". Upon request of the Landlord, Tenant will furnish to Landlord the license numbers of any automobiles belonging to Tenant or its employees and in the event any of such vehicles shall be parked in areas other than those designated for employee parking, the Tenant shall pay to Landlord forthwith on demand an amount equal to \$10.00 per day of each day that such vehicle(s) shall be parked in such non-designated areas.

Landlord shall have the exclusive right at any and all times to close any portion of the common areas for the purpose of making repairs, changes or additions thereto and may change the size, area or arrangement of the parking areas or the lighting thereof within or adjacent to the existing areas and may enter into agreements with adjacent owners for cross-easements for parking, ingress or egress. In the event that the lighting controls for the common areas shall be located in the within premises, then Landlord shall in such event have the right to enter the premises of the Tenant for the purpose of adjusting or otherwise dealing with the said controls as required.

### 7.3 LANDLORD'S USE OF SHOPPING CENTER

Except as specifically provided to the contrary in the Abstract of Lease, Landlord may use or lease the remaining shops and spaces in the Shopping Center or complex for retail use, commercial offices, or any other legally permitted uses.

### 7.4 CONDUCT OF TENANT'S OPERATIONS

A ~~Tenant shall operate all of the demised premises during the entire term of this Lease with due diligence and efficiency as to produce the maximum gross receipts which may be produced by such manner of operation. Subject to inability by reason of strikes or labor disputes or unavailability of goods or other reasons beyond Tenant's reasonable control, Tenant shall carry at all times in the demised premises a stock of merchandise of such size, character, and quality as shall be reasonably designed to produce the maximum return to Landlord and Tenant.~~ Tenant shall conduct its business during the same days, nights and hours as is reasonable and customary for Tenant's type of business, and shall continuously and uninterruptedly operate the store throughout the term for the use permitted by this Lease. This provision applies whether or not Tenant is paying percentage rent. It is the objective of this center to have all businesses operating at maximum hours in order to generate the highest level of traffic for the center in order to promote Tenant's business as well as the business of other Tenants in the center. Failure to comply with this provision, for any reason, shall be a material breach of the lease.

B At all times throughout the lease term, Tenant shall

- (1) Comply with any and all requirements of any of the constituted public authorities, and with the terms of any State or Federal statute or local ordinance or regulation applicable to Tenant or its use, safety, cleanliness or occupation of the demised premises, and save Landlord harmless from penalties, fines, costs, expenses or damages resulting from failure to do so.
- (2) Give to Landlord prompt written notice of any accident, fire or damage occurring on or to the demised premises.
- (3) Load and unload goods at such times in the areas and through such entrance as may be designated for such purposes by Landlord. Such trailers or trucks shall not be permitted to remain parked, overnight, in any area of Shopping Center, whether loaded or unloaded.
- (4) Conduct its business in the premises in all respects in a dignified manner and in accordance with high standards of store operation.
- (5) Comply with all reasonable rules and regulations of Landlord in effect at the time of the execution

of this Lease or at any time or times, and from time to time, promulgated by Landlord, which Landlord in its sole discretion shall deem necessary in connection with the demised premises, the building of which the demised premises are a part or the Shopping Center, including both the operation of Tenant's business during certain minimum days and hours and the installation of such fire extinguishers, water buckets and other safety equipment as Landlord may reasonably require

C Except by prior written consent of Landlord, Tenant shall not

- (1) Use or operate any machinery that, in Landlord's opinion, is harmful to the building or disturbing to other tenants in the building of which the demised premises is a part, nor shall Tenant use any loud speakers, televisions, phonographs, radios or other devices in a manner so as to be heard or seen outside of the demised premises, nor display merchandise on the exterior of the demised premises either for sale or for promotional purposes
- (2) Do or suffer to be done, any act, matter or thing objectionable to the fire insurance companies whereby the fire insurance or any other insurance now in force or hereafter to be placed on the demised premises or any part thereof, or on the building of which the demised premises may be a part, shall become void or suspended, or whereby the same shall be rated as a more hazardous risk than at the date when Tenant receives possession hereunder. In case of a breach of this covenant, in addition to all other remedies of Landlord hereunder, Tenant agrees to pay to Landlord as additional rent any and all increase or increases of premiums on insurance carried by Landlord on the demised premises, the Shopping Center or any part thereof, caused in any way by the occupancy of Tenant
- (3) Conduct any auction, fire, bankruptcy or selling-out sale on or about the demised premises, solicit business in any parking or other common area which may become such by the leasing or licensing to others by Landlord of any property adjoining or near the leased premises. Such solicitation shall include, without limitation, distribution of handbills or other advertising media in automobiles parked in the parking area or other common areas, the use of pickets in such areas, the use of loud speaker systems which are audible in such areas, and the displaying of any of Tenant's merchandise or the posting of any signs not expressly authorized hereunder in such areas

## 7.5 RIGHTS RESERVED BY LANDLORD

- A **EASEMENTS** Landlord expressly reserves all rights in and with respect to the land hereby leased not inconsistent with Tenant's use of the leased premises as provided in the Lease, including (without in any way limiting the generality of the foregoing) the rights of Landlord to establish common areas and grant parking easements to others and to enter upon the premises and give easements to others (even before the establishment of common areas) for the purpose of installing, using, maintaining, renewing and replacing such overhead or underground water, gas, sewer and other pipelines, and telephone, electric, and power lines, cables and conduits as Landlord may deem desirable in connection with the development or use of any other property in the neighborhood of the land hereby leased, whether owned by Landlord or not, all of which pipelines, lines and conduits shall be buried to a sufficient depth or raised to a sufficient height so as not to interfere with the use or stability of the building or any other improvements on the land hereby leased
- B **INSPECTION, REPAIR AND INSTALLATION** Landlord reserves the right to, at all reasonable times, with twenty-four (24) hour prior notice, except for in emergency situations, by itself or its duly authorized agents, employees and contractors to go upon and inspect the demised premises and every part thereof, to enforce or carry out the provisions of this Lease, at its option to make repairs, alterations and additions to the demised premises or the building of which the demised premises are a part, to perform any defaulted obligation of Tenant or for any other proper purposes. Landlord also reserves the right to install or place upon, or affix to, the roof and exterior walls of the demised premises, equipment, signs, displays, antenna, and any other object or structure of any kind, provided the same shall not materially impair the structural integrity of the building or interfere with Tenant's occupancy
- C **PRESENTATION FOR SALE OR LEASE** Landlord hereby reserves the right during usual business hours to

enter the leased premises and to exhibit the same for purposes of sale, lease or mortgage, and during the last six (6) months of the term of this Lease, to exhibit the same to any prospective Tenant, and to display a "For Sale" sign at any time, and also after notice from either party of intention to terminate this Lease, or at any time within six (6) months prior to the expiration of this Lease, a "For Rent" sign, or both "For Sale" and "For Rent" signs, and all said signs shall be placed upon such part of the demised premises as Landlord shall require, except on doors leading into the demised premises. Prospective purchasers or tenants authorized by Landlord may inspect the premises at reasonable hours at any time. Except in the event of an emergency, upon twenty-four (24) hours' prior notice to Tenant.

## ARTICLE VIII - LIABILITY INSURANCE AND INDEMNIFICATION

### 8.1 ALLOCATION OF RISKS AND INSURANCE

A. OPERATION OF SHOPPING CENTER AND COMMON FACILITIES. Landlord bears the risk of and may insure, as practical or required by a lender of Landlord, the operation of the Shopping Center as a whole or the common facilities. Such insurance may include, but is not limited to, general liability, umbrella liability, bodily injury, public liability, property damage liability, ~~automobile insurance~~, sign insurance and the like in limits selected by Landlord. Tenant shall pay to Landlord its proportionate share of such insurance as provided in Section 4.3 above.

B. LEASED PREMISES AND SHOPPING CENTER. Landlord bears the risk of and shall keep the buildings and improvements forming at any time a part of the leased premises insured against loss or damage by fire, with extended coverage and vandalism and malicious mischief endorsement or their equivalents, in such insurance companies as Landlord shall select and in amounts not less than eighty percent (80%) of the replacement cost of the building and structures insured with loss payable thereunder to Landlord and to any authorized encumbrancer of Landlord (with standard mortgagee loss payable clause) in accordance with their respective interests. Landlord may also maintain rent insurance equal to at least one year's rent. If the Lease is canceled, all insurance proceeds shall be paid and retained by Landlord, subject to the rights of any authorized encumbrancer of Landlord. Tenant shall pay to Landlord its proportionate share of such insurance as provided in Section 4.3 above.

Tenant agrees not to keep upon the premises any articles or goods which may be prohibited by the standard form of fire insurance policy. It is agreed between the parties that in the event the insurance rates applicable to fire and extended coverage insurance covering the within premises shall be increased by reason of any use of the premises made by the Tenant, then Tenant shall pay to Landlord such increase in insurance as shall be occasioned by said use.

C. PROPERTY OF TENANT. Tenant agrees that all property owned by it in, on or about the premises shall be at the sole risk and hazard of the Tenant. Landlord shall not be liable or responsible for any loss of or damage to Tenant, or anyone claiming under or through Tenant, or otherwise, whether caused by or resulting from a peril required to be insured hereunder, or from water, steam, gas, leakage, plumbing, electricity or electrical apparatus, pipe or apparatus of any kind, the elements or other similar or dissimilar causes, and whether or not originating in the demised premises or elsewhere, ~~irrespective of whether or not Landlord may be deemed to have been negligent with respect thereto~~, and provided such damage or loss is not the result of the negligence, gross negligence, and/or an intentional and willful wrongful act of Landlord.

Tenant agrees that, if any property owned by it and located in the leased premises shall be damaged or destroyed by an insured peril, Landlord shall not have any liability to Tenant, nor to any insurer of Tenant, for or in respect of such damage or destruction, unless such damage or loss is the result of the negligence, gross negligence, and/or intentional and willful wrongful act of Landlord and Tenant shall require all policies of risk insurance carried by it on its property in the leased premises to contain or be endorsed with a provision in and by which the insurer designated therein shall waive its right of subrogation against Landlord.

D. OPERATIONS OF TENANT. All operations conducted by Tenant shall be at Tenant's sole risk. In addition, Tenant shall procure insurance for its operations as follows:

(1) Liability Insurance. Tenant shall keep in force at its own expense public liability insurance and

comprehensive general liability insurance including contractual liability insurance sufficient to cover all phases and aspects of the operation and conduct of its business with minimum limits of \$1,000,000 on account of bodily injuries to or death of one person, and \$1,000,000 on account of bodily injuries to or death of more than one person as the result of any one accident or disaster, and \$1,000,000 on account of damage to property.

- (2) Plate Glass Insurance Tenant shall keep and maintain in force during the term hereof, plate glass insurance upon windows and doors in the demised premises
- (3) Dram Shop Insurance In the event that at any time during the term of the Lease or any extension or renewal thereof, drugs, prescription drugs, beer, wines or other alcoholic liquors or beverages are sold or given away upon or from the leased premises (it being understood and agreed, however, the foregoing provision shall not authorize the use of the premises for such purposes without the express consent of the Landlord being set forth otherwise in this Lease), Tenant shall, at its sole expense, obtain, maintain and keep in force, adequate Dram Shop insurance protecting both Tenant and Landlord in connection therewith with policy provided for, from time to time, under the laws of this State In the event Tenant shall fail to procure such insurance, then sales of the foregoing products shall be suspended until such coverage is again in force

E REQUIREMENTS OF ALL POLICIES All insurance policies required of Tenant in this Lease shall name Landlord as additional insured (and upon request, any other party named by Landlord) and shall contain an express waiver of any right of subrogation against Landlord and other named insureds designated by Landlord provided that no policy of insurance required herein is invalidated thereby Said policies shall be in such companies as are authorized to write such coverage in this State, shall be acceptable to Landlord and/or its lender (which shall be named as an additional insured if requested in writing) Tenant will further deposit the policy or policies of such insurance or certificates thereof, with Landlord with evidence of payment of premium at all times commencing with the date Tenant first enters upon the demised premises for any purpose Each policy shall provide against cancellation without thirty-(30) days prior written notice to the named insureds

F FAILURE TO PROCURE INSURANCE In the event Tenant shall fail to procure insurance required under this Article and fail to maintain the same in force continuously during the term shall be a default of this Lease by Tenant, and Landlord shall be entitled to but not required to procure the same and Tenant shall immediately reimburse Landlord for such premium expense

## 8.2 INDEMNIFICATION AND WAIVER OF CLAIMS

Tenant indemnifies Landlord and waives claims as follows

A INDEMNIFICATION Tenant will indemnify Landlord and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property occurring in or about, or arising from or out of, the demised premises and adjacent sidewalks and loading platforms or areas or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, customers or employees Additionally, Tenant agrees to indemnify and hold harmless Landlord with respect to any claim, cause of action or proceeding, in law or in equity, civil, criminal or administrative, asserted or brought by any person, firm, corporation, including without limitation, any government or agency thereof, and any private individual, corporation, or other entity, claiming or asserting that the exclusive uses contained in Section 7.1 constitute an unfair method of competition or an unfair and deceptive act or practice in commerce, or is in restraint of trade, or constitutes a violation of any of the Anti-Trust Laws of the United States, including, but not limited to, the Federal Trade Commission Act, or any state law having as its purpose the preservation of competition and/or the outlawing of agreements, combination, and conspiracies in restraint of trade or commerce. Tenant agrees to defend at its own cost and expense any lawsuit or proceeding referred to above and to reimburse Landlord for any reasonable expenses or damages, including reasonable attorneys' fees incurred in any such proceeding, lawsuit, administrative action, or investigation commenced in whole or in part by reason of said exclusive clause

B WAIVER OF CLAIMS Landlord and Landlord's agents, employees and contractors shall not be liable for, and Tenant hereby releases all claims for, damage to person and property sustained by Tenant or any person claiming through Tenant resulting from any theft, fire, accident, occurrence or condition in or upon the demised premises or building of which they shall be a part, including but not limited to such claims for damage resulting from (i) any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, water pipes, stairs, railings or walks, (ii) any equipment or appurtenances becoming out of repair, (iii) the bursting, leaking or running of any tank, washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about such building or premises, (iv) the backing up of any sewer pipe or downspout, (v) the escape of steam or hot water, (vi) water, snow or ice being upon or coming through the roof or any other place upon or near such building or premises or otherwise, (vii) the falling of any fixture, plaster or stucco, (viii) broken glass, and (ix) any act or omission of co-tenants or other occupants of said building or of adjoining or contiguous property or buildings, provided such damage or loss is not the result of the negligence, gross negligence, and/or intentional and willful wrongful act of Landlord

In the event the demised premises or its contents are damaged or destroyed by fire or other insured casualty, the rights, if any, of either party hereto against the other with respect to such damage or destruction are waived, and all policies of fire and/or extended coverage or other insurance covering the demised premises or its contents shall contain a clause or endorsement providing in substance that the insurance shall not be prejudiced if the insureds have waived the right of recovery from any person or persons prior to the date and time of loss or damage, if any

C NOTICE OF CLAIMS OR SUITS Tenant agrees to promptly notify Landlord of any claim, action, proceeding or suit instituted or threatened against the Landlord In the event Landlord is made a part to any action for damages which Tenant has herewith indemnified Landlord against, then Tenant shall pay all costs and shall provide effective counsel in such litigation

## **ARTICLE IX - LOSS, DESTRUCTION OR TAKING OF PREMISES**

### **9 1 FIRE OR OTHER CASUALTY**

Tenant shall give to Landlord prompt written notice of any accident, fire or damage occurring on or to the demised premises Thereupon, Landlord's obligation concerning the repair or reconstruction of the premises will be as follows

A PARTIAL DESTRUCTION If the demised premises shall be damaged by the elements or other casualty or by fire, not due to Tenant's negligence, but are not thereby rendered untenable in whole or in part, Landlord shall promptly at its own expense cause such damage to be repaired, and the minimum annual rent shall not be abated If by reason of any such occurrence, the demised premises shall be rendered untenable only in part, Landlord shall promptly at its own expense cause the damage to be repaired and the minimum rent meanwhile shall be abated proportionately as to the portion of the demised premises rendered untenable

B SUBSTANTIAL DESTRUCTION If the demised premises shall be rendered wholly untenable by reason of such occurrence (i e , destruction of 25% or more), the Landlord shall promptly at its own expense cause such damage to be repaired, and the minimum rent shall meanwhile be abated in whole, provided, however, that Landlord shall have the right, to be exercised by notice in writing delivered to Tenant within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed premises, and in such event this Lease and the tenancy hereby created shall cease as of the date of the said occurrence, the rent to be adjusted as of such date

### **9 2 CONDEMNATION**

A AWARD If title to all or any portion of the leased premises be taken by a public or quasi-public authority under any statute or by right of eminent domain of any governmental body, whether such loss or damage results from condemnation of part or all of the demised premises or any portion of the parking area or service entrances and exits, and Tenant shall not be entitled to participate or receive any part of the damages or award except where said award shall provide for moving or other reimbursable expenses for the Tenant under applicable statute in which event the latter sum shall be received by Tenant, and

except that portion of any award allocated to the taking of Tenant's trade fixtures, equipment and personal property, or to a loss of business by Tenant. None of the awards or payments to Landlord shall be subject to any diminution or apportionment on behalf of Tenant or otherwise.

- B. **SUBSTANTIAL OR MATERIAL TAKING** Should any power of eminent domain be exercised after Tenant is in possession, such exercise shall not void or impair this Agreement unless the amount of the demised premises so taken is such as to substantially and materially impair the usefulness of the demised premises for the purpose for which the same are hereby demised, in which event either party may cancel this Lease by notice to the other within sixty (60) days after possession is taken, and the rental herein provided shall abate as of the date possession is taken by the condemning authority.
- C. **PARTIAL TAKING** If a portion of the demised premises shall be taken as herein provided for public improvements or otherwise under the exercise of the right of eminent domain and the premises shall continue to be reasonably suitable for the use which is herein authorized, then the rental herein provided shall be reduced from the date of such taking in direct proportion to the reduction in usefulness of the premises.

## **ARTICLE X - ASSIGNMENT, SUBLETTING, MORTGAGING AND SUBORDINATION**

### **10.1 ASSIGNMENT AND SUBLETTING BY TENANT**

Tenant shall not convey, assign, mortgage, pledge or encumber this Lease, in whole or in part, nor sublet the whole or any part of the demised premises, or permit the use of the whole or any part of the demised premises by any licensee or concessionaire, without first obtaining the written consent of Landlord such consent not to be unreasonably withheld. This prohibition shall be construed to include a prohibition against any assignment or subletting by operation of law, assignment for the benefit of creditors, voluntary or involuntary bankruptcy or reorganization, or otherwise, without the prior written consent of Landlord.

Landlord's consent or refusal to consent to any such subletting may be based upon, but shall not be limited to, factors pertaining to

- A. The acceptability and/or compatibility of any proposed subtenant to the demised premises and to the whole of any building, structure, shopping center or other entire development wherein said demised premises are located, and
- B. The financial statement, credit and ability of any proposed subtenant to meet the obligations, terms and conditions of this Lease.

The acceptance of any rental payments by Landlord from any alleged assignee shall not constitute approval of the assignment of this Lease by the Landlord, and the consent by Landlord to one assignment or subletting of the demised premises shall not constitute a waiver of Landlord's rights hereunder.

At the time of Tenant's written request of Landlord's approval of a proposed assignment Tenant shall pay to Landlord the sum of \$250.00 as a Processing Fee. Said Processing Fee shall not be refundable in the event that Landlord denies approval. In the event of any such assignment, subletting, licensing or granting of a concession, made with the written consent of the Landlord as aforesaid, Tenant will nevertheless remain liable for the performance of all the terms, conditions, and covenants of this Lease. Any permitted assignment or subletting shall be by agreement in form and content acceptable to Landlord, and shall specify and require that each subtenant or assignee acquiring this Lease by acceptance of any sublease, assignment or transfer shall assume, be bound by, and be obligated to perform the terms and conditions of its sublessor and assignor under this Lease. A condition of such assignment or subletting is the agreement of the parties that Landlord shall receive the full and complete rental payment of subtenant or assignee, though such payments may be in excess of the original rental between Landlord and Tenant. It is the intent and understanding of the parties to this agreement that Tenant shall not receive any monetary benefit, in excess of the actual rental obligation of Tenant, as agreed between the original Tenant and Landlord, through a sublease or assignment to a third party. In the event of default of Tenant, Landlord at Landlord's sole option may succeed to the position of Tenant as to any subtenant or licensee of Tenant.

10 2 ASSIGNMENT AND MORTGAGING BY LANDLORD

- A TRANSFER BY LANDLORD The term "Landlord" as used in this Lease means the Owner, only for the time being, of the demised premises So long as all sums held on Tenant's behalf in trust or escrow by Landlord are paid over to any purchaser of said premises, Landlord shall be and is hereby relieved of all covenants and obligations of Landlord hereunder after the date of sale of said demised premises, and it shall be construed without further agreement between the parties that the purchaser has assumed and agreed to carry out any and all covenants and obligations of Landlord hereunder from the date of such sale
- B SUBORDINATION AND ATTORNMENT This Lease shall be subordinate to any ground lease or other underlying leasehold interest and to the lien of any mortgage or deed of trust heretofore or hereafter placed upon the leased premises or the Shopping Center, to any and all advances made or to be made thereunder, to the interest on the obligations secured thereby, and to all renewals, replacements and extensions thereof, provided, however, that in the event any proceedings are brought for default under any such ground or underlying lease, or in the event of foreclosure or the exercise of the power of sale under any such mortgage or deed of trust, Tenant shall attorn to the purchaser of the leased premises at such foreclosure or sale and recognize such purchaser as Landlord under this Lease, provided such purchaser expressly agrees in writing to be bound by the terms of this Lease If any mortgagee or beneficiary elects to have this Lease superior to its mortgage or deed of trust and gives notice of such election to Tenant, then this Lease shall thereupon become superior to the lien of such mortgage or deed of trust Tenant covenants and agrees to execute and deliver upon written notice, without charge therefor, such further instruments evidencing subordination of this Lease to such ground or underlying leases and to the lien of any such mortgages or deeds of trust as may be required by Landlord or the purchaser of the leased premises, provided that such lienholder agrees in writing not to disturb Tenant's use and possession of the leased premises as long as Tenant shall not be in default hereunder and provided further that Tenant shall agree to attorn to any such lienholder
- C OFFSET STATEMENT Tenant agrees to execute, acknowledge and deliver any and all documents required to effectuate the provisions of this Article and within ten (10) days after written request therefor by Landlord or in the event that upon any sale, assignment, lease or hypothecation of the leased premises and/or the land thereunder by Landlord, an offset statement shall be required by Tenant, Tenant agrees to deliver in recordable form a certificate (if such be the case) that this Lease is in full force and effect and there are no defenses or offsets thereto, or stating those claimed by Tenant, and the dates to which rental or other sums have been paid in advance, it being intended that any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser, mortgagee, assignee or beneficiary Tenant shall also deliver to any prospective institutional lender of Landlord, upon Landlord's reasonable request therefor, from time to time, specific subordination agreement on Lender's form as may be required by Lender, Tenant acknowledges and agrees that the promises to issue statements pursuant to this Paragraph are a material consideration inducing Landlord to enter into this Lease, and that the breach of such promise shall be deemed a material breach of this Lease, and shall constitute a default hereunder Offset statements may also be referred to as estoppel certificates

**ARTICLE XI - DEFAULT AND REMEDIES FOR DEFAULT**

11 1 EVENTS OF DEFAULT

The occurrence of any of the following shall constitute an event of default hereunder

- A The filing of a governmental lien against Tenant, or the filing of a petition by or against Tenant for adjudication as a bankrupt or insolvent, or for its reorganization or for the appointment of a receiver or trustee of Tenant's property, and assignment by Tenant for the benefit of creditors, or the taking of possession of the property of Tenant by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of Tenant
- B Failure of Tenant to pay when due any installment of rent hereunder or any other sum herein required to be paid by Tenant, and the continuance of such nonpayment for ten (10) days after written notice from Landlord

C Abandonment of the leased premises by Tenant

D Tenant's failure to perform any other covenant or condition of this Lease within thirty (30) days after written notice and demand, unless the failure is of such a character as to require more than thirty (30) days to cure, in which event Tenant's failure to proceed diligently to cure such failure shall constitute an event of default

## 11.2 REMEDIES OF LANDLORD FOR DEFAULT BY TENANT

Upon the occurrence of an event of default, Landlord shall have the right, then or at any time thereafter, and while such event of default shall continue, and in addition to and not in lieu of any other remedies, relief or rights available to Landlord at law or equity or contained in this Lease, to do any of the following

A Landlord by itself or its authorized agents may cure the default and charge Tenant for the costs of such cure, which charge shall be due and payable as rental under this Lease immediately upon written notice to Tenant

B Landlord may distrain for rent due

C Landlord may look to the following security as provided in Article V above

(1) Landlord may exercise its general lien on the leasehold estate and all property in the leased premises,

(2) Landlord may apply all or part of the Security Deposit to the Default of Tenant as provided in Section 5.1

D Landlord shall have the right to re-enter the premises to assume and take possession of the whole or any part thereof, and to remove all persons or personal property by direct or summary action, or in a different type of suit or proceeding, by force or otherwise, without being deemed guilty of trespass or other actionable wrong by reason thereof, and without being liable for the damages therefor or in connection therewith, and, after demand made therefor, Tenant or anyone in possession claiming under Tenant shall be deemed guilty of unlawful detainer and subject to such summary or other action as may be provided by law. Additionally, Landlord may relet the premises as the agent for and in the name of the Tenant, at any rental readily acceptable, applying the proceeds first to the payment of such rent as same come due, and toward the fulfillment of the other covenants and agreements of Tenant herein contained, and the balance, if any, shall be paid to Tenant, and the Tenant hereby agrees that if Landlord shall recover or take possession of said premises as aforesaid, and be unable to relet and rent the same so as to realize a sum equal to the rent hereby reserved, Tenant shall pay to Landlord any loss or difference of rent for the remainder of the term

E Landlord, irrespective of the date on which its right of re-entry shall have accrued or be exercised, shall have the right, whether for rent or possession or otherwise, to forfeit this Lease and terminate the state of tenancy hereby created

This right to terminate is exercisable by a written notice to Tenant, which written notice may be part of a notice of default previously delivered to Tenant, and, as such, may be conditioned upon Tenant's failure to cure the default and the event of default. The termination may be made effective as of the event of default, or thereafter, and, if not otherwise specified, will be deemed to be effective immediately. Upon such termination and forfeiture, Landlord shall be entitled to and may take immediate possession of the premises, any other notice or demand being hereby waived. Such termination does not, however, release Tenant from liability for rentals then overdue or remaining under the Lease but shall operate to accelerate the entire balance of the term rental, which shall become immediately due and payable by Tenant, along with all overdue rentals and charges

## 11.3 NON-WAIVER OF REMEDIES

A It is expressly agreed that neither the taking of possession of the leased premises nor the institution of any proceedings by way of unlawful detainer, ejectment, quiet title, or otherwise, to secure possession of

said leased premises, nor the re-entry by Landlord with or without the institution of such proceedings, nor the re-renting or subletting of said premises, shall operate to terminate this Lease in whole or in part, nor of itself constitute an exercise of Landlord's option to do so, but only by the giving of the written notice specifically specifying termination shall such termination be effected

- B In the event Tenant breaches this Lease, or any covenant, term or condition hereunder, and abandon the leased premises, this Lease shall continue in force and effect for so long as the Landlord does not terminate Tenant's right to possession, and Landlord may enforce all rights and remedies of Landlord including, without limitation, the right to recover rental as it becomes due hereunder Acts of maintenance or preservation of efforts to relet the leased premises, or the appointment of a receiver upon the initiation of the Landlord to protect the Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession
- C Waiver by Landlord of any default, breach or failure of Tenant under this Lease shall not be construed as a waiver of any subsequent or different default, breach or failure In case of a breach by Tenant of any of the covenants or undertakings of Tenant, Landlord nevertheless may accept from Tenant any payments hereunder without in any way waiving Landlord's right to exercise the remedies hereinbefore provided for by reason of any other breach or lapse which was in existence at the time such payment or payments were accepted by Landlord
- D It is expressly understood that the enumeration herein of *express rights, options and privileges shall not* limit Landlord thereto nor deprive Landlord of any other remedy or action or cause of action by reason of any default of Tenant, including the right to recover from Tenant any deficiency upon re-renting
- E The specific remedies to which Landlord may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which they may be lawfully entitled in case of any breach or threatened breach by either of them or of any provisions of this Lease

## **ARTICLE XII - GENERAL PROVISIONS**

### **12 1 BROKER(S) COMMISSIONS**

Landlord and Tenant represent and warrant to each other that there are no claims for brokerage commissions or finder's fees in connection with this Lease, *excepting commissions or fees due to Rein & Grosseohme and LevRose Commercial Real Estate*, which commission shall be payable by Landlord Each party agrees to indemnify the other for, from and against all liabilities arising from any such claims for brokerage commissions or finder's fees, including any attorneys' fees connected therewith, arising out of the other's actions The total gross lease commission due will be \$25,483 85 split equally between Rein & Grosseohme Commercial Real Estate and LevRose Commercial Real Estate

### **12 2 NO PARTNERSHIP**

Notwithstanding any other express or implied provision of this Lease, it is understood that Landlord does not in any way, or propose, a partner or joint venturer with Tenant in the conduct of Tenant's business

### **12 3 SUCCESSORS AND ASSIGNS**

All rights, obligations and liabilities herein, given to, or imposed upon, the respective parties hereto shall extend to and bind the several and respective heirs, executors, administrators, successors, sublessees, and assigns of said parties, subject to the provisions of Article X, provided, however, that the liability of Landlord hereunder and any successor in interest and title to the demised premises shall be limited to his or its interest in the Shopping Center, and no other assets of the Landlord other than his or its interest in the Shopping Center shall be affected by reason of any liability which said Landlord or successor in interest may have under this Lease If there shall be more than one Tenant, they shall all be bound jointly and severally by the terms, covenants and agreements herein and the word "Tenant" shall be deemed and taken to mean each and every person or party mentioned as a Tenant herein, be the same one or more, and if there shall be more than one Tenant, any notice required or permitted by the terms of this Lease may be given by or to any one thereof and shall have the same force and effect as if given or to all thereof

## 12.4 NOTICES AND MISCELLANEOUS

- A All notices, demands and communications of any kind which either party to this Lease may be required or desires to serve upon the other shall be in writing and served to Landlord and to Tenant by personal service or at the appropriate address indicated in the Abstract of Lease, whereupon such service shall be deemed complete, or by mailing a copy thereof by certified or registered mail, return receipt requested, postage prepaid, with such service being deemed to be complete on the day of actual delivery as shown by the addressee's receipt or at the expiration of the third day of mailing, whichever first occurs. Either party may change its address or may designate additional parties who shall be entitled to notice hereunder from time to time by giving written notice to the other.
- B This Lease shall be construed in accordance with and governed by the laws of the State of Arizona. Any term or provision of this Lease which now or hereafter is declared contrary to any law, order, ordinance or requirement of any governmental authority, whether now in force or enacted or promulgated in the future, or which is otherwise invalid, shall be deemed stricken from this Lease without impairing the validity of the remainder of this Lease.
- C If Tenant shall be more than one party, then the obligations imposed upon Tenant hereunder shall be joint and several.
- D No delay or omission of either party to exercise any right or power arising from any default shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein. No waiver by either party of the breach of any covenant of this Lease by the other party shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Lease, nor shall the acceptance of rent be deemed to be a waiver of such default by Landlord, other than a default arising from the payment of the rent accepted by Landlord. --
- E The acceptance or endorsement by Landlord of any payment or check from Tenant shall be not deemed an accord and satisfaction and shall not prejudice Landlord's right to recover the balance of any amounts due under the terms of this Lease, unless otherwise expressly agreed by Landlord in writing.
- F If any person shall institute an action against Tenant or Landlord in which the other is involuntarily and without cause made a party defendant, the party whose acts, failure to act or alleged acts gave rise to the action, shall indemnify, defend and save the other harmless for, from and against all liability by reason thereof, including actual attorneys' fees and all costs incurred in such action.
- G Tenant shall not record this Lease without Landlord's prior written consent. Landlord consents to a recording of a memorandum of this Lease, identifying the term and the leased premises, which memorandum shall be in a form reasonably acceptable to Landlord. The parties hereto agree to execute, acknowledge and deliver such further documents as may be necessary or proper to carry out the purpose and intent of this Lease and, in this regard, either party shall, upon request of the other, execute, acknowledge and deliver to the other a "short form" memorandum of this Lease for recording purposes.
- H Tenant's Right to Request Information. Landlord shall, within sixty (60) days of a written request from Tenant relating to any specific expenditure by Landlord for costs of operation and maintenance of the common facilities, provide Tenant with copies of invoices or other reasonable evidence or explanation of the specific expenditure in question. Notwithstanding the foregoing, Tenant shall not be entitled to withhold any rent or other payment owing to Landlord hereunder pending receipt of such explanation of the expenditure in question.

## 12.5 ATTORNEYS' FEES

In the event that legal or arbitration proceedings are brought or commenced to interpret or enforce the terms of this Lease, the prevailing party shall be entitled to recover from the other party all costs and expenses of such proceedings, including reasonable attorneys' fees, whether or not any proceedings are prosecuted to judgment.

## 12.6 SCOPE AND INTERPRETATION OF THIS AGREEMENT

- A ENTIRE AGREEMENT. This Lease shall be considered to be the only agreement between the parties.

hereto pertaining to the demised premises. It is understood that there are no oral agreements between the parties hereto affecting this Lease and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none shall be used to interpret or construe this Lease. It is further agreed by and between the parties hereto that there shall be no modification or amendment to this Lease, except as may be executed in writing between the parties hereto. It is further understood by Tenant that Landlord may not now, or in the future, own all of the Shopping Center in which the leased premises are located. Tenant agrees not to cancel its Lease, reduce, abate, or offset rents, or pursue any other remedies under this Lease, or at law or equity, with respect to Landlord, for any violation, breach or default of this Lease by virtue of any act or omission on, or with respect to, property not owned by Landlord.

- B ARTICLE HEADINGS AND CAPTIONS The headings or captions of Articles in this Lease are for convenience and reference only and they in no way define, limit, or describe the scope or intent of this Lease or the provisions of such Articles
- C GENDER AND INTERPRETATION OF TERMS AND PROVISIONS As used in this Lease and whenever required by the context thereof, each number, both singular or plural, shall include all numbers, and each gender shall include all genders. Landlord and Tenant as used in this Lease or in any other instrument referred to in or made a part of this Lease shall likewise include both the singular and the plural, a corporation, co-partnership, individual or person acting in any fiduciary capacity as executor, administrator, trustee, or in any other representative capacity. All covenants herein contained on the part of Tenant shall be joint and several.
- D TIME OF ESSENCE Time is hereby expressly declared to be of the essence of this Lease and of each and every covenant, term, condition and provision hereof.
- E IMPARTIAL CONSTRUCTION The language in all parts of this Lease shall be in all cases construed as a whole according to its fair meaning and not strictly for nor against either Landlord or Tenant.
- F GOVERNING LAW The laws of the State of Arizona shall govern the validity, interpretation, performance and enforcement of this Lease.
- G PARTIAL INVALIDITY If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.
- H AMENDMENT Oral agreements in conflict with any of the terms of this Lease shall be without force and effect, all amendments to be in writing executed by the parties or their respective successors in interest.

## 12.7 RULES AND REGULATIONS

Provided said rules apply uniformly to all tenants of the Shopping Center, Tenant agrees to observe and comply with all Rules and Regulations of the Shopping Center (the "Rules"), reasonably imposed by Landlord from time to time for the proper enjoyment, cleanliness, appearance, maintenance and reasonable use of the Shopping Center by all tenants and their agents, customers, clients and employees. Breach of such Rules and Regulations shall constitute a default by Tenant entitling Landlord, upon written notice in accordance with the provisions hereof, to exercise the remedies contained herein for such default.

## XIII. OPTION TO RENEW

Tenant shall have the option to extend the Term of this Lease for Three terms of 60 months (5 years) each ("Extension Term") upon written notice to Landlord served not less than six (6) months prior to the expiration date of the initial Lease Term, or of the Extension Term(s) indicated below, as the case may be, provided Tenant is not in default under the Lease as of the date of service of such notice, nor has been declared to have been in default of the Lease on more than three (3) prior occasions during the Initial Term, or any extension thereof. Upon the proper exercise of any such option to extend, the term of this Lease shall be extended for a period of such Extension Term for all purposes to the same extent as though such period was part of the initial Lease.

Term, except only that further reference to such option to extend the Lease Term shall be deemed deleted from the Lease as the same shall be exercised and that the minimum rent payable by Tenant during the Extension Term shall be adjusted commencing

	EXTENSION TERM	MINIMUM ANNUAL RENT
1.	<u>Five (5) Years</u>	<u>3% Annual Increase</u>
2	<u>Five (5) Years</u>	<u>3% Annual Increase</u>
3	<u>Five (5) Years</u>	<u>3% Annual Increase</u>

**XIV. TENANT'S ENVIRONMENTAL WARRANTIES**

Tenant shall not use, generate, manufacture, store or dispose of, in, under or about the leased premises or transport to or from the leased premises any Hazardous Materials. For purposes of this Lease, "Hazardous Materials" shall include, but shall not be limited to (i) flammable, explosive or radioactive materials, hazardous wastes, toxic substances or related materials, (ii) all substances defined as "hazardous substances", "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U S C § 9601, et seq, the Hazardous Materials Transportation Act, 49 U S C § 1801, et seq, the Resource Conservation and Recovery Act, 42 U S C § 6901, et seq, and (iii) all substances defined as "hazardous wastes" in Arizona Revised Statutes § 49-201(16). Tenant shall be solely responsible for, and shall indemnify and hold harmless Landlord and its successors and assigns for, from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, or disposal by Tenant of Hazardous Materials on, under or about the leased premises arising subsequent to the date on which this Lease was executed, including without limitation (a) all foreseeable consequential damages, (b) the costs of any required or necessary repairs, cleanup or detoxification of the leased premises, and the preparation and implementation of any closure, remedial or other required plans, and (c) all reasonable costs and expenses incurred by Landlord in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees.

**XV. EXECUTION AND DELIVERY OF LEASE**

The submission of this Lease for examination does not constitute a reservation or option for the Leased Premises

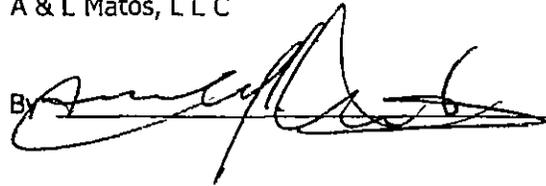
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This Lease shall be executed in duplicate and shall become effective as of the date first written only when an executed original is delivered to each party

IN WITNESS WHEREOF Landlord and Tenant hereby execute this Lease, on their own behalf or through their duly authorized representative

LANDLORD

A & L Matos, L L C

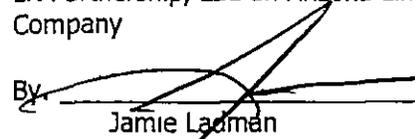
By  \_\_\_\_\_

Its Manager

Date 9-7-05

TENANT

LK Partnership, LLC an Arizona Limited Liability Company

By  \_\_\_\_\_  
Jamie Ladman

Its Managing Member

Date 9-2-05



**EXHIBIT "B"**

**LEGAL DESCRIPTION OF LAND WITHIN WHICH  
THE SHOPPING CENTER IS LOCATED**

**Agua Caliente MCR 303-32 Lot 14**

**EXHIBIT "C"**

**RULES AND REGULATIONS FOR  
SHOPPING CENTER**

With regard to the use and occupancy of the demised premises and the common areas and facilities, Tenant shall,

- A Keep clean the inside and outside of all glass doors and windows of the demised premises,
- B. Keep clean all exterior storefront surfaces of the demised premises,
- C Replace promptly, at its expense, any cracked or broken window glass of the demised premises with glass of like kind and quality;
- D. Maintain the demised premises, at its expense, in a clean, orderly and sanitary condition, free of insects, rodents, vermin and other pests,
- E. Keep any garbage, trash, rubbish or refuse in rat-proof containers within the interior of the demised premises until removed as herein provided,
- F Have such garbage, trash, rubbish and refuse removed on a regular basis as prescribed by Landlord, and
- G Keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the demised premises

With regard to the use and occupancy of the demised premises and the common areas and facilities, Tenant shall not,

- A Place or maintain any merchandise or other articles in any vestibule or entry of the demised premises on the foot-walk adjacent thereto or elsewhere on the exterior of the demised premises or the common areas and facilities,
- B. Permit accumulations of garbage, trash, rubbish or other refuse within or without the demised premises,
- C. Cause, suffer or permit odors to emanate or to be dispelled from the demised premises, and upon direction of Landlord shall promptly, at its expense, remedy any such breach of this provision;
- D Distribute handbills or other advertising matter to persons in the Shopping Center other than in the demised premises or distribute same to, in or upon automobiles parked in the parking areas or in any other part of the Shopping Center
- E Permit the parking of delivery vehicles so as to interfere with the use of any driveway, walkway, parking area or other area of the Shopping Center,
- F. Receive, ship, load or unload articles of any kind, including merchandise, supplies, materials, debris, garbage, trash, refuse and other chattels except through service access facilities at the rear door of the demised premises (if applicable)
- G Use the plumbing facilities for any other purposes than those for which they are constructed, no foreign substance of any kind shall be disposed therein, and the expense of any breakage, stoppage or damage resulting from a breach of this provision shall be borne solely by Tenant
- H Use any part of the demised premises for lodging, sleeping or any illegal purpose, or
- I Cause, permit, any machine selling merchandise, rendering services or providing, however operated, entertainment, including vending machines, to be present on the demised premises unless consented to in advance in writing by Landlord.

## EXHIBIT "D"

### SIGN CRITERIA FOR SHOPPING CENTER

These criteria have been established for the purpose of assuring an outstanding shopping center, and for the mutual benefit of all Tenants. Conformance will be strictly enforced, and any installed non-conforming or unapproved signs must be brought into conformance at the expense of the Tenant.

**Written approval** is required by Landlord prior to Tenant's manufacture and installation of any and all signs, including any sign inside the premises that may be visible from the outside. Each Tenant shall submit or cause to be submitted to Landlord prior to fabrication Two (2) Copies of detailed drawings indicating the locations, size, layout, design and color of the proposed signs including all lettering and/or graphics. Upon Landlord approval, one (1) copy will be returned to Tenant. Landlord's approval shall in no way be interpreted as a waiver of Tenant's responsibility to ensure compliance with all applicable electrical and local sign codes. All signage must be professionally manufactured.

#### A. TYPE OF SIGN

1. Individual, channel letters, any style of letters, both upper and lower case acceptable
2. Logos in addition to signage must be approved by Landlord

#### B. SIZE OF SIGN

1. Depth, Height and Length of Tenant Signage must be in conformity with the existing signs within the Center and subject to Landlord and governmental approval
2. Placement: Letters must be centered on fascia vertically and horizontally

#### C. COLOR OF SIGN

1. Metal Patina Finish.

#### D. DETAIL DRAWING

1. A complete drawing from a sign company shall be submitted to Landlord for approval prior to Tenant ordering sign. Same drawing to be on a minimum of 1/2" 1 to 1" scale
2. Drawing to include the following
  - a. Type and thickness of material
  - b. Type of material used for backs and returns
  - c. Finish used on return
  - d. Type of illumination and mounting method
  - e. Include fascia cross section showing electrical connections

#### E. CONSTRUCTION AND LIGHTING ON SIGN

1. Returns and back: 40" minimum aluminum
2. No armorply or wood in the manufactured returns of backs
3. Electric service to signs will be on Tenant's meter and expense

- 4 All electrical will be U L equivalent approved
- 5 Electrical power must be brought to required location by Tenant Routing and location of conduit and other required items shall not be visible on front of fascia
- 6 Penetration of structure and graphics beams shall be kept to a minimum and must have proper insulation for high voltage cable
- 7 Transformer shall be concealed behind fascia in U L. Box
- 8 Final electrical connection of sign to transformer box will be performed by a licensed electrician

**F. GENERAL SPECIFICATIONS**

- 1 Electrical service to all signs shall be on Tenant's meter and at Tenant's expense
- 2 No scripts will be permitted unless it its part of an established trademark of the Tenant
- 3 Tenant shall be responsible for the installation and maintenance of all signs Tenant shall provide for additional backup bracing angles if necessary, to install sign
- 4 Tenant shall be responsible for the fulfillment of all requirements and specifications
- 5 All signs shall be reviewed for conformance with this criteria and overall design quality Approval or disapproval of sign submittals based on aesthetics of design shall remain the sole right of the Landlord
- 6 At the end of the Tenant's lease term or at the time Tenant vacates the leased premises, whichever shall first occur, upon Landlords approval, Tenant may remove its sign upon the condition that Tenant shall patch and repair any damage to the building to Landlord's satisfaction

**EXHIBIT "E"**

**SAMPLE TENANT CERTIFICATE  
(ESTOPPEL CERTIFICATE)**

PARTIES TO THIS LEASE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LEASE DATED: \_\_\_\_\_, 20\_\_\_\_

LEASE COMMENCEMENT DATE \_\_\_\_\_, 20\_\_\_\_

The undersigned, a lessee of certain space described as:

\_\_\_\_\_ County, Arizona (the "Premises") located in the \_\_\_\_\_ commonly known as \_\_\_\_\_ (the "Project") certifies to \_\_\_\_\_ and any other person or entity that holds or may hold an interest in the Premises, including any lender or lenders providing financing with respect thereto, as follows

1 The lease agreement attached hereto and incorporated by reference herein as Exhibit "A" and all amendments, alterations and supplements thereto, if any, attached hereto as Exhibit "B" and incorporated by reference herein (including written memoranda of oral amendments, modifications or supplements), have been duly executed by Lessor and Lessee and the lease agreement modified by the attached amendments, alterations or supplements (as modified or supplemented, the "Lease") is in full force and effect, and constitutes the entire agreement between Lessor and Lessee with respect to the Premises. There are no additional terms or understandings, written or oral, with respect to the Lease or the Premises between Lessor and Lessee, or anyone claiming under Lessee

INITIAL\_\_\_\_\_

2 Lessee has accepted or will accept the possession of the Premises as of \_\_\_\_\_ Lessee claims no title or interest to the Premises other than under the Lease. The Lease terminates on \_\_\_\_\_

3 The fixed minimum monthly rental payable pursuant to the Lease payable throughout the term of the Lease is set forth on the rent schedule attached hereto as Exhibit "C" and incorporated by reference herein, and such amount or amounts represent the fixed minimum monthly rental rate being paid by Lessee. Such rent is payable in advance and without notice. The first installment of such fixed minimum monthly rental became due or will become due and payable on \_\_\_\_\_ or date rent commences pursuant to lease, if different from general commencement date and, if due, was in fact paid to Lessor on \_\_\_\_\_

4. Lessee has not made any security deposit except for the following: \_\_\_\_\_, and Lessee hereby waives, disclaims and renounces any right of repayment of any sum not specifically set forth herein

5 Neither Lessor nor Lessee is in default under the Lease and there are not actions, suits, proceedings or claims pending or threatened which arise under or in any manner affect the Lease Lessee does not know of any facts or circumstances which should, or could, reasonably form the basis for any such actions, suits, claims or proceedings No petition under any chapter of the Federal Bankruptcy Code has been filed by or against the Lessee and/or the guarantor under the guarantee of the Lease

INITIAL\_\_\_\_\_

6 As of the date of this certification, Lessee has no right of offset or claim or credit against, or right to deduct from, future rentals

INITIAL\_\_\_\_\_

7 No rent or other charges in respect of rent have been paid or deposited for more than the current month during which this certificate is made other than

8 Lessor has fully performed all obligations relating to construction of the Premises and leasehold improvements, and there are no remaining conditions to Lessee's obligations under the Lease Lessee has accepted all improvements called for in the Lease, and all such improvements have been properly completed by Lessor

INITIAL\_\_\_\_\_

9 There are no latent or patent defects in any such improvements and Lessee is in full and complete possession thereof, except for the following:

10 Lessee has no right to require Lessor to pay for any further improvements with respect to the Premises other than

11 The Lease and all of the Lessee's obligations thereunder shall remain in full force and effect despite any assignment of Lessor's interest in the Lease Lessee will provide Lessor with any notices of default given pursuant to the Lease to Lessor at the address set forth on the first page hereof

INITIAL\_\_\_\_\_

12 Lessee has no purchase, expansion or extension options, renewal rights or rights of first refusal relating to the Project or the Premises except for the following

13 In the event any lines in this certificate which call for Lessee to list a certain matter are not filled in when Lessee signs and delivers this certificate to Lessor, Lessee intends such omission to signify that said omission was intentional and that there are no such matters relevant to Lessee or the Lease, and in the event any space left in this certificate provides insufficient space for Lessee to fully and completely respond to the question posed, Lessee has attached a sheet hereto containing all such information

INITIAL\_\_\_\_\_

14 Attached hereto as Exhibit "D" is a complete copy of the guarantee of the Lease

INITIAL\_\_\_\_\_

15 In the event any sale or other transfer of Lessor's ownership interest in the Project is consummated, Lessee will attorn to such purchase or transferee as the Lessor under the Lease, and Lessee acknowledges and agrees that such purchase or transferee will have all the rights and obligations of Lessor under the Lease

INITIAL\_\_\_\_\_

The undersigned hereby acknowledges that Lessor and any other person or entity that holds or may hold an interest in the Premises, including any lender or lenders providing financing with respect thereto, shall be entitled to and shall in fact rely on all the statements contained herein and that the person signing below was duly authorized to execute and deliver this certificate

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

LESSEE \_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

GUARANTOR(S).

By execution below, guarantor(s) acknowledges, agrees and warrants that the guarantee is and shall remain in full force and effect according to its terms and that it shall remain in full force and effect notwithstanding any transfer of Landlord's interest in the Lease and any conveyance of the Project

DATED this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

## EXHIBIT "F"

### CORPORATE LEASE GUARANTY

THIS LEASE GUARANTY (the "Guaranty") is given this \_\_\_\_\_ day of August, 2005, by LK Partnership, LLC an Arizona Limited Liability Company ("Guarantors"), with respect to that certain Lease Agreement, of even date herewith (the "Lease"), executed by A & L Matos, L L C , as Lessor, and LK Partnership, LLC an Arizona Limited Liability Company as Lessee

For good and valuable consideration, Guarantor hereby unconditionally guaranties to Lessor, and to its successors and assigns, the full, complete and timely payment and performance of each and all of the terms, covenants and conditions of the Lease contained therein and in any modification or amendment to the Lease to be kept and performed by Lessee during the initial term of the Lease and any renewal term, including the payment of all rentals and other charges accruing pursuant to the Lease

- 1 This Guaranty shall continue in favor of Lessor notwithstanding any extension, modification, or alteration of the Lease entered into by and between Lessor and Lessee, or their successors or assigns, and notwithstanding any assignment of the Lease, with or without the consent of Lessor. No extension, modification, alteration or assignment of the Lease shall in any manner release or discharge Guarantor, and Guarantor hereby consents to any such extension, modification, alteration or assignment.
- 2 This Guaranty will continue unchanged by the occurrence of any bankruptcy with respect to Lessee or any assignee or successor of Lessee or by any disaffirmance or abandonment of the Lease by a trustee of Lessee. Neither the Guarantor's obligation to make payment or render performance in accordance with the terms of this Guaranty nor any remedy for the enforcement hereof shall be impaired, modified, changed, released or limited in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of Lessee or its estate in bankruptcy or of any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the U S Bankruptcy Act or other statute, or from the decision of any court or agency.
- 3 The liability of Guarantor under this Guaranty shall be primary and independent of the liability of Lessee. Guarantor hereby waives any right to require Lessor to proceed against any other person or to proceed against or exhaust any security held by it at any time or to pursue any right of action that shall accrue to Lessor under the Lease. Lessor may proceed against Guarantor and Lessee, jointly and severally, or Lessor may, at its option, proceed against Guarantor, without having commenced any action, or having obtained any judgment, against Lessee.
- 4 Guarantor agrees to pay all reasonable attorneys' fees and all costs and other expenses incurred in any collection or attempted collection of this Guaranty or in any negotiations relative to the obligations hereby guaranteed or in enforcing this Guaranty against Guarantor.
- 5 Guarantor hereby waives notice of any demand by Lessor, any notice of default in the payment of rent or any other amounts contained or reserved in the Lease, or any other notice of default under the Lease. Guarantor expressly agrees that the validity of this Guaranty and the obligations of Guarantor shall in no way be terminated, affected or impaired by reason of any waiver by Lessor, or its successors or assigns, or failure to enforce any of the terms, covenants or conditions of the Lease or this Guaranty, or the granting of any indulgence or extension of time to Lessee, all of which may be given or done without notice to Guarantor.
- 6 This Guaranty shall extend, in full force and effect, to any assignee or successor to Lessor and shall be binding upon the Guarantor, its executors, personal representatives, heirs, devisees, legatees and successors.
- 7 Until all obligations of Lessee to Lessor have been paid or satisfied in full, Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Lessor has or may hereafter have against Lessee and any benefit of, and any right to participate in, and security now or hereafter held by Lessor.

8 All existing and future indebtedness of Lessee to Guarantor is hereby subordinated to all indebtedness and other obligations hereby guaranteed and, without the prior written consent of Lessor, shall not be paid in whole or in part, nor will Guarantor accept any payment of or on account of any such indebtedness while this Guaranty is in effect

9 This Guaranty shall be construed in accordance with Arizona law

10 For the purpose of the Guaranty, the terms "Lessor" and "Landlord" are synonymous and the terms "Lessee" and "Tenant" are synonymous

Guarantor: LK Partnership, LLC an Arizona Limited Liability Company

By [Signature]  
Jamie Ladman

Its Managing Member LK Partnership ✓ on file with state

Corporation Commission ID # \_\_\_\_\_