



City of Flagstaff

Grants and Contracts Office

URGENT

INDEX #: **LEA-2020-084-AG1**

(assigned by Grants and Contracts Office)

Prior Index #: _____

DOCUMENT TRACKING FORM

DOCUMENT TYPE:	CONTRACT/AGREEMENT TYPE:	DOCUMENT SUBTYPE:
<input checked="" type="checkbox"/> Contract/Agree. <input type="checkbox"/> Grant <input type="checkbox"/> Deed <input type="checkbox"/> Easement <input type="checkbox"/> Other	<input type="checkbox"/> Term <input checked="" type="checkbox"/> Lease <input type="checkbox"/> License <input type="checkbox"/> General/Other <input type="checkbox"/> Grant Funded <input type="checkbox"/> Development <input type="checkbox"/> Intergovernmental <input type="checkbox"/> Reclaimed Water <input type="checkbox"/> Construction: General <input type="checkbox"/> Proprietary/Sole Source	<input checked="" type="checkbox"/> Primary <input type="checkbox"/> Amendment <input type="checkbox"/> Extension <input type="checkbox"/> Change Order <input type="checkbox"/> Deliverable <input type="checkbox"/> Sublease <input type="checkbox"/> Other

Document Title: Office Lease Agreement

Parties: Hopi Tribe Economic Development Corporation

Project/Subject: Lease of the Hopi Building at Heritage Square (Park Flag)

Amount: \$5,129.06 per month **Effective Date:** 01/01/2020 **Expiration Date:** 12/31/2022

Approved by Council: Yes If yes, Council Meeting Date: 11/19/2019 (Attach copy of approved staff summary)
 No If no, Reason: Under \$50k Emergency JOC Other: _____

Insurance? Yes No *If yes, attach Certificate of Insurance approved by Risk Management.*

Submitted By: Charity Lee **Date Submitted:** 12/13/2019 **Number of Originals:** 1

Key Contact: C. Lee/ J. Portillo / D. McIntire **Department:** Economic Vitality **Telephone Extension:** x 2072 / x 2960 / x2907

Comments: _____

ROUTING INFORMATION

Needed Reviewers: Grants and Contracts Manager SBK **Date:** 12/13/19
 Purchasing Manager _____ **Date:** _____

Date Sent to Legal: 12-13-19 **Legal Review Number:** MW **Date Returned from Legal:** 12/13/19

Executing Official: Mayor City Manager Division Director

Date Sent to Executing Official: 12-13-19 **Date Returned to Contracts:** 12/16/19

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: John Portillo, Parking Manager
Co-Submitter: David McIntire
Co-Submitter: David McIntire
Date: 11/13/2019
Meeting Date: 11/19/2019



TITLE:

Consideration and Approval of Office Lease Agreement: Between the HOPI TRIBE ECONOMIC DEVELOPMENT CORPORATION, a federally chartered corporation, wholly owned by the Hopi Tribe, a federally recognized Indian tribe, 5200 E. Cortland Blvd., Suite E200 (Landlord) and the City of Flagstaff, a municipal corporation (Tenant);

Consideration and Approval of Sub-Lease: For a portion of the Hopi Building at Heritage Square Between City of Flagstaff (City) and the Flagstaff Metropolitan Planning Organization (FMPO);

Consideration and Approval of Sub-Lease: For a portion of the Hopi Building at Heritage Square Between the City of Flagstaff (City) and the Downtown Business Alliance (DBA).

STAFF RECOMMENDED ACTION:

1. Approve the Office Lease Agreement to provide office space for City staff (ParkFlag)
2. Approve the Sub-lease with the Flagstaff Metropolitan Planning Organization (FMPO)
3. Approve the Sub-lease with the Downtown Business Alliance (DBA)

Executive Summary:

The City of Flagstaff is currently leasing office space for ParkFlag at 120 N. Beaver Street. However, this lease is expiring. Staff was tasked with finding new office space in the downtown area, to also share space with the FMPO and the Downtown Business Alliance. Several options were researched.

Staff recommends that the City Council approve an Office Lease Agreement for office space at 6 E. Aspen Ave, #200, Flagstaff, AZ 86001 (Heritage Square). The City negotiated a few changes in the landlord's lease form, and those are reflected in the First Addendum, which is attached to the Office Lease Agreement. Rental space includes:

- An accessible and well-lit public space for customers to obtain parking permits and other parking-related business;

- A private office for the Parking Manager; Space to immediately accommodate six Parking Aides;
- Downtown location, desirable for implementation and enforcement of the parking program;
- Space requires no remodeling;
- Sufficient space for sub-lessees.

The Lease Term shall be for three (3) years and shall commence on January 1, 2020, and expire on December 31, 2022. The City has an option to extend the Lease for two (2) additional years ("Extended Term").

The City will sub-lease portions of the office space to FMPO and the DBA, which will offset the rent. The attached Sub-leases are still pending final review by FMPO and the DBA so that they may request a few changes before Council approval.

Financial Impact:

The City shall pay to the Landlord monthly rent of \$5,129.06, includes taxes and utilities. A security deposit of \$5,000.00 is also required prior to occupancy. The City will receive 1/3 of the deposit from FMPO and 1/3 of the deposit from DBA, plus their monthly rent for the use of the space.

Breakdown of costs for ParkFlag, DBA, FMPO the first year (Monthly Rent: \$5,129.06):

- ParkFlag= \$1,915.00 per month
- DBA= \$1,300.00 per month
- FMPO= \$1,915.00 month

Additional costs:

- Internet: Approximately \$140.00 for internet which can be split three ways.
- Phone: Phone costs will be split between the parties.

Division of office space:

- ParkFlag to pay rent for two offices and use of common area;
- Downtown Business Alliance to pay rent for two offices and storage room;
- Flagstaff Metropolitan Planning Organization to pay rent for two offices, common area, and storage room.

ParkFlag was created as a special revenue fund. It was decided that rent would come directly from the parking revenue and would not be supported by other City funding. The budget team has approved an on-going budget for leasing office space for ParkFlag operations.

The City anticipates it will be able to reduce its current ParkFlag office space expenses by approximately \$190.00 per month, or over \$2,200.00 per year, not including phone or internet costs, as a result of entering into the new Office Lease Agreement and Sub-leases.

The FY 2020 budget of \$20,000 for this lease is in account 061-07-231-0890-6-4241. The additional funding required will be pulled from the budgeted line item: Other Operating Supplies.

Policy Impact:

None

Connection to Council Goal, Regional Plan and/or Team Flagstaff Strategic Plan:

CODE COMPLIANCE

Achieve comprehensive and equitable code compliance.

Has There Been Previous Council Decision on This:

Council approved Resolution No. 2016-01 to adopt the Comprehensive Parking Management Plan on January 19, 2016, which established the Parking Program.

Council approved Resolution No. 2018-28 to amend the IGA between the City, County, and FMPO on June 4, 2018, which clarified that FMPO staff may procure various services from either the public or private sectors including office space.

Options and Alternatives:

1. Approve the Lease Agreement and Sub-Leases.
2. Do not approve the Lease Agreement (this option is not recommended as there is currently no space for the additional employees to work at current City facilities and no available private office space to accommodate the needs of the three programs: ParkFlag, Downtown Business Alliance, and Flagstaff Metropolitan Business Alliance.

Background/History:

The current location at 120 N. Beaver Street met all of the space requirements for ParkFlag and was a desirable location to implement and enforce the Parking Management Plan. However, the Lessor recently preferred a month-to-month lease to have the flexibility to vacate the office space for their needs. ParkFlag would prefer the stability of a longer-term lease as the Lessor could give the notice to vacate, and ParkFlag would have 60-days to vacate. ParkFlag looked at several locations in the downtown area that were available, and none met the needs to accommodate ParkFlag, Downtown Business Alliance, and Flagstaff Metropolitan Planning Organization. The limitations included: not meeting the requirements of the Americans with Disability Act, costs exceeded current costs, locations were not centrally located in the ParkFlag management area, and office space did not meet the needs of the staff. Because of the uniqueness of the requirements it was determined that sole-source procurement was appropriate.

Key Considerations:

New Office Considerations:

- Lends efficient operations for customer service and enforcement patrols;
- Compliant with the Americans with Disabilities Act requirements;
- Size and configuration supports the program and the co-location with the Downtown Business Alliance and the Flagstaff Metropolitan Planning Organization;
- Offers safe entry and exit with adequate lighting for night shift security;
- Reduces or is equal to overall cost as compared to current parking office.

Community Benefits and Considerations:

The new office location keeps the ParkFlag office operations in downtown Flagstaff which is accessible to our parking public.

Attachments: Office Lease
Sub-Lease FMPO
Sub-Lease DBA
ParkFlag Map
Procurement Request
Sole Source Memo

OFFICE LEASE AGREEMENT

Dated as of January 1st, 2020

For the Hopi Building at Heritage Square
6 E. Aspen Avenue, Suite 200
Flagstaff, AZ 86001

Between

**HOPI TRIBE ECONOMIC DEVELOPMENT
CORPORATION**

A federally chartered corporation,
Wholly owned by the Hopi Tribe,
A federally recognized Indian tribe (“Landlord”)

And

City of Flagstaff, a municipal
corporation,
Park Flag (“Tenant”)

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OFFICE LEASE AGREEMENT

This Lease Agreement is made and entered into this 1st day of January, 2020, by and between

HOPI TRIBE ECONOMIC DEVELOPMENT CORPORATION, a federally chartered corporation, wholly owned by the Hopi Tribe, a federally recognized Indian tribe, 5200 E. Cortland Blvd., Suite E200, Flagstaff, AZ 86004, hereafter referred to as "Landlord", and

City of Flagstaff, a municipal corporation hereafter "Tenant".

WITNESSETH: In consideration of the rents, covenants and agreements given and exchanged herein, Landlord leases to Tenant, and Tenant leases and accepts from Landlord, the office space described in Section 1.1, hereinafter referred to as the "Premises".

All covenants, agreements, terms and conditions between Landlord and Tenant with respect to the Premises are contained in this Office Lease Agreement ("Lease") and the following exhibits and addendum attached hereto and incorporated into the Lease by this reference:

- Exhibit A – Site Plan of the Hopi Building and retail building located at the Northeast corner of Aspen and Leroux, 6 E. Aspen Avenue, Flagstaff, AZ 86001, referred to herein as the "Building";
- Exhibit B – Floor Plan for the second floor of the Building locating Premises;
- Exhibit C – Sign Criteria;
- Exhibit D – Construction Rider; and
- First Addendum to Lease

ARTICLE 1: PREMISES

- 1.1 The Premises, known as 6 E. Aspen Avenue, Suite 200, Flagstaff, AZ 86001, consists of approximately 2806 square feet of Usable Area located on the second floor of the Building as outlined in red on Exhibit B.
- 1.2 Landlord reserves and excepts from the Premises the right of access in, over, under and upon the Premises as may be reasonably necessary or advisable for maintenance or construction of the building or other portions of the Building, including the right to install, maintain, use and replace pipes, duct work, conduits, utility lines and wires through ceiling plenum areas, column space, partitions and in or beneath floor slabs, for the benefit Landlord, Landlord's contractors and tenants and their respective contractors, subcontractors, employees, suppliers and customers and other patrons of the automobile parking garage. Landlord shall exercise such right of access only upon reasonable advance notice and without material interruption to Tenant's business.

1.3 Landlord further reserves the right to change the shape, dimensions and size of the Premises, provided, however, that no material changes shall be made to the Premises without the prior written approval of the Tenant which approval shall not be unreasonable withheld.

1.4 Tenant acknowledges that the surface level plaza, service roads and sidewalks (excluding the sidewalks designated "Arcade") shown on Exhibit A, are owned or controlled by the City of Flagstaff and are not leased to Tenant or made available by Landlord for Tenant's use.

1.5 As used in this Lease:

(1) Rentable Area means:

(a) With respect to the Building, the sum of the total area of all floors in the Building computed by measuring to the outside finished surface of the dominant portion of permanent outside building walls. Rentable Area includes Interior Common Facilities but excludes major vertical penetrations (for example, stairwells, elevator shafts and vertical ducts) and their walls, and parking areas and exterior balconies.

(b) With respect to the Premises, the Usable Area of the Premises multiplied by the Load Factor. No deductions from Rentable Area shall be made for columns or projections necessary to the Building.

(2) Usable Area means the area of the Premises (or other premises or space occupiable by tenants whether or not actually occupied) computed by measuring to the finished surface of the office side of the corridor walls, to the midpoint of demising walls and to the outside surface of the dominant portion of the permanent outside walls (other than corridor walls). No deductions from Usable Area shall be made for columns or projections necessary to the Building.

(3) Load Factor means 1.15.

(4) Interior Common Facilities means lobbies, corridors, hallways, elevator foyers, restrooms, mail rooms, janitor closets and other similar facilities used by tenants or for the benefit of tenants on a nonexclusive basis. Interior Common Facilities exclude major vertical penetrations and their enclosing walls.

ARTICLE 2: TERM

2.1 The term of this Lease ("Lease Term") shall be for a period of three (3) years, plus the remainder of any partial calendar month in which the term commences.

2.2 The Lease Term shall commence on January 1st, 2020 (the "Commencement Date"), subject to the terms of the First Addendum.

2.3 The date on which this Lease Term expires ("Expiration Date") shall be at midnight on December 31, 2022.

2.4 Notwithstanding the above definition of Lease Term, the Lease, all rights and remedies of the Landlord and all obligations of Tenant except the obligation to pay the Minimum Monthly Rent shall take effect upon the date in which Tenant takes possession of the Premises or January 1st, 2020, whichever is sooner.

2.5 Landlord hereby grants Tenant the right and option to extend the Lease Term for two (2) years (the "Extended Term") as follows:

- (1) The Extended Term shall commence on the first day following the Expiration Date of the Lease Term set forth in Section 2.3. If Tenant fails or is unable to exercise the option for the Extended Term, Tenant's option for the Extended Term shall be void. Tenant's option to extend the Lease Term may be exercised only if:
 - (a) At the time Tenant is entitled to exercise the option, Tenant is not in default under the Lease and no event exists under paragraphs 27.1(d), 27.1(e), 27.1(f) or 27.1(g) of Section 27.1 of the Lease which, with the passage of time, would constitute a default under the Lease; and
 - (b) Tenant has given written notice to Landlord at least three (3) months prior to the date on which an Extended Term is to commence.
- (2) Upon exercise of the option to extend the Lease Term, the phrase "Lease Term" shall thereafter include the Extended Term for which the option is exercised. Upon commencement of the Extended Term, the phrase "Expiration Date" shall thereafter mean the last day of the Extended Term. Except otherwise provided in this Section 2.5, all terms covenants and conditions of the Lease shall apply to the Extended Term; provided, however, Landlord shall have no construction obligations under the Lease during the Extended Term and the Minimum Monthly Rent shall be adjusted per the First Addendum to Lease.

AS

ARTICLE 3: RENT

3.1 During the initial Lease Term, Tenant covenants and agrees to pay to Landlord, without deduction, set off, prior notice or demand, for the use and occupancy of the Premises the Minimum Monthly Rent of \$5,000.00, plus tax. The Minimum Monthly Rent shall be payable in advance on the first day of each and every calendar month during the initial Lease Term and any subsequent extended terms, commencing on January 1st, 2020, in accordance with the First Addendum to Lease. The Minimum Monthly Rent during the Extended Terms shall be adjusted in accordance with the First Addendum to Lease.

ARTICLE 4: ADDITIONAL RENT/EXPENSE STOP

4.1 As used in this Lease:

- (1) "Excess Costs" means Direct Costs in excess of the Expense Stop.
- (2) "Direct Costs" means and includes:
 - (a) Those expenses paid or incurred by Landlord (whether directly or through independent contractors) for managing, maintaining, operating and repairing the Building, Parking Garage and Common Areas and the personal property used in conjunction therewith, including, but not limited to, the cost of utilities, supplies, insurance, amortization (over the reasonable life of the item) of the cost of installation of capital investment items which are installed after the Commencement Date and are installed primarily for the purpose of reducing Direct Costs or which may be required by any governmental authority; janitorial services; compensation (including employment taxes, similar government charges and fringe benefits) of all persons who perform on site operation, maintenance and repair of the Building, the Parking Garage and Common Areas are situated; management fees equal to 10% of Direct Costs; costs allocated to Landlord under an agreement for joint operation, maintenance and used of exterior Common Areas servicing the Building (but excluding the cost of maintenance of the plaza all of which shall be incurred by the City of Flagstaff); and any other necessary and reasonable expense or charges whether or not hereinabove described which, in accordance with consistently applied generally accepted accounting and management principles would be considered and expense of managing, maintaining, operating or repairing the Building, Parking Garage and the Common Areas; and
 - (b) All impositions, taxes, assessments (special or otherwise) and other governmental levies and charges of any and every kind, ordinary or extraordinary, foreseen or unforeseen, assessed or imposed upon or with respect to the ownership of, or other taxable interest attributable to, the Building, Parking Garage and Common Areas and land upon which they are located and any improvements, fixtures, equipment and other property of Landlord, real or personal, located in or used in connection with the operation of the Building, Parking Garage and Common Areas and the land upon which

they are located and any tax which shall be imposed on any interest or excise in substitution for taxes commonly known as real estate taxes.

- (c) Direct Costs shall not include:
1. Income, estate and inheritance taxes levied against Landlord.
 2. Taxes paid by any tenant under Article 6.
 3. Depreciation, capital investment items (except as provided in Section 4.1 and debt service.
 4. Costs of leasing space in the Building, including leasing commissions and leasehold improvement costs.
 5. The cost of utilities separately metered to any tenant or resulting from Excess Consumption under Article 16 and billed directly to that tenant.
 6. The cost of special services provided to any tenant and billed directly to that tenant.
 7. Repairs and maintenance paid by proceeds of insurance or from tenants.
- (d) "Common Areas" means all areas both interior and exterior provided by Landlord for the common or joint use and benefit of the occupants of the Building, their employees, agents, customers, and other invitees including but not limited to the Parking Garage, landscaping, loading docks, exterior lighting, drainage facilities, traffic controls, sidewalks, building lobbies and hallways, mechanical rooms, elevators and stairways, but excluding the plaza maintained by the City of Flagstaff.
- (e) "Expense Stop" means an amount equal to \$11.18 multiplied by the number of square feet of Rentable Area in the Premises.
- (f) "Operating Year" means the year beginning January 1 and ending December 31.
- (g) "Tenant's Pro Rata Share" means that fraction, the numerator of which is the Rentable Area of the Premises and the denominator of which is the aggregate Rentable Area of the Building. If any of Landlord's other tenants in the Building pay Taxes directly to the taxing authority or provide insurance or operational or maintenance services in lieu of payment of a share of the cost of these services, the Rentable Area of such tenant's premises shall be deducted from the denominator in the calculation of the Tenant's Proportionate Share of the taxes so paid or the charges or expenses for the insurance or services so provided.

4.2 — ~~Tenant covenants and agrees to pay Landlord an amount equal to Tenant's Pro Rata Share of Excess Costs paid or incurred by Landlord during the Lease Term, as follows:~~

- ~~1) Within sixty (60) days after the end of each Operating Year, Landlord shall provide Tenant with a written statement of Landlord's estimate of Direct Costs for the next succeeding Operating Year. If Landlord's estimate of Direct Costs for any Operating Year exceeds the Expense Stop thereby resulting in Excess Costs, Tenant agrees to pay Landlord, in addition to and concurrently with each payment of the Minimum Monthly Rent for such Operating Year, an amount equal to one-twelfth (1/12th) of Tenant's Pro Rata Share of such estimated Excess Costs. Notwithstanding the~~

foregoing, during any Operating Year Landlord may provide Tenant with a revised estimate of the Excess Costs for the Operating Year. If the revised estimate of Excess Costs exceeds Landlord's original estimate for Excess Costs for the Operating Year, Tenant agrees to pay Landlord, for the remainder of the Operating Year, in addition to and concurrently with the Minimum Monthly Rent and in addition to the amounts payable pursuant to Landlord's previous estimates, Tenant's Pro Rata Share of the excess divided by the number of remaining months in the Operating Year.

2) Within approximately sixty (60) days after the end of each Operating Year, Landlord shall provide Tenant with a statement showing the actual Direct Costs for the preceding Operating Year and any adjustments to be made as a result thereof. If Tenant's Pro Rata share of the actual Excess Costs paid or incurred by Landlord during such Operating Year exceeds the estimates of Excess Costs paid by Tenant to Landlord during the same Operating Year, Tenant shall pay Landlord the excess at the time the next succeeding payment of minimum Monthly Rent is payable. If Tenant's estimated payments of Excess Costs for the Operating Year have exceeded Tenant's Pro Rata Share of excess Costs during such Operating year, Landlord shall apply the excess against the next succeeding payments due Landlord from Tenant under this Article. If Direct Costs for the Operating Year have not exceeded the Expense Stop, Tenant's estimated payment for such Operating Year shall be credited against the next installment of Minimum Monthly Rent due from Tenant. In no event shall the Minimum Monthly Rent be reduced below that set forth in Section 3.1.

4.3 — The determination and statement of Direct Costs shall be made by Landlord and a copy of such statements shall be made available to tenant upon demand.

4.4 — Notwithstanding anything in this Lease to the contrary, no failure by Landlord to give notices or statements of Direct Costs within the time specified shall waive Landlord's right to require payment by Tenant of Direct Costs in excess of the Expense Stop.

ARTICLE 5: PARKING

5.1 The Building includes a parking garage ("Parking Garage") under the Building and adjacent Heritage Square. This Lease grants no right to Tenant to use the Parking Garage other than such rights granted to the general public and those rights set forth in Section 5.2. Tenant understands that the Parking Garage is managed by American Valet, 8902 N. Central Avenue, Phoenix, AZ 85020 (1-623-221-2646). Nothing contained herein shall be deemed to create liability upon Landlord or American Valet, or any subsequent management company, for any damage to motor vehicles of customers or employees or from loss of property from within such motor vehicles. Landlord and American Valet, or any subsequent management company, shall have the right to establish and from time to time change, alter and amend, and to enforce against all users of the Parking Garage, reasonable rules and regulations (including the exclusion of parking from designated areas) as may be deemed necessary and advisable for the proper and efficient operation and maintenance of said Parking Garage including, without limitation, the hours during which the Parking Garage shall be open for use.

5.2 If Tenant elects to lease space(s) in the Parking Garage, Tenant understands that any contract between Tenant and the Parking Garage management company is separate from the terms of this Lease. Likewise, if Tenant elects to lease parking space(s), Tenant covenants and agrees to pay, for each parking space, directly to the management company, separate from and in addition to the Minimum Monthly Rent. Unreserved spaces are available on a first come, first served basis to tenants in the Building and the general public, and Landlord does not guarantee unreserved spaces will be available for Tenant's use. Rights to lease spaces or parking rights shall not extend beyond the Lease Term.

ARTICLE 6: RENT TAX, PERSONAL PROPERTY TAXES, WOOD INFESTATION AND PEST CONTROL

6.1 Tenant covenants and agrees to pay to Landlord, in addition to, and simultaneously with any other amounts payable to Landlord under this Lease, a sum equal to the aggregate of any municipal, county, state or federal excise, sales, use or transaction privilege taxes now or hereafter legally levied or imposed against or on account of any or all amounts payable under this Lease by Tenant or the receipts thereof by Landlord (except taxes which are commonly referred to as income, estate or inheritance taxes.)

6.2 Tenant shall pay, prior to delinquency, all taxes levied upon fixtures, furnishings, equipment and personal property placed on the Premises by Tenant. If any or all of Tenant's fixtures, furnishings, equipment or personal property shall be assessed and taxed with the Landlord's real property, Tenant shall reimburse Landlord for such taxes within ten (10) days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to the Tenant's property.

6.3 Tenant shall pay for any Wood/Pest Infestation Report for Tenant's premises, the cost of treatment of infestation, repair of any damage caused by infestation and correction of any conditions conducive to infestation that are caused by Tenant. Tenant shall pay for the cost of any pest control within the Premises.

ARTICLE 7: PAYMENT OF RENT/LATE CHARGES

7.1 Tenant shall pay the rentals and all other charges herein specified to Landlord at the addresses set forth in Article 32: NOTICES below, or to another person and at another address as Landlord shall from time to time designate in writing.

7.2 Any payment of rent, additional rent or charge required to be made by Tenant to Landlord under the terms of this Lease not received within FIVE (5) DAYS after the due date thereof shall be subject to a late charge of five percent (5%) of the delinquent amount or fifty dollars (\$50.00), whichever is greater, plus interest on the overdue amount at the rate of eighteen percent (18%) per annum from the due date until paid; provided, however, nothing charged hereby shall ever exceed the amount that may properly be charged or recovered under the laws of the State of Arizona. Tenant understands and acknowledges that the foregoing late charge is not intended as punitive damages, but rather as liquidated damages, being a reasonable estimate of the damages that will be suffered by Landlord as a consequence of Tenant's failure to pay rent

and other charges when due. The foregoing late charges and interest shall be in addition to any other remedies of the Landlord provided in this Lease.

ARTICLE 8: SECURITY DEPOSIT

8.1 Prior to occupancy Tenant shall deposit with Landlord \$5,000.00, to be held as security for the full and faithful performance of each and every term, provision, covenant and condition of this Lease.

8.2 If Tenant defaults in the performance of any of the terms, provisions, covenants or conditions of this Lease, including but not limited to the payment of rent, additional rent or other charge, Landlord may, but need not, use, apply, or retain the whole or any part of this security not as liquidated damages but for the payment of any rent or charge in default or for any other sum which Landlord may spend or be required to spend by reason of Tenant's default. If any portion of said deposit is so used or applied, Tenant shall, within five (5) days after written demand therefor, deposit cash or certified funds with Landlord in an amount sufficient to restore the security deposit to its original amount. Should Tenant fully and faithfully comply with all of the terms, provisions, covenants, and conditions of this Lease, the security deposit or any balance of the security deposit shall be returned to Tenant or, at the option of the Landlord, to the last assignee of Tenant's interest in this Lease within fourteen (14) business days after the Lease Expiration Date and surrender of the Premises by Tenant. Landlord's right with reference to the security deposit shall be in addition to and shall not preclude any other rights, remedies, or recoveries available to Landlord by law or under the terms of this Lease.

8.3 Tenant agrees that in case the landlord shall sell or exchange Landlord's interest in the Premises during the Lease Term, Landlord may pay the deposit to any subsequent owner and in that event, Tenant does hereby agree to release Landlord from all liability for the return of such deposit. Landlord shall not be required to maintain such funds in a segregated account, but may deposit such funds in any general account of Landlord, provided that such commingling shall in no way affect Landlord's obligations to Tenant regarding such funds hereunder. Tenant shall not be entitled to any interest on the security deposit.

ARTICLE 9: CONSTRUCTION OF THE PREMISES

9.1 All construction work, alterations and improvements to the interior of the Premises are subject to the prior approval of Landlord. No construction work, alterations or improvements shall be made to the interior or exterior of the Premises without Landlord's consent, which may be withheld on the basis of aesthetic or other standards, Tenant shall not:

- 1) Make any changes to the store front including the affixing and maintenance upon the glass panes and upon the exterior walls of the Premises any signs, advertising placards, names, insignia, trademarks or descriptive materials;
- 2) Install any exterior lighting, awning or canopy, or any exterior decorations or paintings; or



- 3) Install any exterior sign which is not in accordance with Landlord's sign criteria.

During the course of any construction by Tenant, Landlord may enter upon the premises at all times for the purpose of inspecting the construction.

If Landlord shall find any workmanship inferior, defective or not in accordance with the plans and specifications, Landlord may notify Tenant and if so notified, Tenant shall promptly correct such inferior, defective or deficient construction. Landlord's authority to act under this paragraph shall not give rise to a duty of Landlord to make inspections or otherwise enforce Tenant's compliance with this Article. Tenant's failure to perform or cause to have performed Tenant's construction in a good and workmanlike manner shall constitute a default under this Lease.

9.2 In the event Tenant receives approval from Landlord to perform construction work, alterations and/or improvements to the interior of the premises, then at the time Tenant or Tenant's contractor performs the work, subject to Exhibit D: Construction Rider ("Tenant's Work"):

- 1) All of Tenant's obligations under this Lease, including the obligation to pay rent, shall continue to be in full force and effect;
- 2) Tenant shall maintain liability insurance in accordance with Article 19 of this Lease; and
- 3) Tenant shall require Tenant's contractor to maintain Worker's Compensation Insurance as required by law and public liability insurance with limits equal to those set forth in Article 19. Tenant agrees to indemnify, save, and hold Landlord harmless against any loss, liability, injury or damage to persons or property resulting from such work including the activities of Tenant's contractor.

9.4 The Building and common areas are at all times subject to the exclusive control and management of Landlord. Without limiting the generality of the foregoing, Landlord has the right in its management and operation of the Building to do and perform such acts in and to the Building as in the use of good business judgment the Landlord determines to be advisable for the more efficient and proper operation of the Building, including:

- 1) Obstruct or close off all or any part of the Building for the purpose of maintenance, repair or construction;
- 2) Change area, level, arrangement or use of Building or any part thereof;
- 3) Construct other structures or improvements in the Building and make alterations thereof, additions thereto, subtractions therefrom, or rearrangements thereof, build

additional stories, and construct additional buildings or facilities adjoining or proximate to the Building; and

4) Expand, reduce or alter the Parking Garage in any manner whatsoever.

9.5 After completion of tenant's construction obligations under this Article, Tenant shall not make, or cause to be made any further additions to, or alterations of the premises, or the store front, or any part thereof, without the prior written consent of Landlord. Any alterations or improvements to be made by Tenant will be subject to the conditions of this Article and the following Article 10. Any additions to, or alterations of, the Premises except movable furniture and trade fixtures, shall become at one part of the realty and belong to Landlord. In the event Landlord consents to the making of any alterations, additions or improvements to the Premises by Tenant, the same shall be made by Tenant at Tenant's sole cost and expense.

9.6 Landlord's current sign criteria shown on Exhibit C allows Tenant signage, at Tenant's expense, to consist solely of an entry on the Building directory and upon the entry door to the Premises.

ARTICLE 10: FIXTURES/PERSONAL PROPERTY

All trade fixtures installed by Tenant and movable furniture that are not permanently affixed to the Premises shall remain the property of Tenant and may be removed by Tenant no later than the Expiration Date, provided that Tenant is not then in default hereunder. Tenant shall promptly repair, at its own expense, any damages occasioned by such removal. All cabinetry, built-in appliances, wall coverings, floor covering, window coverings, electrical and plumbing fixtures and conduits, lighting and other special fixtures that may be placed upon, installed in or attached to the Premises by Tenant shall, at the Expiration Date or earlier termination of this Lease for any reason, be the property of Landlord and remain upon and be surrendered with the Premises, without disturbance, molestation or injury unless designated by Landlord to be removed.

ARTICLE 11: LIENS

Tenant shall keep the Premises and the property on which the Premises are situated free from any liens arising out of work performed, material furnished or obligations incurred due to Tenant's actions or the failure of Tenant to comply with any law excluding, however, security interests in Tenant's personal property. In the event any such lien does attach against the Premises, and Tenant does not discharge the lien or post bond (which under law would prevent foreclosure or execution under the lien) within ten (10) days after demand by Landlord, Landlord may take any action necessary to discharge the lien. Tenant shall pay Landlord upon demand for or on account of any cost or expense (including reasonable attorney's fees) incurred by Landlord by reason of attachment or discharge of such lien and shall indemnify Landlord against any liability arising out of attachment of such lien.



ARTICLE 12: USE OF PREMISES/ RULES AND REGULATIONS

12.1 Tenant shall use the Premises solely for general business office purposes for the operations of ParkFlag and shall not use or permit the Premises to be used for any other purpose or purposes except with the prior written consent of Landlord.

12.2 Tenant shall comply with all statues, ordinances, rules, regulations and orders of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the use of the Premises, including such laws governing the storage or disposal of hazardous wastes and protection of the environment. Tenant shall not use or permit the Premises to be used in whole or in part for any purpose or use in violation of any of the laws, ordinances, regulations or rules of any public authority at any time applicable thereto. Specifically, Tenant shall not use at or sell from the Premises anything deemed obscene by community standards or conduct or operate or display any form of adult entertainment as defined in the City of Flagstaff Land Development Code as the same may be amended and judicially interpreted from time to time.

12.3 Tenant shall not:

- 1) Commit, or suffer to be committed, any waste upon the Premises;
- 2) Engage in any activity which will increase the existing premium rate of insurance on the Premises or cause a cancellation of any insurance policy or permit to remain in or about the Premises any article that may be prohibited by standard form fire insurance policies;
- 3) Use the Premises for or carry on or permit any offensive, noisy, or dangerous trade, business, manufacture or occupation, or any nuisance or anything against public policy, or interfere with the business of or disturb the quiet enjoyment of any other tenant in the Building;
- 4) Use the exterior of the roof or walls of the Premises or Building for any purpose;
- 5) Cause or permit any Hazardous Material to be generated, produced, brought upon, used, stored, treated or disposed of in or about the Premises or the Building, whether by Tenant, its invitees, agents, employees, contractors or subleases. "Hazardous Material" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "infectious wastes", "hazardous materials" or "toxic substances" now or subsequently regulated under any applicable federal, state or local laws or regulations including, without limitation, oil, petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds, and other chemical products, asbestos, PCB's and similar compounds, including any

different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons.

12.4 Tenant shall faithfully observe and comply with rules and regulations for the Building and Parking Garage from time to time put into effect by Landlord.

ARTICLE 13: RIGHTS RESERVED BY LANDLORD

13.1 Landlord shall have the following rights, exercisable upon reasonable notice to Tenant without effecting an eviction, constructive or actual, or disturbance or Tenant's use or possession of the Premises and without giving rise to any claim for set-off or abatement of rent:

- (1) To install, affix and maintain any and all signs on the exterior and interior of the Building.
- (2) To designate and approve, prior to installation, all types of window shades, blinds, drapes, awnings, window ventilators and other similar equipment, and to control all internal lighting that may be visible from the exterior of the Building.
- (3) To retain at all times, and to use in appropriate instances, keys to all doors within and into the Premises. No locks shall be changed or added without the prior written consent of Landlord.
- (4) To decorate and to make repairs, alterations, additions, changes or improvements, whether structural or otherwise, in and about the Building.
- (5) To grant to anyone the exclusive right to conduct any business or render any service in or to the Building, provided such exclusive right shall not operate to exclude Tenant from the use expressly permitted herein.
- (6) To approve the weight, size and location of safes and other heavy equipment and articles in and about the Premises and the Building, and to require all such items and furniture and similar items to be moved into and out of the Building and Premises only at such times and in such manner as Landlord shall direct in writing. Movements of Tenant's property into or out of the Building and within the Building are entirely at the risk and responsibility of Tenant and shall be conducted pursuant to Building rules and regulations.
- (7) To take all such reasonable measures as Landlord may deem advisable for the security of the Building and its occupants, including, without limitation, the search of all persons entering or leaving the Building, the evacuation of the

Building for cause, suspected cause, or for drill purposes, the temporary denial of access to the Building, and the restriction of access to the Building at times other than normal business hours.

Reservation of the rights set forth in this Article shall impose no obligation or duty upon Landlord to exercise said rights.

ARTICLE 14: QUIET ENJOYMENT

Landlord covenants that upon Tenant's paying the rentals and keeping and performing all of the terms, covenants and conditions of this Lease, Landlord will do nothing that will prevent Tenant from peaceably and quietly enjoying, holding and occupying the Premises during the Lease Term. This covenant shall not extend to any disturbance, act or condition brought about by any other tenant in the Building and shall be subject to the rights of the Landlord set forth in this Lease. Tenant agrees this Lease Agreement shall be subordinate to any Easements, Covenants and Restrictions or any amendments thereto hereafter imposed upon the property upon which the Building is located. This subordination agreement shall be self-operative; however, Tenant agrees to execute and deliver such further instruments necessary to subordinate this Lease to the lien of Easements, Covenants and Restrictions or amendments hereafter imposed by Landlord.

ARTICLE 15: MAINTENANCE AND SANITATION

15.1 Subject to Articles 20 and 21, Landlord covenants to maintain the Building in good and tenable condition and repair. Tenant hereby waives all rights to make repairs at the expense of Landlord. Landlord's maintenance and repair costs under this Section 15.1 will be deemed a Direct Cost. The foregoing notwithstanding, Landlord shall not be liable to Tenant for failure to make repairs as required herein unless Tenant has previously notified Landlord, in writing, of the need for such repairs and Landlord has failed to commence said repairs within fifteen (15) days following receipt of Tenant's written notification. Landlord shall have no obligation to alter, remodel, improve, renovate, decorate or paint the Premises.

15.2 If Landlord would be required to perform any maintenance or make any repairs under Section 15.1 because of: (a) modifications to the roof, walls, foundation and floor of the Building from that set forth in Landlord's plans and specifications which are required by Tenant's design for improvements, alterations and addition; (b) installation of Tenant's improvements, fixtures or equipment; (c) Tenant's or Tenant's employees; or customers; negligence or wrongful act; or (d) Tenant's failure to perform any agreements contained in this Lease, Landlord may perform the maintenance or repairs and Tenant shall pay Landlord the cost thereof plus a reasonable amount for Landlord's overhead upon receipt of a statement from Landlord. Landlord's costs under this section shall not be a Direct Cost for purposes of Article 4.

ARTICLE 16: UTILITIES AND JANITORIAL SERVICES

16.1 Landlord agrees to furnish to the Premises electricity suitable for the intended use of the Premises, heat and air conditioning required for normal use and occupation of the Premises

and janitorial services for the Common Areas. Tenant shall provide its own janitorial service, at Tenant's expense, within the Premises.

~~16.2 — As used in this Article 16, "Excess Consumption" means (i) the consumption of (excluding electricity used for heating, ventilation and air conditioning) including water, and compressed air (if compressed air if furnished by Landlord) in excess of that which would be provided to the Premises were the Premises to be built out with Building Standard Improvements only and used as general office space; and (ii) heating, ventilation and air conditioning during times other than 7:00 am to 6:00 pm Monday through Friday. Tenant will not, without the written consent of Landlord, use any apparatus, device or equipment in the Premises, or use heating, ventilation or air conditioning which will in any way result in Excess Consumption nor connect, except through existing electrical outlets, water pipes, ducts or air pipes (if any there be) in the Premises, any apparatus, or device, for the purposes of using electric current, water, heating, cooling or air. If Tenant shall require water, heating, cooling, air or electric current which will result in Excess Consumption, Tenant shall first procure the consent of the Landlord to the use thereof, and Landlord may cause separate meters to be installed to measure Excess Consumption or establish another basis for determining the amount of excess Consumption. Landlord's installation of after-hours air conditioning override controls and cost monitoring equipment in or for the Premises will be deemed to be Landlord's consent to the use of after-hours heating, ventilation and air condition. Landlord may disable such controls upon Tenant's default in payment for such Excess Consumption. Tenant covenants and agrees to pay for the cost of the Excess Consumption based on Landlord's cost, plus any additional expense incurred in installing meters or keeping account of the Excess Consumption, at the same time as payment of the minimum Monthly Rent is made. Tenant further agrees to pay Landlord the cost, if any, to upgrade existing mechanical, electrical, plumbing and air facilities, if required to provide Excess Consumption, upon receipt of a statement therefor. Excess Consumption costs will not be a Direct Cost for purposes of Article 4.~~

16.3 Landlord shall not be liable in damages or otherwise in the event of any failure or interruption of any utility or service supplied to the Premises or Building by a regulated utility or municipality and no such failure shall entitle Tenant to terminate this Lease.

ARTICLE 17: ENTRY AND INSPECTION

17.1 Landlord and Landlord's agent shall have the right to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same; performing Landlord's maintenance and repair obligations under this Lease; maintaining or making repairs, alterations, or additions to any other portion of the Building, including the erection and maintenance of such scaffolding, canopy, fences and props as may be required; posting notices of non-liability for alterations, additions or repairs, or of the availability of the Premises for lease or sale; or exhibiting the Premises to potential tenants and purchasers. Tenant shall permit Landlord, at any time within one hundred fifty (150) days prior to the expiration of the Lease Term, to place upon the premises any usual or ordinary "For Lease" signs.

17.2 If Tenant shall not be personally present to open and permit an entry into said Premises, at any time, when for any reason an entry therein shall be necessary or permissible, Landlord or

Landlord's agents may use a master key to enter, without rendering Landlord or such agents liable therefor, and without any manner affecting the obligations and covenants of this Lease. Landlord shall be permitted to take any action under this Article without any abatement of rent and without any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises thereby occasioned, nor shall such action by Landlord be deemed an actual or constructive eviction.

**ARTICLE 18: ACCEPTANCE OF THE PREMISES, LIABILITY INSURANCE
AND INDEMNIFICATION OF LANDLORD**

18.1 Tenant acknowledges that it has fully inspected the Premises, including but not limited to any and all mechanical equipment, and hereby accepts such "As-Is". Tenant also acknowledges that the Premises are suitable for the purposes for which the same are leased, in their present condition. Tenant further acknowledges that Landlord has made no warranties or representations as to either condition or the suitability of the Premises for the Use specified in Article 12 hereof.

18.2 All merchandise, furniture, floor and wall coverings and personal property and fixtures belonging to Tenant and all persons claiming by or through Tenant which may be on the Premises shall be at Tenant's sole risk. Tenant hereby waives all claims against Landlord for loss, injury or damage to all persons and property on the Premises or the Common Areas from theft, fire, water, gas or otherwise, including sprinkler and roof leakage or bursting pipes.

18.3 Tenant hereby agrees to indemnify and to hold Landlord and any mortgagee of Landlord harmless against all Claims arising from: tenant's possession, use, maintenance and repair of the Premises; any act or omission of tenant or tenant's agents and employees; any default of Tenant under this Lease; or other acts or omissions which result in personal injury, loss of life or property damage sustained in and about the Premises.

18.4 Upon taking possession of the Premises and thereafter during the Lease Term, the Tenant shall, at Tenant's sole cost and expense, maintain comprehensive liability insurance, including, without limitation products liability and contractual liability endorsements, against Claims for personal injury, death, or property damage occurring in, upon, or about the Premises and in the hallways, elevator and stairwells and on any sidewalks or patio areas directly adjacent to the Premises and Building. The Limits of Liability of such insurance shall not be less than Two Million Dollars (\$2,000,000) combined single limit or in such higher amounts as Landlord may require. All such policies of insurance shall name Landlord and/or such other party or parties as Landlord may require as additional insured.

18.5 Tenant's insurance shall be maintained with an insurance company qualified to do business in the state in which the Premises are located and have a current A.M. Best manual rating of at least A or better. Tenant's insurance policies will contain an endorsement stating that the insurance will not be canceled nor will the carrier fail to renew or materially change the policy without first giving Landlord thirty (30) days written notice. Before entry into the Premises and before expiration of any policy, Tenant shall provide Landlord with evidence that

the requirements of this Article have been met and that the applicable premiums or renewal premiums have been paid.

18.6 During the entire Lease Term, Landlord shall maintain or cause to be maintained public liability insurance against Claims for personal injury, death, or property damage occurring on the common areas. The Limits of Liability of such insurance shall be in such amounts as Landlord shall determine.

18.7 Landlord shall not be responsible or liable to Tenant for any Claims for loss or damage caused by the acts or omissions of any person occupying any space adjacent to or adjoining the Premises.

18.8 As used in this Article, "Claims" means any claims, suites, proceedings, actions, causes of action, responsibility, liability, demands, judgements and executions.

18.9 Tenant hereby agrees to indemnify, defend and hold Landlord and any Mortgagee of Landlord harmless against all claims arising from: Tenant's possession, use maintenance and repair of the Premises; any act or omission of Tenant or Tenant's invitees, contractors, subtenants, agents and employees including acts occurring on the Common Areas (except to the extent of Landlord's gross negligence); any default of Tenant under this Lease; or other acts or omissions which result in personal injury, loss of life or property damage sustained in and about the Premises.

ARTICLE 19: CASUALTY INSURANCE

19.1 Tenant, at Tenant's expense, shall maintain fire and extended coverage insurance (full replacement value) on merchandise, personal property, equipment and trade fixtures owned or used by Tenant and other property which Tenant may remove on the Expiration Date. Tenant shall not maintain insurance on any structural portion of the Premises, roof, demising or interior walls or floors. In the event of a violation of this obligation, Tenant agrees all proceeds of Tenant's insurance policies, except proceeds related to tenant's personal property or improvements supplied by Tenant, will be held in trust for the benefit of Landlord.

19.2 Tenant shall be responsible for the maintenance of plate glass in or a part of the Premises, but shall have the option either to insure the risk or to self-insure, provided Landlord's written consent to self-insure is previously obtained.

19.3 Tenant's fire and extended coverage insurance shall be maintained in accordance with the standards set forth in Sections 18.4 and 18.5.

19.4 Landlord shall maintain special form property coverage insurance ("all risk") including vandalism and malicious mischief, sprinkler leakage damage and flood and boiler explosion endorsements throughout the Lease Term on the Building (excluding Tenant's trade fixtures and personal property) and may name the holder of a first mortgage or deed of trust and any ground lessor as additional insured. Landlord may elect to self-insure any component comprising the Common Areas. AT Landlord's option, the policy of insurance may include a business

interruption insurance endorsement for loss of rents. The cost of the insurance obtained under this Section shall be a Direct Cost under Article 4 of this Lease, subject to the First Addendum to Lease. If it is determined that Landlord's fire and extended coverage insurance premium, due to Tenant's special fixtures, Non-Building Standard Improvements or business, is in excess of the premium which would have been charged, but for Tenant's fixtures, improvements or business, Tenant agrees to pay Landlord such excess. Tenant shall have no rights in said policy procured by Landlord under this Section and shall not be entitled to be named as insured thereunder.

19.5 Tenant hereby waives any right of recovery from Landlord, and Landlord's agents, officers and employees, and Landlord hereby waives any right of recovery from Tenant and Tenant's agents, officers or employees, for any loss or damage (including consequential loss) resulting from any of the perils insured against by either's fire and extended coverage insurance policy. Neither Landlord nor Tenant shall be liable to the other or to any insurance company insuring the other party (by way of subrogation or otherwise) for any loss or damage to any building, structure or other tangible property; or any resulting loss of income, even though such loss or damage might have been occasioned by the negligence such party, its agents or employees, if any such loss or damage is covered by insurance benefiting the party suffering such loss or damage or was required to be covered by insurance pursuant to this Lease. If either Landlord or Tenant elects to self-insure property, equipment or fixtures (including self-insurance implicit in insurance policies having deductibles in excess of \$1,000.00 under a program of self-insurance risk management), the waiver in this Section 19.5 shall extend to losses that would have been covered by insurance but for a party's selection to self-insure such loss or damage.

ARTICLE 20: DAMAGE AND DESTRUCTION OF PREMISES

20.1 In the event of (a) fire or other casualty damage to the Premises or the Building during the Lease Term which requires repairs to either the Premises or the Building or (b) the Premises or the Building being declared unsafe or unfit for occupancy by any authorized public authority for any reason other than Tenant's act, use or occupation, which declaration requires repairs to either the Premises or the Building, Landlord shall commence to make said repairs within sixty (60) days of written notice by Tenant of the necessity therefore. The minimum Monthly Rent shall be proportionately reduced while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business carried on by Tenant in the Premises.

20.2 Landlord's obligation to repair the Premises shall, however, be subject to the following. If

(a) during the last one (1) year of the Lease Term the Premises or the Building is damaged as a result of fire or any other insured casualty; or,

(b) the Premises is damaged to the extent of twenty-five percent (25%) or more of its then current replacement value; or,

(c) the Premises or the Building are damaged or destroyed as a result of a casualty not insured against, unless the lack of insurance arises from Landlord's election to self-

insure matters which are normally covered in "all risk" policies by reasonable and prudent property managers in the Flagstaff area; or,

(d) the Building shall be damaged or destroyed by fire or other cause to the extent of twenty percent (20%) or more of the Building's then current replacement value, Landlord shall have the right, to be exercised by notice in writing to Tenant given within ninety (90) days from said occurrence, to cancel and terminate this Lease. Upon notice to Tenant, the Lease Term shall expire by lapse of time upon the third day after such notice is given, and Tenant shall vacate the Premises and surrender the same to landlord. If Landlord elects to terminate this Lease under this Section, all rents shall be prorated as of the date of damage or destruction and Landlord shall be released from liability or obligation to Tenant arising after such termination. If Landlord, however, elects to make said repairs, and provided Landlord uses due diligence in making said repairs, this Lease shall continue in full force and effect and the Minimum Monthly Rent shall be proportionately reduced as provided in Section 20.1.

20.3 With respect to any destruction (including any destruction necessary in order to make repairs) which Landlord is obligated to repair or may elect to repair under the terms of this Article, Tenant waives Tenant's statutory right under Arizona law to terminate this Lease as a result of such destruction and no such destruction shall annul or void this Lease.

20.4 The provisions of this Article 20 shall supersede the obligations of Landlord to make repairs under Section 15.1 of the Lease. Landlord shall not be obligated to make repairs to the extent that the cost thereof exceeds the insurance proceeds or to the extent such repairs would exceed the Building Standards.

20.5 Unless the Lease is terminated under this Article, within thirty (30) days of substantial completion of Landlord's restoration obligations, Tenant shall re-fixture the Premises according to the specifications set forth in Article 9 of the Lease. Upon completion of Tenant's re-fixturing or upon passage of thirty (30) days from the date Landlord substantially completes repairs and restoration of the Premises, the Minimum Monthly Rent shall be restored to the amounts which would have been in effect but for the damage or destruction.

If fire or casualty causing damage to the Premises or other parts of the Building shall have been caused by negligence or misconduct of the Tenant, its agents, representatives, employees, or of any person entering the Premises under the express or implied invitation of Tenant, such damage shall be repaired by Landlord with any costs not paid for by insurance paid for by Tenant and in such event there shall be no abatement or reduction of rent despite contrary provisions appearing in this Lease.

ARTICLE 21: EMINENT DOMAIN

21.1 As used in this Article, "Taking" means a taking of or damage to the Premises or Building or any part thereof by exercise of the power of eminent domain, condemnation or sale under the threat of or in lieu of eminent domain or condemnation.



21.2 If the whole of the Building or the whole of the Premises shall be acquired by a Taking, then this Lease shall terminate as of the date of taking of possession by the Taking authority.

21.3 If more than ten percent (10%) of the value of the Building is acquired by a Taking, whether or not any portion of the Premises is so taken, Landlord shall have the right to terminate this Lease as of the date of such Taking by giving Tenant ninety (90) days written notice of Landlord's intent to terminate this Lease.

21.4 If more than twenty-five percent (25%) of the Premises is acquired in a Taking, either Landlord or Tenant may terminate this Lease upon notice to the other within ninety (90) days prior to taking of possession. If less than twenty-five percent (25%) of the Premises is acquired in a Taking and the award received is sufficient to restore the Premises, subject to Section 21.3, Landlord shall promptly restore the Premises to a condition comparable to its condition at the time of such condemnation less the portion acquired in the Taking, this Lease shall continue in full force and effect with respect to the part not acquired, and the Minimum Monthly Rent shall be reduced in the proportion that the rental value of the Premises after the taking bears to the rental value before the Taking.

21.5 standing Section 21.2, if any part of the Parking Garage shall be acquired by a Taking, this Lease shall continue in full force and effect unless a governmental entity forces the closing of the Building. If a closing is required, this Lease shall terminate on the date of closing.

21.6 In the event of a Taking as hereinbefore provided, whether whole or partial, the Tenant shall not be entitled to any part of the award, as damages or otherwise for diminution in value of the leasehold, reversion or free, and Landlord is to receive the full amount of such award. Tenant hereby expressly waives any right or claim to any part thereof. Tenant shall have no claim against Landlord for the value of the unexpired Lease Term if the Lease is terminated under this Article. Although all damages in the event of any condemnation are to belong to the Landlord, Tenant shall have the right to claim and recover from the condemning authority, and shall have the right to maintain separate action against the condemning authority as long as such does not diminish Landlord's award, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any damage to Tenant's business by reason of the condemnation and for or on account of any cost or loss to which Tenant might be put in removing Tenant's merchandise, furniture, trade fixtures and equipment.

21.7 If this Lease s terminated partially or in total under Article 21, all rent shall be prorated as of the date of Taking including refunds for amounts paid in advance by Tenant.

ARTICLE 22: ASSIGNMENT AND SUBLETTING

22.1 Tenant shall not transfer or assign this Lease, or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, including spaces in the Parking Garage, without Landlord's consent, which shall not be unreasonable withheld. Consent by the Landlord to one assignment, subletting, occupation or use by another

person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Neither this Lease nor any interest therein shall be assignable, as to the interest of Tenant, by operation of law, without prior written consent of Landlord. Any attempted transfer, assignment or subletting without the prior written consent of Landlord shall be void and shall constitute a default under this Lease.

If Tenant is a corporation, a limited liability company, an unincorporated association or a partnership, unless listed on a national stock exchange, the transfer, assignment or hypothecation of any stock or interest in such corporation, limited liability company, association or partnership in the aggregate in excess of fifty percent (50%) shall be deemed an assignment of this Lease.

22.2 If Tenant, with Landlord's prior written approval, assigns this Lease or sublets the Premises and the assignee or sub lessee maintains the liability insurance coverage required by the Lease, Tenant shall be relieved of such obligation but no other obligation under this Lease. Tenant agrees to pay Landlord reasonable legal fees and handling fees incurred in connection with the processing of any documents necessary to give consent. In the event of default by any assignee of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting or pursuing any remedies against said assignee or successor.

22.3 The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or sub tenancies, or may, at the option of Landlord, operate as an assignment to Landlord of any or all such subleases or sub tenancies.

ARTICLE 23: SALE OF PREMISES BY LANDLORD

In the event of any sale of the Building or the property upon which the Building is located or assignment of this Lease by Landlord, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of Landlord's covenants and obligations contained in or derived from this Lease or arising out of any act, occurrence of omission occurring after such sale or assignment; and the assignee or purchaser, at such sale or any subsequent sale of the Premises or assignment of this Lease, shall be deemed, without any further agreement between the parties and only such assignee or purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of Landlord under this lease.

ARTICLE 24: SUBORDINATION/ATTORNMEN/ MODIFICATION/ ASSIGNMENT

Tenant's interest under this Lease shall be subordinate to all terms of the lien of any ground lease, first deed of trust, first mortgage or security agreement (hereinafter collectively referred to as "Mortgage") now or hereafter place on the Landlord's interest in the Premises, the Building or on the land upon which the Building is located and any amendments thereto. If Landlord has not obtained permanent financing for the Building having a term of at least fifteen (15) years at the time of execution of this Lease, Tenant agrees to reasonable amendments to this Lease as may be requested by a lender who proposes to fund permanent financing provided the amendment does not increase Tenant's monetary obligations under this Lease. Tenant further consents to an

assignment of Landlord's interest in this Lease to Landlord's lender as required under such financing. If the Premises or the Building is sold pursuant to default on the Mortgage, or pursuant to a transfer in lieu of foreclosure, Tenant shall, at the Mortgage holder's or purchasers election, not disaffirm this Lease but shall attorn to the Mortgage holder or purchaser and if so requested, enter into a new lease for the remainder of the Lease Term. This Article shall be self-operative, however, Tenant agrees to execute and deliver, within ten (10) days after requested by Landlord, such further instruments necessary to subordinate this Lease to a lien of any Mortgage, to acknowledge the consent to assignment and to affirm the attornment provisions set forth herein.

ARTICLE 25: RIGHT TO CURE

In the event of breach, default, or noncompliance hereunder by Landlord, Tenant shall, before exercising any right or remedy available to it, give Landlord written notice of the claimed breach, default, or noncompliance. If prior to its giving such notice Tenant has been notified in writing (by way of Notice of Assignment of Rents and Leases, or otherwise) of the address of a lender which has furnished financing secured by a Mortgage, as defined in Article 24, on the Premises or the Building, concurrently with giving the aforesaid notice to Landlord, Tenant shall also give notice by certified mail to such lender. For the thirty (30) days following such notice (or such longer period of time as may be reasonably required to cure a matter which, due to its nature, cannot reasonably be remedied within thirty (30) days, Landlord shall have the right to cure the breach, default, or noncompliance involved. If Landlord has failed to cure a default within said period, any such lender shall have an additional thirty (30) days within which to cure the same or, if such default cannot be cured within that period, such additional time as may be necessary if within such thirty (30) day period said lender has commenced and is diligently pursuing the actions or remedies necessary to cure the breach, default, or noncompliance involved (including, but not limited to, commencement and prosecution of proceedings to foreclose or otherwise exercise its rights under its mortgage or other security instrument, if necessary to effect such cure) in which event this Lease shall not be terminated by Tenant so long as such actions or remedies are being diligently pursued by said lender.

ARTICLE 26: ESTOPPEL CERTIFICATES

Tenant agrees at any time and from time to time upon request by the Landlord, to execute, acknowledge and deliver to Landlord a statement within five (5) calendar days of demand in writing certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications), (b) the dates to which the Minimum Monthly Rent and other charges have been paid in advance, if any, (c) Tenant's acceptance and possession of the Premises, (d) the commencement of the Lease Term, (e) the rent provided under the Lease, (f) that Landlord is not in default under this Lease (or is Tenant claims such default the nature thereof), (g) that Tenant claims no offsets against the rent, and (h) such other information as shall be reasonably necessary to establish the status of the tenancy created by this Lease. It is intended that any such statement delivered pursuant to this Article may be relied upon by any prospective purchaser, Mortgage holder or assignee of any mortgage holder of the Premises or the Building.

ARTICLE 27: DEFAULT AND CONDITIONAL LIMITATIONS

27.1 The following shall constitute a default under this Lease:

(a) If Tenant fails to pay any installment of the Minimum Monthly Rent or additional rent herein provided or any other sum required by this Lease to be paid to Landlord, or any part thereof, within five (5) days following Landlord's written notice that the rent or sum is due and unpaid; or

(b) If Tenant fails to perform any covenants or conditions agreed to be performed under Exhibit "D" and such failure shall continue for ten (10) days after notice thereof from Landlord to Tenant; or

(c) If Tenant fails to perform any other covenants or conditions on its part agreed to be performed under the Lease and such failure to perform other covenants shall continue for thirty (30) days after notice thereof from Landlord to Tenant; or

(d) If a petition or proceeding under the Federal Bankruptcy Act or any amendment thereto is filed or commenced by or against Tenant or any guarantor of this Lease, and if against Tenant, said proceedings shall not be dismissed within sixty (60) days following commencement thereof; or

(e) If Tenant or any guarantor of this Lease is adjudged insolvent, makes an assignment for the benefit of its creditors or enters into an arrangement with its creditors; or

(f) If a writ of attachment or execution is levied on the leasehold estate hereby created and is not released or satisfied within sixty (60) days thereafter; or

(g) If a receiver is appointed in any proceeding or action to which Tenant is a part with authority to take possession or control of the Premises or the business conducted thereon within a period of thirty (30) days after his appointed; or

(h) Tenant abandons the Premises and is not paying rent.

27.2 Upon default of Tenant as defined in Section 27.1 Landlord, or Landlord's agents and employees shall have the right and option to:

(a) Prosecute and maintain an action or actions, as often as Landlord deems advisable, for collection or rent, other charges and damages as the same accrue, without entering into possession and without terminating this Lease. No judgment obtained shall constitute a merger or otherwise bar prosecution of subsequent actions for rent and other charges and damages as they accrue. Tenant agrees to pay Landlord all costs of collection of past due rent, including court costs and attorney's fees.

(b) Immediately or any time thereafter reenter and take possession of the Premises and remove Tenant, Tenant's agents, any subtenants, licensees, concessionaires, or invitees and any or all of their property from the Premises. Reentry and removal may be effected by summary proceedings or any other action or proceedings at law or by self-help. Landlord shall not be liable in any way in connection with any action taken under this paragraph. No action taken, commenced or prosecuted by Landlord, no execution on any judgment and no act or forbearance on the part of Landlord in taking or accepting possession of the Premises shall be construed as an election to terminate this Lease unless Landlord expressly exercises this option under Section 27.2. (c).

Upon taking possession of the Premises, Landlord may from time to time, without termination of this Lease relet the Premises or any part thereof as agent for Tenant for such rental terms and conditions (which may be for a term extending beyond the Lease Term) as Landlord, in its sole discretion, may deem advisable, with the right to make reasonable alterations and repairs to said Premises required for reletting. The rents received by Landlord from such reletting shall be applied first to the payment of any costs of reletting and second to the payment of rent due and unpaid hereunder. The residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. If the rents received from such reletting during any month are insufficient to reimburse Landlord for any cost of reletting or rent due and payable, Tenant shall pay any deficiency to Landlord. Such deficiency shall be calculated and paid monthly. Notwithstanding any such reletting without termination, Landlord may at any time, thereafter, elect to terminate this Lease for such previous breach.

(c) Elect to terminate this Lease by written notice to Tenant. Upon such termination, Tenant agrees to immediately surrender possession of the Premises. If Tenant fails or refuses to surrender the Premises, Landlord may take possession in accordance with Paragraph (b) above. If Landlord terminates this Lease, Tenant shall have no further interest in this Lease or in the Premises, however, Tenant shall remain liable to Landlord for all damages Landlord may sustain by reason of Tenant's default, including without limitation (1) the cost of reletting the Premises, and (2) an amount equal to the rent which, but for termination of this Lease, would have been payable by Tenant during the remainder of the Lease Term, less any proceeds from reletting the Premises. Rent which would have been payable for the remainder of the Lease Term shall be calculated on the basis of the Minimum Monthly Rent and Additional rent payable by Tenant at the time of default plus any future increases which are determinable at the time of calculation.

27.3 As used in this Article "costs of reletting" means any reasonable cost necessary to collect past due rent, take possession of the Premises and lease the Premises to another tenant, including, but not limited to:

- (a) legal costs and expenses of collecting past due rent and recovery of the Premises including court costs and attorney's fees,
- (b) brokerage costs for leasing,
- (c) costs and expenses of alterations, repairs and improvements,

(d) indebtedness other than minimum rent due from Tenant to Landlord under this Lease,

(e) costs of protecting the Premises, and

(f) removal and storage of Tenant's property.

27.4 No act or conduct of the Landlord, whether consisting of reentry, taking possession or reletting the Premises or obtaining appointment of a receiver or accepting the keys to the Premises, or otherwise, prior to the expiration of the Lease Term shall be deemed to be or constitute an acceptance of the surrender of the Premises by the Landlord or an election to terminate this Lease unless Landlord exercises its election under Section 27.2 (c) of this Lease. Such acceptance or election by Landlord shall only be effected, and must be evidenced, by written acknowledgement of acceptance of surrender or notice of election to terminate signed by Landlord.

27.5 Tenant agrees that in the event it is due to render performance in accordance with any term or condition of this Lease and it fails to render such performance within ten (10) days after written notification thereof is given in accordance with the notice provision hereof or immediately if required for protection of the Premises, Landlord shall have the right, but not the obligation, to render such performance and to charge all costs and expenses incurred in connection therewith to Tenant. All amounts so charged shall be considered additional rent and shall be due and payable immediately to Landlord upon presentment of a statement to Tenant indicating the amount and nature of such cost or expense.

27.6 No remedy herein conferred upon Landlord shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute. No delay or omission of Landlord 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.

27.7 Any requirement that Landlord provide a consent or approval under this Lease shall be subject to the condition that at the time the approval or consent is requested that Tenant shall not be in default under this Lease, and no circumstances shall exist, which with the giving of notice and the passage of any grace period would constitute a default by Tenant under this Lease.

ARTICLE 28: FORCE MAJUERE

Except as otherwise provided in the Lease, if either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, civil disorder, inability to produce materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the party obligated, performance of such act shall be excused for the period of delay and then for a period of time reasonably necessary to perform the act; provided, however, nothing in this Article shall excuse Tenant from the prompt payment of any rental or other charge required of Tenant hereunder.

ARTICLE 29: SURRENDER OF PREMISES

At the Expiration Date, Tenant shall surrender the Premises in good order and condition reasonable wear and tear and casualty damage expected, and shall deliver all keys to Landlord. Before surrendering the Premises, Tenant shall remove all of its personal property and trade fixtures and such alterations or additions to the Premises made by Tenant as may be specified for removal by Landlord, and shall repair any damage caused by such property of the removal thereof. If Tenant fails to remove its personal property and fixtures upon the Expiration Date, the same shall, at Landlord's election, be deemed abandoned and shall become the property of the Landlord. Tenant shall further surrender to Landlord any Parking Garage cards/keys issued under Article 5.

ARTICLE 30: HOLDING OVER

If Tenant shall hold over after the Expiration Date, or any extension thereof, Tenant shall become a tenant on a month-to-month basis at a minimum rental of one and one-half times the amount Tenant is paying for Minimum Monthly Rent at the time the holdover period begins, which rental shall be payable in advance on the first day of such holdover period and on the first day of each month thereafter, upon all the terms, covenants and conditions herein specified.

ARTICLE 31: GENERAL PROVISIONS

31.1 If Tenant is composed of more than one person or entity, then the obligations of such entities or parties shall be joint and several.

31.2 If any term, covenant, condition or provision of this Lease is held by a court of authorized jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

31.3 The various headings and numbers herein and the grouping of the provisions of this Lease into separate articles and paragraphs are for the purpose of convenience only and shall not be considered a part hereof.

31.4 Time is of the essence of this Lease.

31.5 Subject to the express provisions of this Lease, in the event either party initiates legal proceedings to enforce any right or obligation under this Lease or to obtain relief for the breach of any covenant hereof, the party ultimately prevailing in such proceedings shall be entitled to recover from the defaulting party the costs of such proceedings, including reasonable attorney's fees as determined by the court and not by a jury. If Landlord is involuntarily made a party defendant to any litigation commenced by a party other than Tenant concerning this Lease or the Premises by reason of any act or omission of Tenant, Tenant shall indemnify and hold Landlord harmless from all liability by reason thereof, including Landlord's reasonable costs and attorney's fees.

31.6 This Lease, and any Exhibit or Addendum attached hereto, set forth all the covenants, promises, agreements, conditions or undertakings, either oral or written, between the Landlord and Tenant. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by both parties. If a provision of the Addendum and this base Lease are in conflict, the provision of the Addendum shall govern.

31.7 Subject to Article 22, the covenants herein contained shall apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto.

31.8 No covenant, term or condition of this Lease shall be waived except by written waiver of Landlord, and the forbearance or indulgence by Landlord in any regard whatsoever shall not constitute a waiver of the covenant, term or condition to be performed by Tenant to which the same shall apply, and until complete performance by Tenant of such covenant, term or condition, Landlord shall be entitled to invoke any remedy available under this Lease or by law despite such forbearance or indulgence. The waiver by Landlord of any breach or term, covenant or condition hereof shall apply to and be limited to the specific instance invoked and shall not be deemed to apply to any other instance or to any subsequent breach of the same or any other term, covenant or condition hereof. Acceptance or rent by Landlord during a period in which Tenant is in default in any respect other than payment of rent shall not be deemed a waiver of the other default. Any payment made in arrears shall be credited to the oldest amount outstanding and no contrary application will waive this right.

31.9 The use of a singular term in this Lease shall include the plural and the use of the masculine, feminine or neuter genders and shall include all others.

31.10 Notwithstanding anything to the contrary in this Lease, no Lease provisions, or provisions of any attached exhibits or addendum shall constitute a waiver of Landlord's sovereign rights, including but not limited to sovereign immunity, which is hereby expressly preserved.

ARTICLE 32: NOTICES

Wherever in this Lease it is required or permitted that notice or demand be given or served by either party to or on the other, such notice or demand shall be given or served and shall not be deemed to have been duly given or served unless in writing and delivered personally or forwarded by certified mail, return receipt requested.

TO LANDLORD: All payments or rent and other monies due to Landlord shall be payable to "Hopi Tribe Economic Development Corporation" or "HTEDC" and mailed to:

HTEDC
Sterling Real Estate Management
323 S. River Run Road, Suite 1
Flagstaff, AZ 86001

All other notices, demands, insurance certificates and correspondence to Landlord shall be made to:

HTEDC
Sterling Real Estate Management
323 S. River Run Road, Suite 1
Flagstaff, AZ 86001

TO TENANT: All notices, demands, and correspondence to Tenant shall be made to:

Either party may change such address by written notice by certified mail to the other. Service of any notice or demand shall be deemed completed forty-eight (48) hours after deposit thereof in the United States Postal Service or, if delivered in person, upon receipt thereof.

ARTICLE 33: ENVIRONMENTAL MATTERS

Tenant shall, at Tenant's sole expense, comply with all federal, State, and local laws and regulations relating to environmental matters and workplace safety.

If Tenant or its employees, agents, contractors, invitees, or visitors shall ever violate the provisions of Section 12.3(e) or otherwise contaminate the Premises or the Building, or any portion thereof, then Tenant shall clean up, remove and dispose of the material causing the violation, in compliance with all applicable governmental standards, laws, rules and regulations and then prevalent industry practice and standards and shall repair any damage to the Premises or the Building within such period of time as may be reasonable under the circumstances after written notice by Landlord. Tenant shall notify Landlord of its method, time and procedure for any clean up or removal and Landlord shall have the right to require reasonable changes in such method, time or procedure or to require the same to be done after normal business hours. Tenant's obligations under this Article 33 shall survive the termination of this Lease.

TENANT AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE LANDLORD FROM AND AGAINST ALL OBLIGATIONS (INCLUDING REMOVAL AND REMEDIAL ACTIONS), LOSSES, CLAIMS, SUITS, JUDGMENTS, LIABILITIES, PENALTIES, DAMAGES (INCLUDING CONSEQUENTIAL AND PUNITIVE DAMAGES), COSTS AND EXPENSES (INCLUDING ATTORNEY'S AND CONSULTANTS' FEES AND EXPENSES) OF ANY KIND OR NATURE WHATSOEVER THAT MAY AT ANY TIME BE INCURRED BY, IMPOSED ON OR ASSERTED AGAINST LANDLORD DIRECTLY OR INDIRECTLY BASED ON, OR ARISING OR RESULTING FROM (a) THE ACTUAL OR ALLEGED PRESENCE OF HAZARDOUS OR TOXIC TENANT, AND (b) ANY CLAIM OR



CAUSE OF ACTION RELATING IN ANY WAY TO TENANT'S OPERATION OR USE OF THE PREMISES AND COMMON AREAS OF THE BUILDING. THE PROVISIONS OF THIS ARTICLE 33 SHALL SURVIVE THE EXPIRATION OF SOONER TERMINATION OF THIS LEASE.

Landlord represents that, to the best of its knowledge, there is no hazardous or toxic material on or about the Premises or the property of which the Premises are a part. Landlord shall be solely responsible for all costs and expenses and the removal of hazardous or toxic material introduced by Landlord and Landlord agrees to indemnify Tenant for any costs or damages resulting from contamination arising as a result of the Landlord introducing hazardous or toxic material to the Premises or the property.

ARTICLE 34: BROKER'S COMMISSIONS

No brokerage commissions or finder's fees are payable in connection with this Lease. Tenant shall indemnify and hold Landlord harmless from and against any other claim, demand or suit for any brokerage commission, finder's fee or similar charge in respect of the execution of this Lease or the transaction contemplated by this Lease based on any act by or agreement or contract (or alleged act, agreement or contract) of Tenant, and for all losses, obligations, costs, expenses and fees (including attorneys' fees) incurred by Landlord on account of or arising from the same. Landlord shall indemnify and hold Tenant harmless from and against any other claim, demand or suit for any brokerage commission, finder's fee or similar charge in respect of the execution of this Lease of the transaction contemplated by his Lease based on any act by or agreement or contract (or alleged act, agreement or contract) of Landlord, and for all losses, obligations, costs, expenses and fees (including attorneys' fees) incurred by Tenant on account of or arising from the same.

ARTICLE 35: CORPORATE STATUS

If Tenant executes this Lease as a corporation or other entity, Tenant represents and warrants that (a) the execution of this Lease has been duly authorized as an act of the corporation or other entity; (b) upon execution of this Lease, the Lease will constitute a binding and valid undertaking of the corporation or other entity; and (c) the persons executing this Lease on behalf of the corporation or other entity are authorized and empowered to bind the corporation or other entity as provided in this Lease.

ARTICLE 36: AMERICANS WITH DISABILITIES ACT

Landlord represents and Tenant understands that any failure of the Premises, the Building, the Common Areas and/or the Parking Garage serving the Premises to comply under the Americans with Disabilities Act (the "Act") has been grand-fathered and is accepted from compliance as specified under the Act. It is further agreed between Landlord and Tenant that Landlord shall hold Tenant harmless and indemnify Tenant for all costs and expenses related to such compliance or for any claims, liabilities, costs, or expenses (including Tenant's reasonable attorneys' fees and expenses) resulting from any complaint, suit, or action brought against the Landlord and/or Tenant resulting from Landlord's non-compliance with the Act, if any. This

covenant shall survive the termination of this Lease for any reason. This agreement to hold harmless and indemnify shall not extend to any failure of Tenant to comply with the Act within the leased Premises, excluding common areas.

IN THE WITNESS WHEREOF, the parties have duly executed this Lease as of the day and year first above written.

LANDLORD:

TENANT:

HOPI TRIBE ECONOMIC
DEVELOPMENT CORPORATION

CITY OF FLAGSTAFF

A federally chartered corporation,
Wholly owned by the Hopi Tribe,
A federally recognized Indian tribe

By:

Lucinda Smith 11/5/19
(Date)

By:


Coral Evans
(Date)

Name Printed: Lucinda Smith
Its: CEO

Name Printed CORAL EVANS
Its: MAYOR

City of Flagstaff
Office Lease Agreement – Hopi Building at Heritage Square
Hopi Tribe Economic Development Corporation

ATTEST:


Stacy Sattberg
CITY CLERK

APPROVED AS TO FORM:

Anja Wendel for
CITY ATTORNEY

LEASE ABSTRACT

DATE: September 17, 2019

PROPERTY: Hopi Building at Heritage Square
6 E. Aspen Ave, Suite 200
Flagstaff, AZ 86001

TENANT: City of Flagstaff, ParkFlag

CONTACT PERSON: John Portillo Work:
Cell: 928-699-8861
Email: JPortillo@flagstaffaz.gov

BILLING ADDRESS: 6 E. Aspen Ave, Suite 200, Flagstaff, AZ 86001

LEASE COMMENCEMENT: 11/1/2019 LEASE EXPIRATION: 10/31/2022

LEASE TERM: Five (5) years

RENTABLE SQ. FT.: +/- 2806 PRO-RATA: N/A

SECURITY DEPOSIT: \$5,000.00

BASE YEAR: 2019 NEXT ADJUSTMENTS: N/A

CURRENT TOTAL MONTHLY RENT: \$5,129.05 RENT / SF: \$21.93/sf/yr; \$1.83 sf/mo

BASE RENT/MO: \$5,000.00 NNN: N/A CITY TAX: \$129.05

ADDITIONAL RENT: None

LATE FEES: If received on the 6th or after = 10% of base rent; if received 11th or after = additional 10% of base rent.

USE: General Administrative Office Use

SPECIAL PROVISIONS: This is a gross lease. Landlord responsible for gas, electric, water, HVAC servicing. Tenant responsible for communications/internet services. Tenant may sublease to Downtown Business Alliance and Flagstaff Metropolitan Planning Organization.

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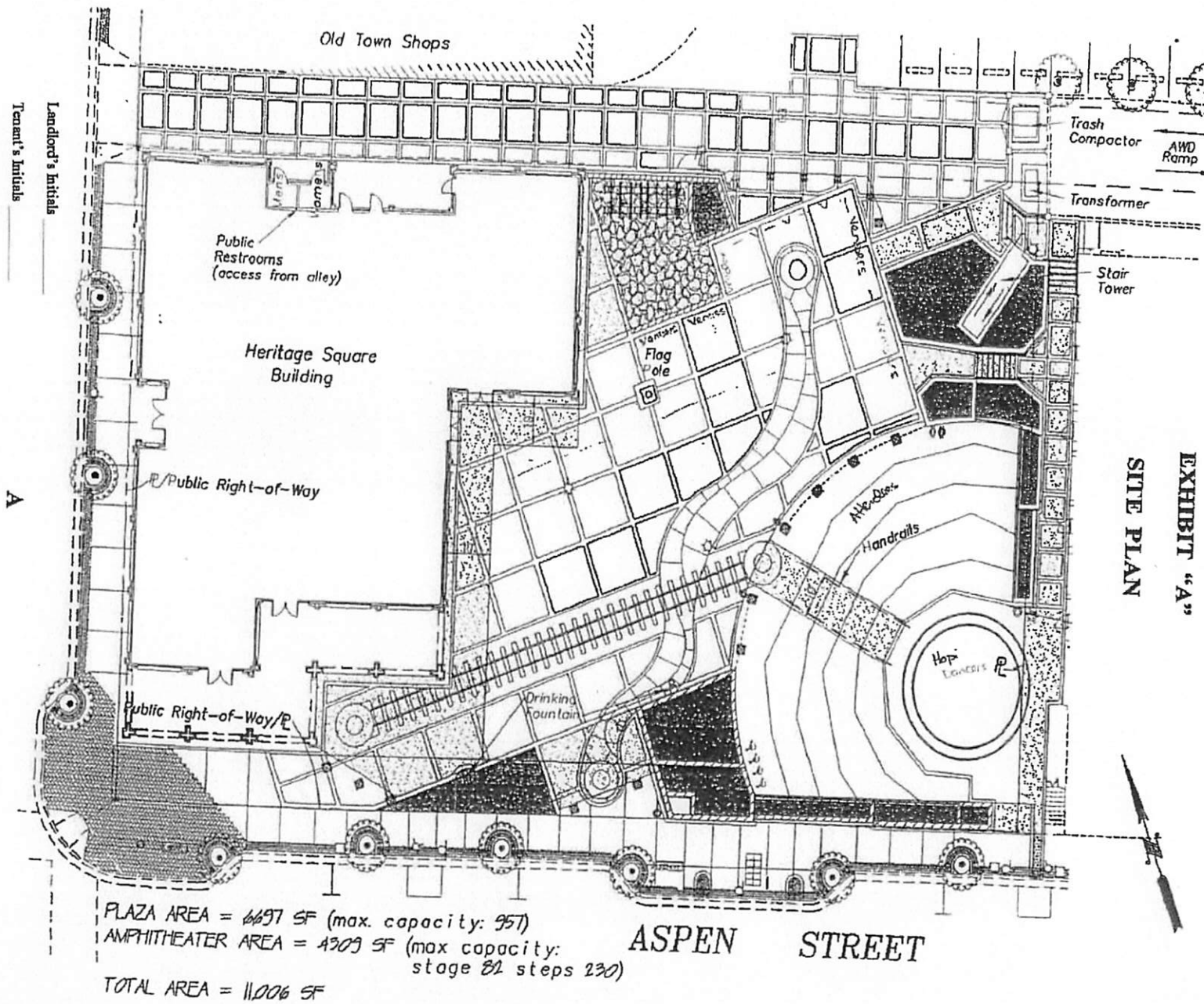


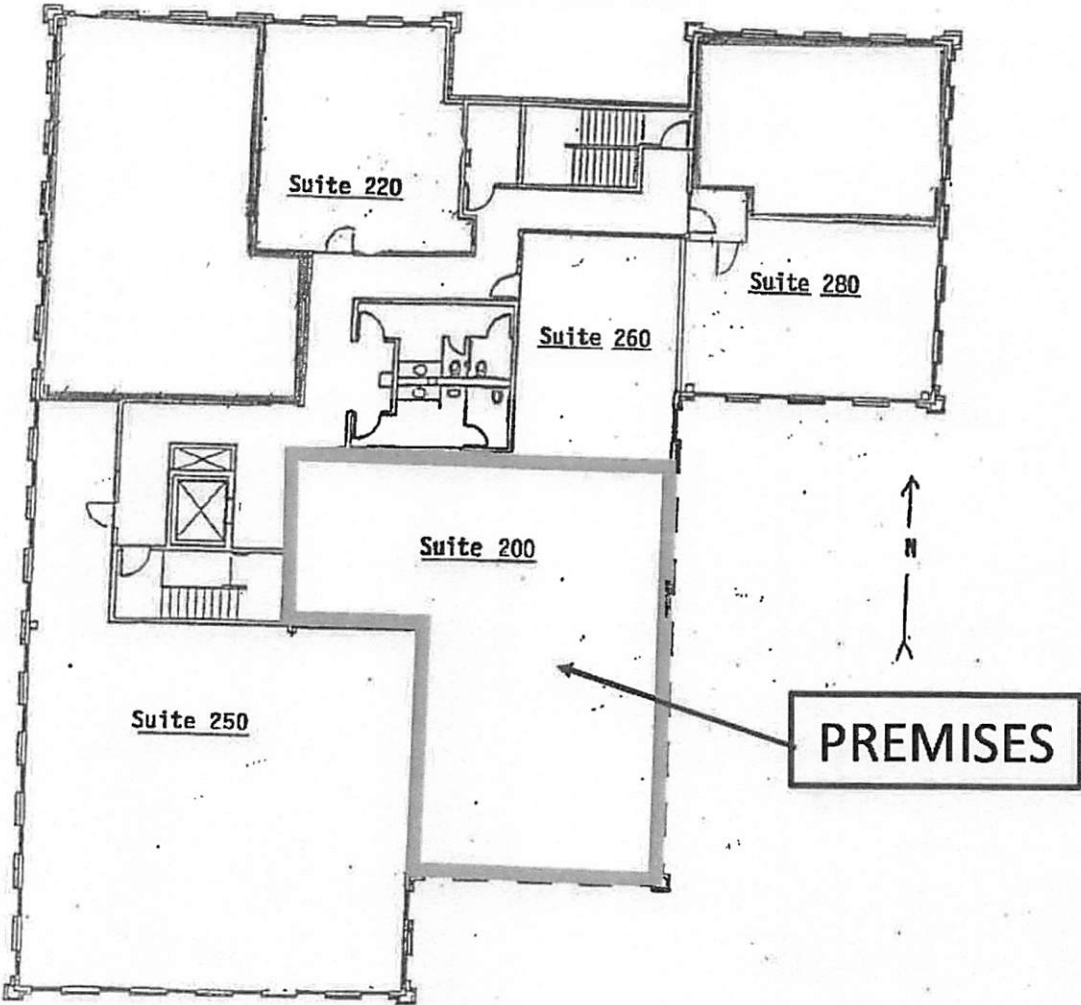
EXHIBIT "A"
SITE PLAN



PARKFLAG
CITY OF FLAGSTAFF

EXHIBIT "B"

SECOND FLOOR PLAN



This floor plan is not to scale.

Landlord Initials _____

Tenant Initials _____

B

EXHIBIT "C"



SIGN CRITERIA

Signs

Approved

SIGN CRITERIA
HERITAGE SQUARE
FLAGSTAFF, ARIZONA

Sign package

Per. Cof F 5/12/90

A) Introduction

This criteria has been established for the purpose of assuring an outstanding center for the mutual benefit of all tenants, and are in addition to the requirements as stated in the lease between landlord and tenant. Conformance shall be strictly enforced and any installed non-conforming or unapproved signs shall be brought into conformance at the sole expense of the tenant.

Landlord shall administer and interpret the criteria. Bootz & Duke Sign Co. is the consulting company for Heritage Square.

The City of Flagstaff shall issue sign permits and have final interpretation of this criteria.

B) General Requirements

1. Painted lettering directly to the wall shall not be permitted.
2. Flashing or audible signs shall not be permitted.
3. All electrical signs and their installations must comply with all uniform building and electrical codes.
4. No exposed conduit, tubing, transformer or raceways shall be permitted.
5. All letters, conductors, transformers and other equipment shall be neatly concealed in a water tight condition.

Landlord's Initials _____
Tenant's Initials _____

C

& Duke Sign Co. • 4028 West Whitton Ave. • Phoenix, Arizona 85019 • Phone (602) 272-9356

278

6. All business identification signs will flag mounted wall signs as per the attached Detail A.

7. Tenant or his representative must submit two copies of detailed sign drawings to the landlord for approval fifteen (15) days prior to submitting for permits or manufacturing.

C. Construction Requirements

1. All exterior bolts, fastening and clips shall be of hot dipped galvanized iron and no black iron materials of any type shall be permitted.

2. Locations of all openings for conduit and sleeves in building walls shall be indicated by the sign contractor on drawings submitted for approval of landlord's architect. The contractor shall install the same in accordance with the approved drawings.

3. No labels shall be permitted on the exposed surface of signs, except those required by ordinance, which shall be applied in an inconspicuous place.

4. All penetrations of the building structure required for sign installation shall be neatly sealed in a water tight condition.

5. Tenant and his contractor shall repair any damage caused during installation of signage.

6. Tenant shall be fully responsible for the operations of tenant's sign contractor.

D) Design Requirements

1. Identification signs shall be designed as an integral part of the storefront in a manner complimentary to adjacent and facing storefronts and the overall design concept of the shopping center. Second story tenants are not allowed building signs.

Landlord's Initials

AS

Tenant's Initials _____

2. Signs are to be a maximum 16 Sq. feet, flag mounted off the building as per Detail A. The steel mounting bracket shall be the same for each sign, but tenants are encouraged to be innovative and use unique 2 or 3 dimensional graphics on their sign panel. Alternative designs may be allowed with landlord approval. All design elements and lighting details are subject to landlord and City of Flagstaff approval.

3. Window lettering is allowed with the landlord and City of Flagstaff approval. Acceptable materials for window lettering are gold leaf and "Signgold" vinyl lettering. Painted "gold" lettering will not be approved.

If you have any questions regarding this criteria or if you would like a competitive bid, please contact Steve Nelsen at:

Bootz & Duke Sign Co.
4028 W. Whitton Avenue
Phoenix, AZ 85019
(602) 272-9356

Landlord's Initials SN

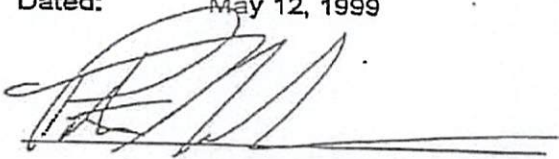
Tenant's Initials _____

Addendum to Sign Criteria
Heritage Square

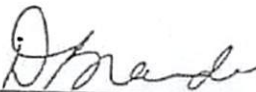
Changes to Sign Criteria:

- 1.. Remove Detail A as submitted by Bootz & Duke Signs. Replace with new drawing marked "Empress Plaza, Heritage Square" dated April 26, 1999..
2. All projecting signs shall be mounted at the same height on the building with the top of the sign support structure installed at the centerline of brick capital on building face as indicated in Detail A.
3. All illumination fixtures for externally illuminated signs shall be of the same design and shall consist of down-directed and shielded fixtures.
4. The City of Flagstaff will issue sign permits only for signs which are in conformity with the Flagstaff Sign Code and with the Flagstaff Historic District Design Criteria.

Dated: May 12, 1999



A large, stylized handwritten signature in black ink, written over a horizontal line.



A smaller, more legible handwritten signature in black ink, written over a horizontal line.

Landlord's Initials



Handwritten initials in blue ink, appearing to be "LH".


Tenant's Initials

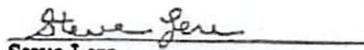
Amended Addendum to Sign Criteria

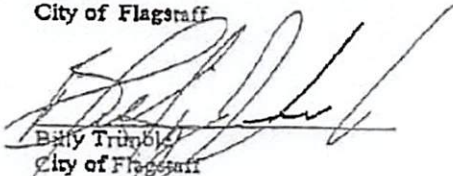
Additional Changes to approved Sign Criteria:

5. City of Flagstaff, hereby, approves sign permits for two flush building wall-mounted signs identifying the name of the building. The size, materials and method of installation of these signs shall be the same, or similar, in intent to the attached exhibit E. The location of such signs shall be as specified in the attached exhibit F.
6. City of Flagstaff, hereby, approves one projecting wall mounted sign identifying the name of the building; the size, materials, and method of installation of such sign shall be the same in nature to the typical projecting wall-mounted sign as previously approved on 5/12/99 by the City of Flagstaff for the general Sign Criteria for Heritage Square (attached here to as exhibit A). The location of such sign shall be the northern column immediately adjacent to the main entrance on Leroux Street.
7. City of Flagstaff, hereby, approves two flush-mounted building plaques identifying the name of the building. The size, materials, and location of such signs shall be specified at submittal of sign permit application for said signs.
8. City of Flagstaff, hereby, approves one projecting wall mounted sign identifying tenants of the building; the size, materials, and method of installation of such sign shall be the same in nature to the typical projecting wall-mounted sign as previously approved on 5/12/99 by the City of Flagstaff for the general Sign Criteria for Heritage Square (attached here to as exhibit A). The location of such sign shall be the southern column immediately adjacent to the main entrance on Leroux Street.

The foregoing is agreed and accepted today, 4/21/00

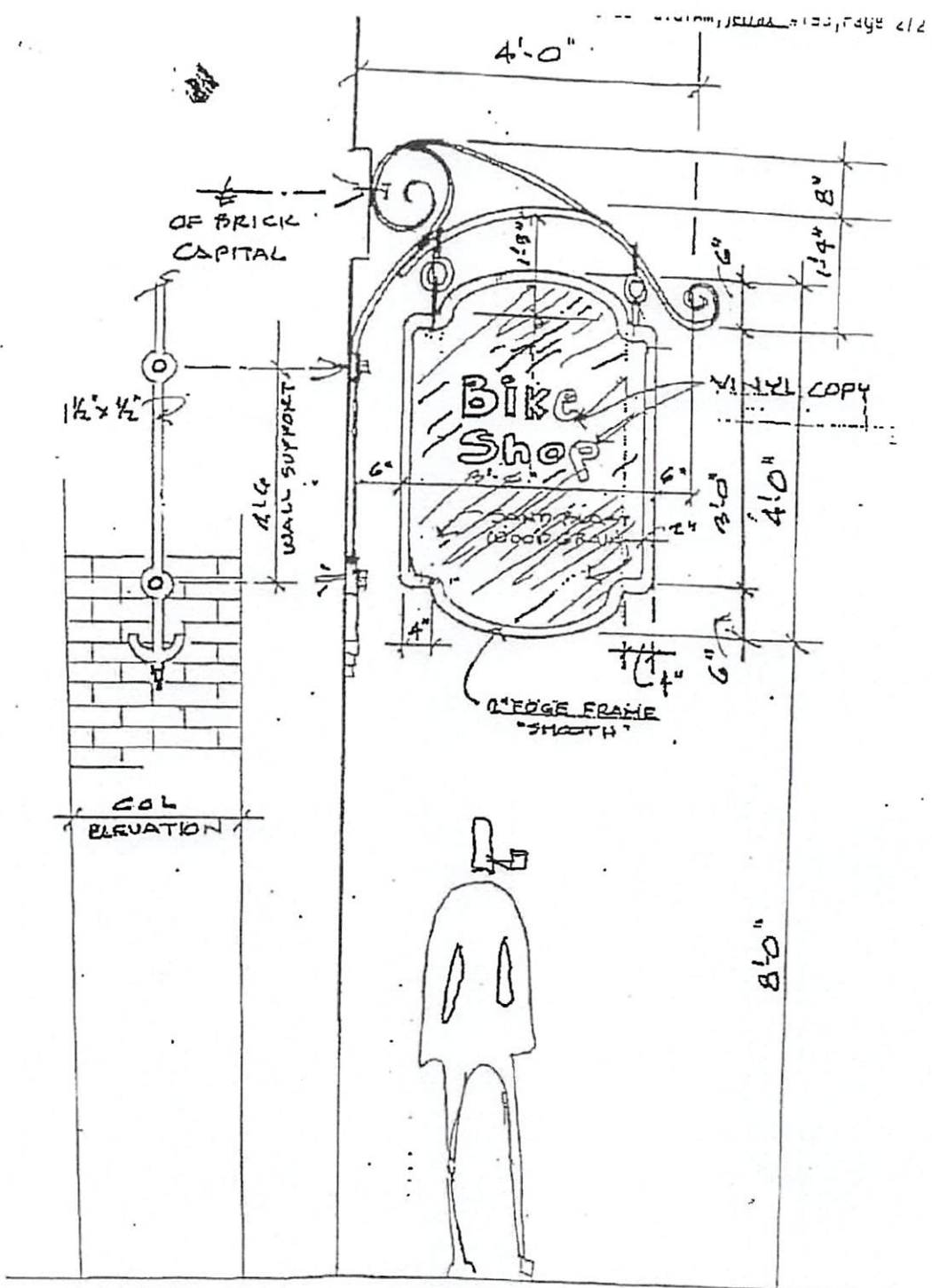

Peter W. Nelson
Empress Plaza, L.L.C.


Steve Lere
City of Flagstaff


Betty Trumbler
City of Flagstaff

Landlord's Initials PL

Tenant's Initials _____



EMPRESS PLAZA
HERITAGE SQUARE

SCALE: 1" = 1'-0"

LLM & ARCHITECTS.
APRIL 16, 1999

Landlord's Initials _____
Tenant's Initials _____

Handwritten signature

EXHIBIT "D"

CONSTRUCTION RIDER

D1. Tenant has inspected the Premises and accepts them in their present condition. Tenant has the responsibility, except as stated elsewhere in this Lease, to repair/replace all existing construction as required for Tenant's use and occupancy, including, but not limited to: signs, light bulbs/tubes, window and door glass, and all finishes

D2. Tenant shall, at Tenant's sole expense, furnish to Landlord construction drawings and specifications (hereinafter called "Plans"), describing all work necessary to construct the Premises for Tenant's use and occupancy (hereinafter called "Tenant Work"). Tenant shall furnish to Landlord three (3) copies of the Plans for Landlord's review and approval, which is required prior to the initiation of any work on the Tenant Work. Landlord shall have fourteen (14) working days from the date of receipt of the Plans to review them. If Landlord makes no written objection to Tenant within the said fourteen (14) days, then the Plans shall be deemed approved by Landlord.

D3. Tenant shall, at Tenant's sole expense, perform all work necessary to complete the Tenant Work as approved by Landlord.

D4. Tenant shall cause the Tenant Work to be constructed in compliance with all applicable ordinances, laws, rules and regulations of all governmental authorities, and shall secure written approval of the Plans from such governmental authorities before beginning work on the Tenant Work. In the event that said governmental authorities require changes or alterations in the Plans before granting Tenant written approval, then Tenant shall, at Tenant's sole expense, cause the Plans to be revised to indicate the required changes or alterations, and shall furnish to Landlord two (2) copies of the revised Plans for Landlord's records. Without limiting the foregoing, Tenant shall specifically ensure that all construction complies with the Americans with Disabilities Act.

D5. Tenant shall cause the Tenant Work to be constructed by a contractor (hereinafter called "Tenant's Contractor") licensed by the appropriate governmental authorities, and shall require Tenant's Contractor to furnish to Landlord a Certificate of Insurance as proof of insurance coverage in at least the following amounts:

- (a) Worker's Compensation Insurance in the amounts required by law in Arizona;
- (b) Comprehensive general liability insurance and personal injury liability insurance, specifying a single occurrence policy limit of at least \$1,000,000;
- (c) Products/Completed Operations Insurance

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- (d) Independent Contractors Insurance
- (e) Personal liability insurance specifying a single occurrence policy limit of at least \$1,000,000;
- (f) Owned and hired automobile and equipment liability insurance; and
- (g) Builder's Risk Insurance in the minimum amount of the contract between Tenant and Tenant's Contractor.

D6. Tenant shall, upon completion of all Tenant Work, furnish to Landlord a Certificate of Occupancy or other documentation indicating acceptance of construction by the appropriate governmental authorities. Tenant shall also furnish to Landlord an acceptable Affidavit of No Liens and Waivers of Liens from Tenant's Contractor and its subcontractors.

D7. Tenant shall, at Tenant's sole expense, furnish signs and the electrical connections thereto, in compliance with Landlord's sign criteria.

D8. Roof/Building Penetrations. There shall be no penetrations of the roof or the exterior walls of the Building without the prior written approval of Landlord. If Tenant employs any contractor or person to perform roof or Building penetrations or Tenant performs roof or Building wall penetrations personally, Tenant will be responsible for the cost of repair or replacement to said roof or Building walls required because of any damage resulting from Tenant's or Tenant's Contractor. Landlord shall have the right to have Landlord's roofing contractor and/or maintenance contractor make said repairs or replacement at Tenant's expense.

Landlord's Initials 

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