

**FRISCO TEN MILE DRIVE LLC  
LEASE AGREEMENT**

This Lease Agreement (“Lease”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2005 by and between Frisco Ten Mile Drive, LLC, a Colorado limited liability company (“Landlord”), and \_\_\_\_\_ (“Tenant”).

1. **LEASE:** For and in consideration of and upon the agreements, at the rental, and for the Term set forth in this Lease, Landlord leases to Tenant and Tenant leases from Landlord the premises (the “Premises”) located in the buildings (collectively, the “Building”) in the County of Summit, Colorado, (the “Project”) and highlighted in red on attached Schedule I, which is hereby incorporated herein by reference.

(a) Unit #: \_\_\_\_\_.

(b) Square feet (approximate): \_\_\_\_\_ (See Section 12.06)

(c) Address: \_\_\_\_\_ Ten Mile Drive, Frisco, CO 80443

2. **LEGAL:** The legal description of the Building and Project is I, J, and NN, Ten-mile filing number one and Lot EE-1 and EE-3 (Peak II) of a re-subdivision of Lot EE, Ten-mile filing number one, Town of Frisco, Summit County, Colorado.

3. **TERM:**

01. The Term of the Lease (the “Term”) and the right of Tenant to take possession of the Premises shall commence at twelve o’clock noon on \_\_\_\_\_, 200\_ (the “Commencement Date”), and, unless extended or sooner terminated pursuant to the Lease, shall terminate at twelve o’clock noon on the last day of \_\_\_\_\_.

02. Subject to the conditions hereinafter set forth, Tenant is hereby granted an option (“Option”) for \_\_\_\_\_(0)\_\_\_\_\_(0) year extension of the Term. If Tenant intends to exercise an Option, then, at least one hundred eighty (180) days prior to the expiration of the then existing Term, Tenant shall give Landlord written notice that it thereby exercises an Option. Notwithstanding the service of such notice, it shall be a condition precedent to the effective exercise of an Option that, at the time of service of the written notice and at the time of the commencement of the extension of the Term, Tenant shall not be in default under the Lease. All terms and provisions of the Lease shall apply and be in full force and effect during any extension of the Term resulting from this Section 3.02. No additional options for further extensions of the Term are created by this Section. If Tenant fails to provide the written notice required by this Section, then Landlord will not be required to grant any further extension of the Lease term to Tenant, and Landlord may relet or retake possession of the Premises without any further liability or

obligation to Tenant, and this Lease will expire and terminate at the end of the existing Term. The foregoing notwithstanding, Landlord may, at Landlord's sole option, upon the giving of written notice to Tenant, terminate and declare null and void any Option described in this Section 3.02 in the event that, during the term of this Lease, Tenant fails to pay Rent when due on more than two (2) occasions or otherwise is declared, in writing, in default of any term or provision of the Lease that is not cured by Tenant within any applicable cure period provided for in this Lease. In the event of the exercise by Tenant of any Option, as provided for herein, Landlord shall, until sixty (60) days prior to the effective date of any such renewal term, have the sole and absolute right to modify the terms and conditions of this Lease, but not the "Fixed Minimum Rent" amount or Term of the lease, but only so as to include in the Lease any standard Lease provisions which, since the date hereof, Landlord has incorporated into its standard lease form for the Project. Upon receipt of any such modification, presented by Landlord to Tenant by way of a new lease agreement or an amendment to this Lease, Tenant shall, within thirty (30) days, execute and deliver or cause to be delivered to Landlord such new lease agreement or amendment to this Lease. In the event Tenant fails to execute and deliver or cause to be delivered to Landlord such new lease agreement or amendment to this Lease within such thirty (30) days, Tenant's notice of having exercised an Option to extend the Term of the Lease shall, at Landlord's option, be deemed void and of no effect.

4. USE OF PREMISES:

01. Tenant shall occupy and use the Premises for the purpose of conducting thereon the business of [REDACTED] and for no other purpose whatsoever.

02. Tenant shall not use or occupy the Premises, or permit the use or occupation of the Premises, or any part thereof, by any person other than Tenant, for any purpose other than the one specified in Section 4.01 herein or for any purpose which (a) constitutes waste or a public or private nuisance, including, but not by way of limitation, the outside storage, display or sales of any items or materials, construction, assembly, or work of any kind, (b) transmits light outside of the Premises (excluding signs allowed pursuant to the Lease), sound, odor or vibrations which are obnoxious or offensive to any one or more of the other tenants of the Building or to Landlord, (c) violates any governmental laws, ordinances or regulations, (d) is contrary to any leases, restrictive covenants, agreements or limitations of record, or (e) renders the Building or the Premises, or any part of either, uninsurable with standard insurance at ordinary rates.

03. Tenant shall not obtain from any governmental entity, or maintain, any license to distill, manufacture, sell, dispense, or serve malt, vinous, or spirituous liquors, or to operate any retail gaming establishment, as may otherwise be obtained within the State of Colorado pursuant to Colorado Law, except that, with the express written consent of Landlord, which consent may be withheld for any reason, Tenant may obtain a license to operate a package "Retail Liquor Store", as defined by C.R.S. § 12-47-103

(31) or a "Restaurant", as defined in C.R.S. § 12-47-103 (30) provided, however, that, in the event that Landlord gives written permission for Tenant to operate a licensed "Restaurant", pursuant to C.R.S. § 12-47-101 et seq., Landlord may impose restrictions pertaining to the nature of such Restaurant operation to ensure that alcoholic beverages are served only in conjunction with, and as part of, the service of food and specifically prohibiting the inclusion and operation of any bar, nightclub, live or recorded entertainment, amusement devices, floor shows, and so forth from operating as a part of such "Restaurant".

04. Tenant, its successors, assigns or sub-tenants, shall not use all or any portion of the Premises for any one or more of the following activities:

(a) A wholesale or retail commercial establishment which devotes at least ten percent (10%) of its stock-in-trade or interior floor space to, or receives at least ten percent (10%) of its revenues from, the sale, rental or viewing of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" or sexual accessories or any items for sale primarily of a sexual nature. "Specified sexual activities" shall mean and include (i) human genitals in a state of sexual stimulation or arousal; (ii) actual or simulated acts of human masturbation, sexual intercourse or sodomy; and (iii) actual or simulated fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts. "Specified anatomical areas" shall mean: (i) less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the areola; or (ii) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(b) A nightclub, bar, club, restaurant, concert hall, auditorium or other establishment which features, allows, permits, or conducts live adult entertainment. "Adult entertainment" is defined as any exhibition, display or dance which involves the exposure to view of any portion of the female breasts below the top of the areola, male genitals, female genitals, or the pubic hair, anus, or cleft of the buttocks of any person or male genitals in a discernibly turgid state, even if completely and opaquely covered.

5. RENT:

01. Subject to the same being increased pursuant to Section 5.05 herein, during the Term and any extension thereof, Tenant shall pay Landlord a fixed minimum rent (the "Fixed Minimum Rent") computed at the rate of:

(a) \$ [redacted] per year, which equates to

(b) \$ [redacted] per month.

02. Except as is expressly provided for in the Lease, the Fixed Minimum Rent shall be paid in twelve equal installments of monthly rent as provided for in Section 5.01 herein, in advance, on or before the first day of each calendar month during the Term.

03. If the Commencement Date shall fall on a day other than the first day of a calendar month, then the installment of the Fixed Minimum Rent due for the calendar month during which the Commencement Date falls shall be prorated so that, as the installment of the Fixed Minimum Rent for such month, Tenant shall pay an amount which bears the same ratio to a regular monthly installment of the Fixed Minimum Rent as the number of days from and including the Commencement Date through the end of such month bears to the total number of days in such month.

04. Landlord hereby acknowledges the receipt from Tenant of \$   to be applied toward the payment of the first installment of the Fixed Minimum Rent and Additional Rent coming due.

05. Commencing with the fiscal year beginning on the first day of the calendar month during which the First (1<sup>st</sup>) anniversary of the Commencement Date occurs and on the first day of each such fiscal year thereafter, the Fixed Minimum Rent set forth in Section 5.01 herein shall be increased by the greater of: (1) 5.0 percent; or (2) any increase in the Consumer Price Index ("Index Fraction"). The numerator of the Index Fraction shall be the published Consumer Price Index - All Urban Consumers (All Items) for the West Region published by the United States Department of Labor, Bureau of Labor Statistics ("Index") for the last month of the immediately preceding twelve (12) month period. The denominator of the Index Fraction shall be the Index published for the same month of the previous year. On computation of the new Minimum Rent, the Landlord shall give written notice of such Minimum Rent to Tenant and such notice shall be deemed to be incorporated herein by reference and constitute an amendment to this Lease. Within thirty (30) calendar days after notice of the new Minimum Rent for each twelve (12) month period, Tenant shall pay the difference between the new Minimum Rent and the amount of Minimum Rent actually paid from the beginning of the twelve (12) month period until the computation of the new Minimum Rent has been made.

06. Other than the Fixed Minimum Rent and Security Deposit (defined in Section 6.01 herein), all sums, costs and expenses which Tenant assumes or agrees to pay to Landlord pursuant to the Lease shall be deemed to be additional rent (the "Additional Rent") for the Premises. The total rent payable to Landlord by Tenant (the "Rent") during the Term shall be the sum of the Fixed Minimum Rent for the Term and the Additional Rent which accrues or will accrue during the Term. All Rent due and payable pursuant to the terms and provisions of this Lease shall be paid to Landlord at the office of Landlord, or at such other place as Landlord may designate, without any set-off, deduction or counterclaim.

07. The Additional Rent provided for in Section 5.06 herein shall be prorated between Landlord and Tenant in accordance with the number of days of the applicable accounting period during which the Premises were subject to the Lease and not subject to the Lease.

08. It is recognized that Landlord will incur additional costs as a result of and in handling any payment of Rent which is not received by Landlord on or within the three (3) business day period following its due date; therefore, to reimburse Landlord for such costs, which will be difficult to ascertain with specificity, if Tenant fails to timely pay any Rent, and/or Other Tenant Expenses or charges, and the Rent and charges are not received by the Landlord on or within the three (3) business day period following its due date, in addition to and with such Rent, Tenant shall pay Landlord an amount equal to the greater of five percent (5.0%) of such Rent, and/or Other Tenant Expenses or charges, or \$200, as a Late Charge which shall be added to the total balance due as of the due date of such Rent, without notice by Landlord. Tenant agrees that such Late Charge is reasonable. A business day shall be defined as Monday through Friday of each week, except official Federal or State holidays necessitating the closure of Banks and/or the U.S. Post Office.

6. SECURITY DEPOSIT:

01. To secure the timely and faithful performance of all of Tenant's obligations under the Lease, Tenant has deposited with Landlord the sum of \$ [REDACTED] as a security deposit (the "Security Deposit"), the receipt of which is acknowledged. At any time, if Tenant shall be in default in the performance of any of Tenant's obligations under the Lease, at Landlord's option, Landlord may use all or so much of the Security Deposit as Landlord deems necessary to cure any such default without being under any obligation to do so. Upon notification thereof, Tenant shall forthwith pay Landlord the amount of the Security Deposit so expended so that Landlord will at all times have the full amount of the Security Deposit as security. The Security Deposit and the use thereof shall not be considered as liquidated damages in the event of default but only as an application toward actual damages. Within sixty (60) days after the termination of the Lease, Landlord shall return the unused portion of the Security Deposit to Tenant without interest. Landlord is under no obligation to segregate the Security Deposit and may commingle the same.

02. If Landlord conveys its interest in the Premises and assigns the Lease, Landlord shall transfer the Security Deposit, or so much thereof as remains, to the grantee of such interest and the Lease and, thereupon, Landlord shall be released from all liability for the return of the Security Deposit to Tenant or for the subsequent use of the Security Deposit pursuant to Section 6.01 herein.

7. AVAILABILITY OF THE PREMISES:

01. Landlord shall not be liable for any damages sustained or costs or expenses incurred by Tenant on account of Tenant's failure to obtain possession of the Premises on or before the Commencement Date and Tenant shall have no right to rescind, cancel or terminate this Lease because of such failure.

02. Occupancy of all or part of the Premises by Tenant shall be deemed possession and acceptance thereof by Tenant in good and suitable condition in full accordance with the provisions of the Lease.

03. At the expense of Tenant, Tenant shall fully comply with all provisions and standards of the Occupational Safety and Health Act of 1970 (Chapter XVII, Title XIX of the United States Code) and any applicable federal or state statute or regulation adopted pursuant thereto, in lieu thereof, or in conjunction therewith, as the same relate to Tenant's use and occupancy of the Premises, as such may be amended or re-enacted from time to time. Tenant shall indemnify and hold Landlord harmless from all obligations, liability, damages, costs, and expenses, including attorney's fees, concerning any failure to so comply.

8. COMMON AREAS:

01. At its option, Landlord may provide Common Areas (hereinafter defined) for the non-exclusive use of Tenant, its employees and customers in common with other Tenants and customers of other portions of the Building.

02. At all times all common facilities, if any, furnished by Landlord in or near the Building and all such other accommodation areas as Landlord may provide and designate (collectively, the "Common Areas"), including, but not by way of limitation, pedestrian sidewalks, parking areas, landscaped areas, exterior stairways, lamps, public restrooms, and driveways and similar areas and improvements shall be subject to the exclusive control and management of Landlord. From time to time, Landlord may establish and modify in written form rules and regulations and enforce same with respect to the Common Areas to be used by Tenant and its employees, customers, guests and invitees and Tenant agrees to abide by and conform to such rules and regulations and obtain the abidance by its employees, customers, guests and invitees thereto.

03. Landlord reserves the right to change the area, location, and arrangement of and to restrict or eliminate the use of any and all Common Areas and to do such other acts in and to the Common Areas as Landlord deems advisable.

9. UTILITIES:

01. All charges for utilities, including, but not by way of limitation, electricity, gas, water, sewer, steam, cable service, and telephone pertaining to the Premises shall be paid when due by Tenant. All utility charges that are separately metered and/or charged solely to the Premises, and which are not shared by any other tenant in

the Project, shall be paid solely and exclusively by Tenant, whether billed directly to Tenant or to Landlord. Tenant shall, immediately upon taking possession of the Premises, contract with each utility provider to have all utility charges that are separately metered or billed so that such services are billed directly to Tenant.

02. Tenant shall not install any electrical equipment which overloads the lines or interferes with other equipment in or on the Building, or any part thereof, and, if said lines are overloaded by such installation, Tenant shall immediately remedy the same at its own expense.

03. Unless caused by the acts or omissions of Landlord, Tenant shall not allow the temperature inside the Premises to become so low as to cause damage to the improvements, specifically including water pipes and other plumbing in or about the Premises.

10. TENANT'S TAXES:

01. Tenant shall pay before delinquency any and all taxes, assessments, license taxes, fees and other charges levied, assessed or imposed and which become payable during the term of this Lease upon Tenant's operations at, occupancy of, or conduct of business at the Premises, or upon Tenant's leasehold improvements, equipment, inventory, furniture, appliances, trade fixtures and any other personal property of any kind installed or located at the Premises. If the taxing authorities fail to render a separate tax bill with respect to any or all of such property, Landlord shall reasonably allocate to such property a portion of such taxes attributable to the Premises. Tenant shall pay such amount to Landlord promptly upon receipt of a written statement of such allocation. Tenant shall be permitted to challenge the imposition of any such tax following notice of such challenge to Landlord, on the condition that, at Landlord's request, Tenant will post security in connection with such challenge as necessary to protect Landlord's interest in the Premises from any lien or judgment against Tenant which may arise in connection with Tenant's action.

02. As provided in Colorado Revised Statutes § 39-26-117(1)(b) and § 39-26-205(3), both as amended from time to time, the Premises and all of the improvements and installations constituting any part of the Premises, and all other improvements (other than Tenant's trade fixtures) made to or installed in the Premises (whether constructed by, for or at the expense of Landlord or Tenant), all of which shall be deemed property owned by Landlord, shall be exempt from any lien for sales and use taxes otherwise imposed by the taxing authorities of the State of Colorado. In order to secure this exemption from the date of execution of this Lease, upon execution of this Lease, Landlord and, at Landlord's request, Tenant, shall execute a memorandum of this Lease for filing with the Colorado Department of Revenue, such memorandum to be in such form as may be prescribed by that Department.

11. INSURANCE:

01. At Tenant's sole expense, Tenant shall obtain and maintain, during the Term, public liability insurance naming Landlord, along with its agents, as an additional insured to the extent of its interests, against any and all claims for injury to or death of persons or loss or damage to property occurring upon, in, or about the Premises and the said Common Areas and facilities provided by Landlord, and all portions of the Project used or accessible for use by Tenant and its employees, agents, contractors, subcontractors, invitees and customers. Such insurance shall afford minimum protection of a single limit of liability of \$3,000,000.

02. At Tenant's sole expense, Tenant shall obtain and maintain, during the Term, adequate insurance which insures its fixtures, trade fixtures and contents against loss by fire and causes covered by standard extended coverage endorsements. Tenant shall cause Landlord to be named as a co-insured on all such policies to the extent of its interest in such insured property and shall cause such insurance to be written in a manner so as to provide that the insurance carrier waives all right of recovery by way of subrogation against Landlord, and its agents, in connection with any loss or damage covered by any such policies.

03. All policies of insurance to be obtained by Tenant pursuant to the provisions of the Lease shall be obtained through reputable carriers, authorized to issue insurance policies in the State of Colorado. A certificate of insurance, as proof that such policies remain in full force and effect, shall be delivered to Landlord at the commencement of this Lease and on each anniversary of the Commencement Date thereafter, and at any other time upon written request of Landlord. Such policies shall provide that they may not be cancelled without at least thirty days prior written notice to Landlord. In the event any policy of insurance required to be obtained by Tenant pursuant to the Lease is terminated, cancelled, expires, or is replaced, a certificate evidencing the replacement policy shall be immediately delivered to Landlord.

04. During the Term, Landlord shall maintain insurance, with a carrier authorized to do business in the state of Colorado, (a) insuring the Premises and the Building against loss by fire and causes covered by standard extended coverage endorsements, earthquake insurance, boiler insurance, loss of rents insurance, and such other coverage as is deemed appropriate by Landlord from time to time (the "Fire Insurance") and (b) insuring Landlord and its agents against all claims for injury to or death of persons or loss or damage to property occurring upon, in or about the Building (the "Landlord's Liability Insurance") in amounts determined by Landlord in its sole discretion. In such event, Tenant agrees to do all things, and to conduct its business in a manner, reasonably requested or required by Landlord's insurer in order to lessen or minimize risk of loss by any casualty, regardless of whether such casualty is covered by such insurance. Insurance costs will be Common Area Expenses to be paid by Tenant as provided in Section 12.

12. OTHER TENANT EXPENSES:

01. As is hereinafter provided, Tenant shall pay Landlord a sum equal to [REDACTED] % percent of all costs and expenses (collectively, the “Common Area Expenses” or “C.A.M.”) of owning, operating, maintaining, and repairing the Building, the Common Areas and the real property upon which they are located, which are allocable to the period during the Term. The Common Area Expenses shall include, but shall not be limited to, the cost and expense of trash disposal and/or hauling; parking lot sweeping and maintenance and replacement of Common Area pavement and line striping; maintenance and replacement of exterior lighting and interior Common Area lighting; installation and maintenance of exterior signs; landscape maintenance, repair, painting, replacements and plantings; snow removal; utilities pertaining to the Common Areas; all water and sewer charges common to the Project; acquisition costs of replacement and/or rents for the leasing of any machinery or equipment used in connection with operations, management or maintenance; professional fees (i.e. legal, accounting, engineering, architectural, etc.); repair and/or replacement of roofs, utility meters, on-site water or sewer lines; repair and/or maintenance of the Building; any costs incurred by Landlord in making capital improvements or other modifications to the Building or any part thereof, which costs shall be amortized over the useful life of such improvement or modification with interest at the rate of twelve (12) percent per annum, in accordance with such reasonable life and amortization schedules which shall be determined by Landlord in accordance with generally accepted accounting practices and principles, to the extent that other tenants are not liable for the payment thereof; the Project’s Real Estate, personal property taxes, and any special assessments, taxes, liens and/or charges of any kind; all costs of challenging Real Estate tax assessments, to include legal and professional assistance; insurance premiums pertaining to Fire and extended coverage, loss of rent, Landlord’s Liability Insurance, and other insurance acquired by Landlord with respect to the Premises, Building or Project; and professional management fees which do not exceed six percent (6%) of the gross rents, from all sources, received from the Project. Common Area Expenses shall not include: (a) leasing commissions; (b) costs and repairs, or other work to the extent that such is insured and insurance proceeds are received therefore; (c) ground lease expenses; (d) costs, including permits, license and inspection costs, incurred with respect to the installation of tenant or other occupancy improvements in the building or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants of the building; (e) depreciation, amortization and interest payments as determined in accordance with generally accepted accounting principles; (f) marketing costs; (g) costs incurred by Landlord due to violation by Landlord or any tenant of the terms and conditions of any lease of space in the building; (h) Landlord’s general corporate overhead and administrative expenses, except for a 6% management fee, as stated above, and the on-site management office gas and electricity will be connected to the C.A.M. meters; (i) rentals and other related expenses incurred in renting HVAC systems, elevators, or other building structural equipment, ordinarily considered to be capital equipment; (j) advertising and promotional expenses; (k) tax penalties incurred as a result of Landlord’s negligence, inability or unwillingness to make payments; (l) any and all costs arising from the presence of hazardous materials or substances in or about the Building; (m) Landlord’s charitable or political contributions; (n) costs arising from latent defects in the base shell or core of the building; (o) entertainment, dining or travel expenses; and (p) Manager’s in-house legal or accounting fees, not associated with the management of the Building.

02. From time to time, Landlord shall make reasonable projections of the annualized Common Area Expenses allocable to the period during the Term; and, based upon such projections, with each payment of the Fixed Minimum Rent Tenant shall pay Landlord installments in an amount equal to one-twelfth (1/12) of the amount payable annually pursuant to Section 12.01 herein. Following the end of each calendar year during the Term and following the termination of the Term, Landlord shall compute the amount of the actual Common Area Expenses for the preceding calendar year, or part thereof, as is appropriate, and Tenant shall pay Landlord any shortages and Landlord shall pay Tenant any overages in the amount of such Operating Expenses actually paid with respect to the amount payable pursuant to the provisions of Section 12.01 herein. Tenant's obligation to pay any deficiency between (i) Tenant's share of estimated C.A.M. for the last calendar year of the term, and (ii) Tenant's share of actual C.A.M., determined after adjustment as contemplated above, shall survive the expiration or earlier termination of this Lease. If any adjustment based on actual C.A.M. for the final calendar year of the term reflects amounts due and payable to Tenant, Landlord shall refund to Tenant such amount within a reasonable time after Landlord determines the amount owed to Tenant; or, at Landlord's option, Landlord shall apply such amount toward payment of any unsatisfied obligation of Tenant to Landlord.

03. No delay in the payment of the Common Area Expenses or such installments or in the making of any demand for such payment shall constitute a waiver of the right of Landlord to receive payment therefor from Tenant pursuant to the provisions of the Lease.

04. The percentage of C.A.M. to be paid by Tenant to Landlord, as described in Section 12.01, represents the percentage of the approximate square footage of the Leased Premises ( [redacted] square feet) to the total approximate square feet in the Project (55,554 square feet). In the event of an increase or decrease in either the square footage of the Leased Premises or in the square footage in the Project, or in the event that a survey results in more accurate square footage calculations for the Leased Premises or the Project, Landlord shall prospectively adjust the percentage of C.A.M. to be paid by Tenant to reflect the then current percentage of the size of the Leased Premises to the total square feet of all leased premises in the Project, which adjustment shall constitute an amendment to this Lease, and shall notify Tenant, in writing, as to the new percentage of C.A.M. to be paid by Tenant to Landlord from the date of such adjustment forward.

05. Provided that Tenant is not in breach of any term or provision of this Lease, and only in such event, Tenant shall have the right to have Tenant's accountant, lawyer, or other independent professional (non-company employee), review in Landlord's office, at Tenant's expense, all documents necessary to substantiate C.A.M. upon reasonable written request and the scheduling of an appointment with Landlord. Tenant's right to review documentation substantiating the actual C.A.M. imposed for each calendar year, pursuant to Section 12.02 above, shall be deemed waived by Tenant unless Tenant delivers to Landlord a written request for such documentation review within fifteen days after Landlord's written notification to Tenant of such actual C.A.M. Tenant's right to question, challenge, contest or object to Landlord's computation of actual C.A.M. for any preceding calendar year shall be deemed waived by Tenant unless Tenant delivers to Landlord a written objection of Landlord's

computation of actual C.A.M., specifying the nature and reason for such objection, within thirty (30) days after Landlord's notification to Tenant of such actual C.A.M.

"Alternative 05." If Tenant wishes to dispute Landlord's determination of C.A.M. for any calendar year or the calculation of any Additional Rent due under this Lease, Tenant shall give Landlord written notice of such dispute within thirty (30) days after receipt from Landlord of the matter giving rise to the dispute. If Tenant does not give Landlord such notice within such time, Tenant shall have waived its right to dispute such determination or calculation. In the event Tenant disputes any such determination or calculation, Tenant shall have the right to inspect Landlord's account records at Landlord's accounting office, and if, after such inspection, Tenant still disputes such determination or calculation, a certification as to the proper amount made by an independent certified public accountant reasonably acceptable to Landlord and Tenant shall be final and conclusive. Tenant agrees to pay the cost of any copies of Landlord's records, and any other expenses related to Tenant's inspection. Tenant shall also pay the cost of any such certification by the independent certified public accountant unless it is determined that Landlord's original certification was in error (in Landlord's favor) by more than 5% of the final, audited charge to Tenant for Common Area Expenses. Notwithstanding the pendency of any dispute under this Section, Tenant shall make payments based upon Landlord's determination or calculation until such determination or calculation has been established under this Section to be incorrect.

06. Tenant shall have no right to rescind this Lease, nor will Tenant be entitled to any claim for breach of this Lease by Landlord or adjustment of the Fixed Minimum Rent or the Additional Rent on account of alleged discrepancies in square footage measurements or calculations. Tenant hereby acknowledges that Tenant has independently verified the square footage of the Premises and agrees to be bound by same.

13. MAINTENANCE, REPAIRS AND ALTERATIONS:

01. Except for repairs which become necessary by reason of the improper conduct, carelessness, negligence or act of omission by Tenant, its employees, agents, servants, customers, guests, invitees, visitors or licensees, within a reasonable time after notice of the necessity of such repairs, Landlord shall repair the roof (tenant agrees that there shall be no access to any part or portion of the premises roof by Tenant, Tenant's employees, and agents, without specific written approval by Landlord), foundation and exterior walls, other Common Area and Building facilities of the Premises other than glass and other breakable materials used in structural portions thereof. All such repair costs involved shall be considered as Common Area Expenses and shall be billed in accordance with the provisions of Section 12. Any repairs, service, or work contracted by Tenant without specific written approval by the Landlord, shall be paid for by the Tenant at its sole expense, even if repair/work should normally be a Common Area Maintenance expense.

02. Except as provided specifically in Section 13.01, Tenant is accepting the herein described space in its “as is” condition, without all warranties, without representation from Landlord, and any maintenance, repairs or alterations shall be at the sole expense of Tenant.

03. Except as is provided specifically in Section 13.01 herein, at its own expense Tenant shall maintain and repair, as necessary, the interior and exterior portions of the Premises regardless of the cause of the maintenance or repair, including specifically all plate glass, exterior and interior glass surfaces, heating systems and HVAC, overhead and entry doors, interior walls and ceilings. Landlord reserves the right, at its option, to contract for the work and pass the costs thereof through to Tenant as additional charges. In addition, Tenant shall keep the walks, porches, decks, and docks adjacent to the Premises, plus a minimum of eight (8) feet into the parking lot and inside any fenced or walled areas immediately adjacent to the Premises and designated for Tenant’s sole use, free of dirt, litter, snow and ice, and shall be responsible for the maintenance of the automobile tire stops, if any.

04. Tenant shall make no additions, improvements or alterations in or about the Premises without first presenting to Landlord copies of the plans and specifications created and stamped by a licensed engineer and or architect detailing the desired additions, improvements or alterations to include structural, electrical, and mechanical detailing (loading, circuitry, and distribution). The Tenant must obtain the written consent of Landlord for the making of such additions, improvements or alterations, which consent shall not be unreasonably withheld. Prior to Tenant making any additions, improvements or alterations in or about the Premises, Tenant shall obtain and pay for all necessary city or county approvals, building permits, and obtain the endorsements of the insurance referred to in Section 11 herein to extend their coverage during the course of and pertaining to the construction of such additions, improvements or alterations. All such alterations shall comply with all applicable building and fire codes and shall be constructed only by contractors and subcontractors approved by Landlord prior to the commencement of such construction.

05. Tenant shall leave outside door locks on the building master system. If any changes are to be made to the outside door locks, the changes will be performed by a locksmith approved in advance by Landlord. Any changes must be consistent with the master system. If any lock is rekeyed inconsistent with the master system, tenant shall be responsible for all costs associated with rekeying back to the master system.

14. SIGNS AND AWNINGS:

01. Tenant shall not install, paint, display, inscribe, place or affix any sign, picture, advertisement, notice, lettering or direction in the interior of the Premises, without Landlord’s written consent, which consent shall not be unreasonably withheld. All of Tenant’s exterior signs and identifications will conform to all Frisco Town Codes and to the written sign criteria outlined by Landlord on Schedule II (Sign Criteria) attached hereto and made a part hereof. Tenant agrees to keep all interior and exterior signs in good repair. Landlord reserves the right to

alter Schedule II (Sign Criteria) in writing at such times as is necessary due to a change in events such as, but not limited to, changes in the city or county sign ordinance or a redevelopment of the Project.

02. Tenant shall comply with all ordinances, laws, statutes and regulations applicable to Tenant's use and occupancy of the Premises and concerning Tenant's signage.

03. If Tenant has not exercised the renewal option and if Landlord so desires to install, at Landlord's sole expense, an exterior or interior "FOR LEASE" sign (banner, broker or etc.), during the one hundred eighty (180) days prior to the expiration of this Lease, Tenant shall fully cooperate with Landlord in obtaining any permit applications then required by the city. Said application and permit fee shall be provided by Landlord.

15. LIENS:

01. No Mechanic's Liens. Tenant covenants and agrees not to permit, and to cause to be removed and released, any mechanic's, materialmen's or other lien on account of supplies, machinery, tools, equipment, labor or material furnished or used in connection with the construction, alteration, improvement, addition to or repair of the Premises by, through or under Tenant. If any lien is filed or recorded against the Premises, or if any action affecting title to the Premises is commenced, Tenant shall give prompt written notice of the lien and/or action to Landlord. Tenant shall then cause any such lien to be removed of record within fifteen (15) days after the filing of the lien; however, Tenant shall have the right to contest, in good faith and with reasonable diligence, the validity of any such lien or claimed lien, on the conditions that (i) Tenant shall give to Landlord such security as may be reasonably requested by Landlord to ensure the payment of any amounts claimed, including interest and costs, and to prevent any sale, foreclosure or forfeiture of any interest in the Building on account of any such lien, and (ii) on final determination of the lien or claim for lien, Tenant shall immediately pay any judgment rendered, with interest and costs, and will cause the lien to be released and any judgment satisfied, and/or (iii) Tenant shall comply with any other requirements with respect to such liens as may be imposed by the holder of any Mortgage.

02. Landlord's Rights. At least thirty (30) days prior to the commencement of any regularly scheduled work on the Premises, and reasonably in advance of any other work on the Premises by or for Tenant or claiming under Tenant, Tenant shall notify Landlord of the proposed work and the names and addresses of the persons supplying labor and materials for the proposed work, so that Landlord may avail itself to the provisions of Colorado Revised Statutes § 38-22-105(2), as amended from time to time. Before and during any such work on the Premises, Landlord and its agents shall have the right to go upon and inspect the Premises at all reasonable times, and shall have the right to keep posted on the Premises notices such as those provided for by the statute referred to above or to take any further action which Landlord may deem to be proper for the protection of Landlord's interest in the Premises.

03. No Other Encumbrances. Tenant covenants and agrees not to obtain any financing secured by Tenant's interest in the Premises and not to encumber the Premises or the interest of Landlord or Tenant in the Premises without the prior written consent of Landlord, and to keep the Premises free from all other liens and encumbrances except liens and encumbrances existing upon the Commencement Date or liens and encumbrances created by Landlord.

16. FIXTURES:

01. Unless removed by Tenant pursuant to the provisions of this Section 16, upon the expiration of the Term, the termination of the Lease by Landlord, or the vacation of the Premises by Tenant, all non-moveable fixtures, additions and installations placed in or about the Premises by Tenant shall be the sole and absolute property of Landlord and Tenant warrants title to the same free and clear of all liens and encumbrances except those liens and encumbrances arising out of the actions of Landlord.

02. At any time, and from time to time during the Term, if Tenant shall not be in default under any of the provisions of the Lease, Tenant may remove from the Premises all or any part of the trade fixtures placed in or about the Premises by Tenant.

03. Upon the expiration of the Term, the termination of the Lease by Landlord, or the vacation of the Premises by Tenant and upon written notice by Landlord, Tenant shall promptly remove any fixtures, trade fixtures, additions and installations placed in or about the Premises by Tenant and designated in such notice and repair any damage occasioned by such removals at Tenant's expense. If Tenant shall fail to promptly remove such items or repair such damage, or both, Landlord may, at its option, effect such removals and repairs and Tenant shall pay Landlord the cost thereof together with interest at the rate of eighteen (18) percent per annum, or the maximum allowed by law whichever is less, from the date of payment of such costs by Landlord.

17. EXCULPATION OF LANDLORD: Except to the extent caused by the willful misconduct of Landlord, its agents, servants, employees or contractors, Landlord and its agents, servants, employees, and contractors shall not be liable to Tenant, its agents, representatives or employees, or any other person, and Tenant hereby releases all claims for damages arising out of the death of or injury to any such person or damage to or loss of any property or business sustained by Tenant or any person claiming through Tenant resulting from any fire, explosion, theft, accident, occurrence or condition of any nature whatsoever in or upon the Premises or the Building, including, but not by way of limitation, (a) any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, gas lines, fixtures or equipment or installation thereof, water pipes, stairs, railings or walks, (b) any equipment or appurtenances becoming out of repair, (c) the bursting, leaking or running of any pool, tank, washstand, water closet, waste pipe, drain or other pipe or tank, (d) the backing up of any sewer pipe or downspout, (e) the escape of steam or hot water, (f) water, snow or ice being upon or coming through the roof, parking areas, common areas or facilities or any other place in or near the Building, (g) the falling of any fixture,

plaster or other building material, (h) broken glass and (ii) any act or omission of co-tenants or other tenants of the Building or of adjoining or contiguous property or buildings and their agents, employees and contractors.

18. INDEMNITY TO LANDLORD:

01. To the extent caused by the negligence or willful misconduct of Tenant, its agents, representatives or employees, Tenant shall indemnify and save harmless Landlord and its agents, employees and contractors and the owners of the fee title of the Project and all mortgagees thereof from and against any and all claims, liens, actions, proceedings, judgments, liabilities, damages, costs, reasonable attorney fees and any and all expenses in connection with (a) the use or occupancy, management or control of the said Premises, (b) any injury to or death of any person or damage to any property or business upon the Premises or the Building or to or upon adjacent property or to or upon the adjoining street, avenue or sidewalk and which was caused in whole or in part by Tenant, its employees, servants, agents, contractors, subcontractors, guests, customers or invitees, (c) any lien or claim or other matter arising from any construction, addition, repair, maintenance or improvements on the Premises or from any work done in or about the Premises or the Building by, at the instigation of, or for Tenant, (d) any use of the Premises for any illegal trade, manufacture or business or for any purpose or in any manner prohibited by law, ordinance, government regulation, regulations of Landlords insurance Company or lender, or the provisions of the Lease, (e) any failure of Tenant to observe or perform the terms, covenants or conditions of the Lease and from any act or omission by Tenant, its agents, employees, servants, contractors, subcontractors, customers or invitees during the Term, and (f) the installation, operation, maintenance, repair, removal or replacement of any sign, awning, antenna or other exterior or interior improvement made by Tenant on, in or about the Premises and the Building.

02. Unless defense is actually provided by an insurance carrier, upon demand from time to time, Tenant shall pay for the reasonable defense of any action or proceeding brought against Landlord or its agents, employees and contractors or the said fee owners or mortgagees, upon any such claims categorized in Section 18.01 herein.

19. DAMAGE BY FIRE OR OTHER CASUALTY:

01. If the Premises are damaged by fire or other casualty but not so as to render the same untenable, after being notified of such damage by Tenant, Landlord shall forthwith repair the damage. The Rent or Additional Rent shall not be abated under such circumstances.

02. If the Premises are damaged by fire or other casualty so that 50% or less thereof is untenable and, after Landlord is notified of such damage by Tenant, if any architect selected by Landlord certifies that, in his opinion, such damage can be reasonably expected to be repaired within ninety (90) days of the occurrence of such damage, Landlord shall forthwith repair the damage. Until such repairs are completed, all Rent and Additional Rent

shall be apportioned each month according to that part of the Premises which remains untenable and there shall be no other abatement.

03. If the Premises are damaged by fire or other casualty so that more than 50% thereof is untenable and, if an architect selected by Landlord certifies that, in his opinion, such damage cannot reasonably be expected to be repaired within ninety (90) days of the occurrence of such damage, Tenant shall have the right to terminate this Lease and all of Tenant's obligations shall cease as of the date of termination. If Tenant does not terminate this Lease, then Landlord, at its option, may do one of the following three things, viz:

(a) Give notice to Tenant that the Lease is terminated and, in such event, all obligations and rights hereunder shall cease as of the date of such damage.

(b) Give notice to Tenant that Landlord intends to raze and rebuild the Premises, according to plans and specifications which are either substantially similar to those for the Premises so damaged or which are mutually agreed upon by Landlord and Tenant, and complete such rebuilding. Until the Premises are completed and a temporary or permanent certificate for occupancy is issued, all Rent and Additional Rental shall abate.

(c) Give notice to Tenant that it intends to repair the Premises and proceed to repair the Premises. Until such repairs are completed, the Rent and all Additional Rent shall be apportioned each month according to that part of the Premises which remains untenable.

20. CONDEMNATION: Tenant waives any loss or damage to Tenant as the result of the exercise of the power of eminent domain by any governmental body and the right to receive any portion of any condemnation award given to Landlord, as a participant in the condemnation proceeding or otherwise, whether such loss or damage results from condemnation of part or all the Premises or any portion of the Project, Common Areas or facilities or service entrances and exits. Should any power of eminent domain be exercised after Tenant is in possession, such exercise shall not void or impair the Lease unless the Premises shall be taken and, upon the happening of such event, all Rent charges shall proportionately abate as of the date that possession is required by the condemning authority. Tenant shall be entitled to any award for loss of or damage to Tenant's trade fixtures and removable personal property.

21. SUBORDINATION, ATTORNMENT AND ESTOPPEL:

01. This Lease is subject and subordinate to the following:

(a) Any condominium declaration and map covering the Premises, as amended from time to time; and

(b) All renewals, extensions, modifications, consolidations and replacements of all the foregoing.

02. This Lease is subject and subordinate to all applicable federal, state, county and municipal laws, ordinances, codes, orders, rules and regulations, permits and certificates of occupancy and to all covenants, conditions, declarations, encroachments, restrictions, reservations, rights, rights-of-way and easements and all conditions, renewals, extensions, modifications, consolidations and replacements thereof (except to the extent any such time shall expressly provide that this Lease is superior thereto), now or hereafter affecting or placed, charged or enforced against all or any portion of the Building or any interest of Landlord in the Building or Landlord's interest in this Lease and the leasehold estate created by it.

03. This Lease and Tenant's rights under it are and will remain subject and subordinate to each and every underlying lease, indenture, mortgage, deed of trust or other encumbrance (and all voluntary and involuntary advances thereon) that may now or hereafter encumber all or any interest in the Property, and to all increases, renewals, recastings, modifications, consolidations, participations, replacements and extensions thereof (collectively referred to as a "Mortgage"). If any mortgagee (including the ground lessor under any underlying lease) becomes the owner of the Property by reason of termination of the underlying lease, foreclosure, or acceptance of a deed in lieu of foreclosure, then at the election of the mortgagee, Tenant will be bound to such mortgagee or its designee under all terms and conditions of this Lease, and Tenant will be deemed to have attorned to and recognized such mortgagee or its designee as Landlord's successor-in-interest for the remainder of the term of this Lease. As used in this Section above, whenever the context allows, the word "mortgagee" also includes a purchaser of the Property interest in question at a foreclosure sale.

04. The foregoing is self-operative, and no further instrument of subordination and/or attornment will be necessary unless required by Landlord or mortgagee, or any declarant under the Declaration, in which case Tenant, within ten (10) days after written request, will execute and deliver without charge any documents acceptable to Landlord or such other requesting party in order to confirm the subordination and/or attornment set forth above.

05. Should mortgagee request that this Lease and Tenant's rights under it be made superior, rather than subordinate, to the mortgage, then Tenant, within ten (10) days after written request, will execute and deliver without charge an agreement to that effect, in form and content reasonably acceptable to mortgagee.

06. Tenant agrees, at any time and from time to time, to execute, acknowledge and deliver to Landlord within fifteen (15) days following receipt of Landlord's written request any documents and instruments which may reasonably be required by Landlord or by the holder or beneficiary of a mortgage or deed of trust to evidence or effectuate such subordination. Tenant further agrees, at any time and from time to time, within fifteen (15) days following receipt of Landlord's written request to execute, acknowledge and deliver to Landlord a statement in writing certifying 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 the modifications, and the dates to which any rent or other payments due hereunder from Tenant have been paid in advance, if any, and stating such other reasonable information about the Lease as may be requested, including, but not limited to, whether or not, to the best of the knowledge and information of the Tenant, the Landlord is in default in the performance of any covenant or condition of the Lease and, if so, specifying each such default. It is intended that such a statement will be relied upon by the Landlord and by the holder or beneficiary, or prospective holder or beneficiary, of a mortgage or deed of trust, by assignees of such holder or beneficiary or by prospective purchasers and that the Tenant shall be estopped from asserting claims contrary to that which is set forth in such a statement. If Tenant fails to execute and deliver any such documents, instruments or statements with said fifteen (15) day period, Tenant irrevocably appoints Landlord as Tenant's special attorney-in-fact to execute and deliver such documents, instruments and statements, and, at Landlord's election, such failure shall be a material breach of this Lease.

07. If Tenant fails to execute and deliver any documents as and when required by this Section 21 above, then, notwithstanding any other provision of this Lease, without the requirement of notice from Landlord, such failure will constitute a default under this Lease beyond any applicable grace period, entitling Landlord to the same rights and remedies as if such default were with respect to non-payment of rent.

22. SALE OF PREMISES:

01. If Landlord shall sell its right, title and interest in and to the Premises, Landlord shall notify Tenant of the purchaser thereof.

02. If Landlord shall sell its right, title and interest in and to the Premises, and provided any subsequent purchaser shall have assumed Landlord's covenants and obligations under this Lease, Landlord shall be, and is hereby, released and discharged of all liability under any and all of the covenants and obligations contained in or derived from the Lease arising out of any act, occurrence or omission occurring after the transfer of its title to the Premises by Landlord.

23. ACCESS TO PREMISES:

01. Landlord and its agents shall have the right to enter the Premises at all times after reasonable advance notice to Tenant by telephone or otherwise (except that no advance notice will be required in emergency circumstances), to examine the Premises, to show the Premises to prospective purchasers, mortgagees or lessees, and to make and perform such cleaning, maintenance, repairs, alterations, improvements or additions as Landlord may be required to perform under this Lease or as Landlord may deem necessary or desirable for the safety, improvement or preservation of the Premises or of other portions of the Building. Landlord shall have the right from time to time to install, maintain, use, repair and replace utility lines, unexposed pipes, ducts, conduits and wires in and through the Premises. Landlord shall also be allowed to bring and keep upon the Premises all

necessary materials, supplies and equipment. No such action by Landlord shall constitute an eviction of Tenant in whole or in part or entitle Tenant to any abatement of rent or damages, by reason of inconvenience, annoyance, disturbance, loss or interruption of business or otherwise, and no such action shall affect Tenant's obligations under this Lease in any manner whatsoever.

02. Landlord covenants in any event to use reasonable diligence to avoid disruption and inconvenience to Tenant's business and patrons in the course of any exercise of Landlord's right of entry under this Section.

03. If during the term of this Lease Tenant shall have removed all or substantially all of Tenant's property from the Premises and Tenant has not paid any amounts due hereunder, Landlord may immediately enter and alter, renovate and redecorate the Premises without incurring liability to Tenant for any compensation or damages, and such acts shall not entitle Tenant to any elimination or abatement of rent and shall not have the effect of terminating this Lease or making this Lease void or voidable, absent notice from Landlord to the contrary.

04. If Tenant shall not be personally present to permit an entry into the Premises at any time upon Landlord's reasonable advance notice and such entry is necessary or permissible, Landlord or Landlord's agents may enter the Premises by use of a master key, or may forcibly enter the Premises, without rendering Landlord or its agents liable therefor (provided that during such entry Landlord or its agents shall accord reasonable care to Tenant's property), and without in any manner affecting the obligations and covenants of this Lease.

05. Nothing in this Lease, however, shall be deemed or construed to impose upon Landlord any obligations, responsibility or liability whatsoever for the care, supervision or repair of the Premises other than as provided in this Lease.

24. ASSIGNMENT AND SUBLETTING:

01. Tenant shall not assign, convey, mortgage, hypothecate or encumber this Lease or any interest in this Lease or sublet all or any part of the Premises, or suffer or permit all or any part of the Premises to be used by others (any and all of which shall be referred to as a "Transfer"), at any time during the term of this Lease without the prior written consent of Landlord in each instance, which consent may be withheld in Landlord's reasonable discretion. Any attempted Transfer without Landlord's prior written consent shall be void and shall confer no rights upon any third person, and any assignee, subtenant, licensee, concessionaire or other transferee is hereby notified that such a Transfer is of no force and effect without the prior written consent of Landlord.

02. Without limiting the generality of the provisions of the above, "Transfer" shall be deemed to include the following:

(a) If Tenant is a corporation: any merger, dissolution, consolidation or other reorganization of Tenant, or any sale, transfer, pledge or other disposition of the corporate stock or voting securities of Tenant or which, taken with all such prior transfers, involves more than 49% of the voting securities of Tenant, but excluding, however, a transfer of minority ownership interests to employees of Tenant which, in any single transfer, do not involve more than 10% of the voting securities of Tenant, and in the aggregate, do not involve more than 25% of the voting securities of Tenant.

(b) If Tenant is a partnership or joint venture: any merger, dissolution, consolidation or other reorganization of Tenant, or any sale, transfer, pledge or other disposition of the ownership interests of Tenant which results in a change in the voting control of such entity or which, taken with all such prior transfers, involves more than 10% of the ownership interests of such entity.

(c) Any such change of the parties in control of Tenant by any means whatsoever, and any changes, direct or indirect in the ownership and control of any entities that may directly or indirectly own or control Tenant.

(d) The granting of a concession or license to operate in or use in any manner any portion of the Premises.

(e) Any transfer, assignment or sale by operation of law and any involuntary assignment of this Lease or any interest of Tenant in this Lease or in the Premises.

03. Without limiting Landlord's discretion to grant or withhold its consent to a transfer, the parties agree as follows:

(a) Tenant acknowledges that Landlord shall deny Tenant's request for an assignment or sublease under the following circumstances: (i) the use to be made of the Premises by the proposed assignee or sublessee is a use which would be prohibited by any other provision of this Lease; or (ii) the business reputation and financial responsibility of the proposed assignee or sublessee are not reasonably satisfactory to Landlord.

(b) If Landlord consents to a sublease of this Lease, Tenant shall pay to Landlord monthly as Additional Rent, together with the monthly installments of Minimum Rent, the excess, if any, of any and all rental amounts collected by Tenant in connection with the sublease over the Minimum Rent and Additional Rent payable by Tenant under this Lease (which shall be prorated in the event of a sublease of less than the entire Premises).

(c) If Landlord consents to either an assignment or a sublease of this Lease, Landlord shall, at the time of such assignment or subletting, have the sole and absolute right to modify the terms and conditions of this Lease, but not the "Fixed Minimum Rent" amount or Term of the lease, but only so as to include in the Lease any standard Lease provisions which, since the date hereof, Landlord has incorporated into its standard lease form for the Project. The instrument described in Section 24.04 shall include all modifications to the Lease that meet this standard.

04. Each Transfer to which Landlord has consented shall be by an instrument in writing and shall be executed by the Landlord, transferor and the transferee in each instance in such manner that it may be recorded (at Landlord's sole election) in the real property records in Summit County, Colorado. One copy of such written instrument so executed shall be delivered to Landlord.

05. Tenant shall reimburse Landlord, within ten (10) days after demand, for all of Landlord's reasonable expenses, including, but not limited to, accounting, legal, and management fees and leasing commissions, incurred by Landlord in conjunction with the review and documentation of any assignment, sublease, license, or occupancy, or use by any other person or entity for which Landlord's consent is requested, and payment of such expenses and fees shall be a condition of the granting of Landlord's consent.

06. Except as otherwise agreed in writing, no assignment or subletting of all or any part of the Premises shall relieve Tenant or any Guarantor of this Lease from any of its obligations under the provisions of the Lease including payment of Rent and any notice required to be given by the provisions of the Lease shall be deemed to be properly given to all assignees and subleases when given to Tenant as is herein provided.

07. If any Transfer shall occur, with or without Landlord's prior consent, Landlord may, after default by Tenant, collect rent from the assignee, subtenant or other transferee, and apply the net amount collected to the rent reserved in this Lease, but no such Transfer or collection shall be deemed a waiver of the provisions of this Section 24, or the acceptance of the assignee, subtenant or other transferee as the tenant under this Lease, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant contained in this Lease. The consent by Landlord to a Transfer shall not relieve Tenant from primary liability under this Lease or from the obligation to obtain the express consent in writing of Landlord to any further Transfer.

25. SURRENDER OF PREMISES:

01. Unless otherwise required by Landlord, as provided in this Section 25, upon the expiration or other termination of the Lease, Tenant shall quit and surrender to Landlord the Premises in good order, condition, and repair, ordinary wear and tear and damage by fire or other casualty which is insured against with standard extended coverage endorsements excepted, and, except as otherwise provided in the Lease, shall remove all of Tenant's property therefrom.

02. Unless otherwise required by Landlord, as provided in this Section 25, upon the expiration or other termination of the Lease, Landlord, ten (10) days after written notice to Tenant, may retain or dispose of any or all improvements, furniture, fixtures or other personal property left remaining upon the Premises upon termination or expiration of the term. Tenant waives all claims against Landlord for any damage to Tenant resulting from Landlord's retention or disposition of such property. Tenant shall be liable to Landlord for Landlord's costs for storing, removing and disposing of any or all of Tenant's property.

03. All other provisions of the Lease notwithstanding, at Landlord's option, upon the expiration of the Lease term and upon written notice from Landlord to Tenant, given at least thirty (30) days prior to the expiration of the Lease term, Tenant shall, at Tenant's cost and expense, quit and surrender the Premises to Landlord in "Lease Ready Condition," as described and defined in Section 24.06 hereof. In order to insure that all work required by this Section 25.03 is performed to Landlord's requirements and specifications, all such work, demolition, construction, reconstruction, repair, replacement, painting, and so forth required in order to place the Premises in Lease Ready Condition shall be performed by reputable, professional contractors of Tenant's choosing, however, all electrical and plumbing work shall be performed by Colorado licensed electricians and plumbers. Furthermore, all such work, demolition, construction, reconstruction, repair, replacement, painting and so forth, required to place the Premises in Lease Ready Condition shall be inspected and approved by Landlord prior to acceptance by Landlord, and if such work does not meet Landlord's requirements and specifications, such work shall be brought to Landlord's requirements and specifications prior to being accepted by Landlord.

04. All other provisions of the Lease notwithstanding, at Landlord's option, upon written notice from Landlord to Tenant at any time within sixty (60) days after Landlord takes possession of the Premises as the result of any default or breach of the Lease by Tenant, Landlord may, at Tenant's cost and expense, place the Premises in "Lease Ready Condition," and Tenant shall reimburse Landlord for all costs and expenses of such work within ten (10) days of Landlord's invoice to Tenant therefor.

05. In addition to the foregoing, Tenant shall, upon the expiration or other termination of the Lease, or upon the Tenant's vacation of the Premises, whichever first occurs, remove all exterior signage from the Building and properly patch, repair and paint the Building fascia in order to make said Building fascia ready for signage of a successor tenant.

06. "Lease Ready Condition," as that term is used in the Lease, shall entail returning the Premises as close to the condition as the Premises were in as originally constructed as is reasonably possible, with no interior improvements other than restrooms, dropped grid ceiling system with industry standard drop in lighting, perimeter walls to current electrical code, freshly painted interior walls, and a clean, smooth and flat concrete floor ready for new tenant finishes. "Lease Ready Condition" shall also mean and include the following:

(a) All fixtures, furnishings, equipment, plumbing and electrical that are not part of the original demising walls, ceilings, or restrooms, shall be removed.

(b) All interior partition walls, excluding only restroom walls, shall be removed and all damage resulting from such removal shall be patched and otherwise repaired.

(c) All flooring materials shall be removed and the concrete floor shall be cleaned, repaired and returned to a flat and smooth condition.

(d) All demising walls and drywall shall be returned to good, sound, clean and patched condition, and shall be painted.

(e) All demising wall knock-out panels shall be in place, fully reconditioned, repaired, and patched, as necessary, and painted.

(f) All electrical circuitry throughout the Premises shall be certified by a Colorado licensed electrician to meet current electrical codes.

(g) All plumbing throughout the Premises shall be certified by a Colorado licensed plumber to meet current plumbing codes.

(h) The Premises shall contain a complete and fully functional dropped grid ceiling, or other ceiling acceptable to Landlord, with industry standard lighting included.

(i) All interior walls shall be freshly painted and all windows shall be cleaned.

07. If Tenant fails to surrender the Premises to Landlord within the time, and in the condition, as provided for herein, Tenant shall indemnify and hold Landlord harmless from all damages and costs incurred by Landlord and resulting from Tenant's failure to surrender the Premises as required herein, including, without limitation, all lost rents, all costs and expenses incurred by Landlord in completing the work required by this Section 25 as well as all claims made by a succeeding tenant resulting from Tenant's failure to surrender the Premises as required.

08. Tenant's obligation to observe and perform the provisions of this Section 25 shall survive the expiration of the Lease term, shall survive any other termination of the Lease, and shall survive Landlord's possession of the Premises pursuant to any provision of this Lease.

26. HOLDING OVER: If after the expiration of the Term or other termination of the Lease, Tenant shall remain in possession of the Premises without a written agreement as to such holding, then such holding over shall be deemed to be a holding over upon a month-to-month tenancy under the same agreements and provisions as the Lease except that the Fixed Minimum Rent shall be equal to one hundred fifteen percent (115%) of the Fixed Minimum Rent applicable under the Lease immediately prior to the period of the hold over. Furthermore, notwithstanding all other provisions hereof, during such hold over period Tenant shall not terminate its tenancy without first giving Landlord written notice of such termination at least ninety (90) days prior to the end of such tenancy, and Landlord shall not terminate such tenancy without first giving Tenant written notice of such termination at least thirty (30) days prior to the end of such tenancy. However, nothing contained herein shall give Tenant the right to hold over at any time, and Landlord may exercise any and all remedies at law or equity to recover possession of the Premises, as well as to collect any damages incurred by Landlord due to failure by Tenant to vacate the Premises in accordance herewith.

27. QUIET ENJOYMENT: Landlord covenants and agrees with Tenant that upon Tenant's paying all Rent and any other sums due under this Lease and observing and performing all the terms, covenants and conditions of this Lease on Tenant's part to be observed and performed, Landlord shall not disturb Tenant's peaceable and quiet enjoyment of the Premises, subject, nevertheless, to the terms and conditions of this Lease, and to any Mortgage (as defined in Section 21 above) and other matters mentioned in this Lease.

28. DEFAULT: The occurrence or existence of any one or more of the following events or circumstances, at the option of Landlord, shall constitute a default under this Lease by Tenant:

01. The failure by Tenant to pay when due any installment of Minimum Rent or Additional Rent due within five (5) days after said due date under the terms of this Lease;

02. The neglect or failure by Tenant to perform or observe any of the covenants on Tenant's part to be performed or observed under this Lease, and Tenant shall fail to remedy such neglect or failure within ten (10) days after Landlord shall have given to Tenant written notice specifying such neglect or failure (or within such period, if any, as may be reasonably required to cure such default if it is of such nature that it cannot be cured within such ten (10) day period, provided that Tenant commences to remedy such default within such ten (10) day period and proceeds with reasonable diligence to cure such default);

03. The taking of this Lease or the Premises or any part thereof upon execution or by other process of law directed against Tenant, or upon or subject to any attachment at the instance of any creditor of or claimant against Tenant, if such attachment shall not be discharged or disposed of within fifteen (15) days after the levy of same;

04. The vacating or abandonment of the Premises (which shall be defined to include, but not be limited to, any absence by Tenant from the Premises for five (5) or more days while otherwise in default under this Lease), or Tenant's locking the Premises so as to prevent the entry by Landlord or its representatives as permitted by the terms of this Lease;

05. An action by Tenant or any guarantor of Tenant's obligations under this Lease to (i) admit in writing its inability to pay its debts generally as they become due; (ii) make an assignment of all or a substantial part of its property for the benefit of creditors; (iii) apply for or consent to or acquiesce in the appointment of a receiver, trustee or liquidator of Tenant or such guarantor or of all or a substantial part of Tenant's or such guarantor's property or of the Premises or of Tenant's interest in this Lease; or (iv) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization under any bankruptcy or insolvency law or an arrangement with creditors, or take advantage of any insolvency law or file an answer admitting the material allegations of a petition filed against Tenant or such guarantor in any bankruptcy, reorganization or insolvency proceedings; or

06. The entry of a court order, judgment or decree without the application, approval or consent of Tenant or any guarantor of Tenant's obligations under this Lease, as the case may be, approving a petition seeking reorganization of Tenant or such guarantor under any bankruptcy or insolvency law or appointing a receiver, trustee or liquidator of Tenant or such guarantor, or of all or a substantial part of Tenant's or such guarantor's property, or of the Premises, or of Tenant's interest in this Lease, or adjudicating Tenant or such guarantor as bankrupt or insolvent, if such order, judgment or decree shall not be vacated, set aside or stayed within thirty (30) days from the date of entry.

29. LANDLORD'S REMEDIES:

01. If Tenant shall default under this Lease as set forth in Section 24, Landlord shall have the following rights and remedies, in addition to all other remedies at law or equity, and none of the following, whether or not exercised by Landlord, shall preclude the exercise of any other right or remedy whether set forth in this Lease or existing at law or equity:

(a) Landlord shall have the right to terminate this Lease by giving Tenant notice in writing at any time. No act by or on behalf of Landlord, such as entry in the Premises by Landlord to perform maintenance and repairs and efforts to relet the Premises, other than giving Tenant written notice of termination, shall terminate this Lease. Further, the service upon Tenant of a statutory notice for payment of rent or possession of the Premises, regardless of whether Tenant delivers possession of the Premises to Landlord in response to such notice, shall not operate to terminate this Lease, unless the notice contains a statement calling for such termination upon delivery of possession. Landlord shall have the right to give such notice of termination at any time after service of the statutory notice for payment or possession or notice to demand compliance or possession.

If Landlord gives such notice of termination, this Lease and the term hereof as well as the right, title and interest of Tenant under this Lease shall wholly cease and expire in the same manner and with the same force and effect (except as to Tenant's liability) on the date specified in such notice as if such date were the expiration date of the term of this Lease without the necessity of re-entry or any other act on Landlord's part. Upon any termination of this Lease Tenant shall quit and surrender to Landlord the Premises as set forth in Section 25 above.

If this Lease is terminated, Tenant shall remain liable to Landlord for (i) all Fixed Minimum Rent, Additional Rent, and damages which may be due or sustained by Landlord and all reasonable costs, fees and expenses including, but not limited to, attorneys' fees, costs and expenses, incurred by Landlord in pursuit of its remedies under this Lease, or in renting the Premises to others from time to time (all such rent, damages, costs, fees and expenses being referred to in this Lease as "Termination Damages"), and (ii) additional damages (the "Liquidating Damages"), which at the election of Landlord, shall be either:

(i) An amount or amounts equal to the Minimum Rent and Additional Rent which, but for termination of this Lease, would have become due during the remainder of the term, less the amount or amounts of rental, if any, which Landlord shall receive during such period from others to whom the Premises may be rented (other than any sums received by Landlord as a result of any failure of such other person to perform any of its obligations to Landlord), in which case such Liquidated Damages shall be computed and payable at Landlord's option either in an accelerated lump sum payment in an amount equal to the present worth of the total rentals due for the remaining term of the Lease, or payment in monthly installments, in advance, on the first day of each calendar month following termination of the Lease and continuing until the date on which the term would have expired but for such termination, and any suit or action brought to collect any such Liquidated Damages for any month shall not in any manner prejudice the right of Landlord to collect any Liquidated Damages for any subsequent month by a similar proceeding; or

(ii) An amount equal to the present worth (as of the date of such termination) of the Minimum Rent and Additional Rent which, but for the termination of this Lease, would have become due during the remainder of the Term, less the fair rental value of the Premises, as determined by an independent real estate appraiser named by Landlord, in which case such Liquidated Damages shall be payable to Landlord in one lump sum on demand and shall bear interest at the Maximum Rate until paid.

For purposes of these clauses (i) and (ii), "present worth" shall be computed by discounting such amount to present worth at a discount rate equal to one percentage point above the discount rate then in effect at the Federal Reserve Bank nearest to the location of the Building.

Termination Damages shall be due and payable immediately upon demand by Landlord following

any termination of this Lease pursuant to this Section 29 above.

If this Lease is terminated pursuant to this Section 29 above, Landlord may relet the Premises or any part thereof, alone or together with other premises, for such term or terms (which may be greater or less than the period which otherwise would have constituted the balance of the term of this Lease) and on such terms and conditions (which may include concessions or free rent and alterations of the Premises) as Landlord, in its absolute discretion, may determine, but Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished by reason of, any failure by Landlord to relet the Premises or any failure by Landlord to collect any rent due upon such reletting.

(b) Landlord may, without demand or notice, in accordance with Colorado law, re-enter and take possession of the Premises or any part thereof, and repossess the same as Landlord's former estate and expel Tenant and those claiming through or under Tenant, and remove the effects of any and all such persons (forcibly, if necessary) without being deemed guilty of any manner of trespass, without prejudice to any remedies for arrears of rent or preceding breach of covenants and without terminating this Lease or otherwise relieving Tenant of any obligation hereunder. Should Landlord elect to re-enter as provided in this Section 29, or should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Landlord may, from time to time, without terminating this Lease, relet all or any part of the Premises for such term or terms and at such rental or rentals, and upon such other conditions as Landlord in its absolute discretion may deem advisable with the right to make alterations and repairs to the Premises.

No such re-entry, repossession or reletting of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of termination is given to Tenant by Landlord. No such re-entry, repossession or reletting of the Premises shall relieve Tenant of its liability and obligation under this Lease, all of which shall survive such re-entry, repossession or reletting.

Upon the occurrence of such re-entry or repossession, Landlord shall be entitled to the amount of the monthly rent, and any other sums, which would be payable under this Lease if such re-entry or repossession has not occurred, less the net proceeds, if any, of any reletting of the Premises after deducting all of Landlord's expenses in connection with such reletting, including, but without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys' fees, expenses of employees and alteration costs and expenses of preparation for such reletting at rates then prevailing for other tenants in the Building or other retail space comparable to the Premises in the Summit County area. Tenant shall pay such amount to Landlord on the days on which the rent or any other sums due under this Lease would have been payable under this Lease if possession had not been retaken. In no event shall Tenant be entitled to receive the excess, if any, of net rent collected by Landlord as a result of such reletting over the sums payable by Tenant to Landlord under this Lease.

(c) If Tenant shall default in making any payment required to be made by Tenant (other than payments of rent) or shall default in performing any other obligations of Tenant under this Lease, Landlord may, but shall not be obligated to, make such payment or, on behalf of Tenant, expend such sum as may be necessary to perform such obligation. Tenant shall repay to Landlord on demand all sums so expended by Landlord with interest at the Maximum Rate. No such payment or expenditure by Landlord shall be deemed a waiver of Tenant's default, nor shall it affect any other remedy of Landlord by reason of such default.

(d) In the event of a breach or threatened breach by either party of any of the terms, covenants, or conditions of this Lease, the non-breaching party shall also have the right of injunction and specific performance. The party in breach shall pay the premium for any bond required in connection with any injunction.

.02 Bankruptcy Considerations.

(a) Notwithstanding any provision in this Lease to the contrary, if at any time before the Commencement Date there occurs a default as described in Section 28(.05) and (.06) above, this Lease shall be cancelled ipso facto.

(b) If this Lease is terminated ipso facto prior to the Commencement Date, as provided immediately above, or if this Lease is terminated by Landlord at any time after the Commencement Date as provided in this Section 29 above, neither Tenant nor any person claiming through or under Tenant or by virtue of any statute or of an order of any court shall be entitled to possession of the Premises. Further, Landlord, in addition to the other rights and remedies available to Landlord, may retain as damages any rent, security deposit, or other money received by Landlord from Tenant or others on behalf of Tenant.

(c) If Landlord does not choose to exercise, or by law is not able to exercise, its rights under this Lease upon the occurrence of an event of default described in Section 28(.05) and (.06) above, then, in addition to any other relief reserved by or available to Landlord, Landlord shall not be obligated to provide Tenant with any services unless Landlord has received compensation in advance for such services, and the parties agree that Landlord's estimate of the compensation required with respect to such services shall control. Further, neither Tenant, as debtor-in-possession, nor any trustee or other person (in any case, the "Assuming Tenant") shall be entitled to assume this Lease unless, on or before the date of such assumption, the Assuming Tenant does the following:

(i) Cures, or provides adequate assurance that the Assuming Tenant will promptly cure, any default under this Lease;

(ii) Compensates, or provides adequate assurance that the Assuming Tenant will promptly compensate, Landlord for any monetary loss (including, without limitation, attorneys' fees and disbursements) resulting from such default; and

- (iii) Provides adequate assurance of further performance under this Lease.

For these purposes, any cure or compensation shall be effected by the immediate payment of any monetary default or any required compensation, and any "adequate assurance" of such cure, compensation, or future performance shall be effected by the establishment of an escrow fund for the amount at issue or by bonding.

The foregoing provisions were a material part of the consideration for this Lease.

30. LANDLORD'S RIGHT TO CURE/TENANT REMEDY: Landlord shall not be in breach or default under any term or provision of this Lease unless and until Tenant has first given to Landlord written notice of such breach or default and Landlord has failed or refused to cure such breach or default within thirty (30) days of Landlord's receipt of such notice, except where such failure or refusal constitutes a threat to Tenant's ability to conduct normal business operations, in which event such breach shall be cured or corrected as promptly as is reasonably possible after receipt by Landlord of such notice. The foregoing notwithstanding, Tenant's sole and exclusive remedy for any breach of this Lease by Landlord, other than a breach which results in a non-temporary physical inability of Tenant to reasonably carry on its business in the Premises, shall be limited to an action for actual damages suffered by Tenant as the result of such breach. Tenant hereby specifically waives any right Tenant might otherwise claim to terminate this Lease due to a breach by Landlord, except only for a breach by Landlord resulting in a constructive eviction.

31. RIGHT TO CURE DEFAULTS: If at any time Tenant should be in default in the performance of any covenant or condition of the Lease, other than the payment of Rent, in addition to any other remedies Landlord may have, Landlord may cure any such default at the expense of Tenant after giving Tenant three days notice of Landlord's intention to take curative action. All costs and expenses incurred by Landlord in taking such curative action, including attorney fees, shall be deemed to be Additional Rent due upon demand of Landlord.

32. RELATIONSHIP OF PARTIES: Landlord and Tenant are lessor and lessee, respectively, and are not, nor shall they become by virtue of the Lease or any actions taken pursuant hereto, anything other than lessor and lessee. Landlord and Tenant are not joint ventures, partners, employed by one and the other or agents of one and the other.

33. NOTICES: All notices, requests, consents and other communications hereunder shall be in writing and shall be deemed to have been sufficiently given or served if either: a) in writing by certified United States mail, postage prepaid, b) by nationally know overnight courier, or 3) by facsimile addressed as follows:

If to Landlord: Frisco Ten Mile Drive, LLC  
c/o Tyler Myers  
P.O. Box 5644  
Frisco, CO 80443

If to Tenant:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

34. ATTORNEY FEES: If Tenant shall be in violation of any provision of this Lease, Tenant shall pay to Landlord all reasonable attorney fees (including paralegal and legal assistant fees) incurred by Landlord in connection with such violation or breach, or Landlord's enforcement of any of Tenant's obligations hereunder, or all of them, and in addition Tenant shall pay all costs and reasonable attorney fees (including paralegal and legal assistant fees) incurred by Landlord and associated with any litigation commenced by Landlord against Tenant, or commenced by Tenant against Landlord, including, but not limited to, all costs, expenses and attorney fees (including paralegal and legal assistant fees) incurred in enforcing any judgment obtained by Landlord against Tenant and Tenant's guarantors.

35. BROKERAGE: Both Landlord and Tenant represent to each other that no broker was influential in negotiating the lease or was a procuring cause thereof.

36. INTEREST: Any delinquent payments of Rent or any other sum or amounts due from Tenant to Landlord pursuant to the terms of the Lease, including any Late Charges specified above, shall accrue interest at the rate of eighteen percent (18%) per annum, or the maximum allowed by law, whichever is less, compounded monthly, from the date such Rent, Late Charge, or other sum or amount was due. The provisions of this Section 36 shall in no way relieve Tenant of the obligation to pay Rent, Late Charges, and all other sums and amounts due on or before the date on which such are due, or affect Landlord's remedies under Section 29, but shall be in addition thereto.

37. AUCTIONS: Tenant shall not conduct or permit to be conducted any sale by auction on the Premises, whether said auction is voluntary, involuntary, pursuant to any assignment for the payment of creditors, or pursuant to any bankruptcy or other insolvency proceeding.

38. JOINT OBLIGATION: If there be more than one Tenant, the obligations of Tenant hereunder imposed shall be the joint and several obligations of all Tenants.

39. MARGINAL HEADINGS: The marginal headings and titles to the paragraphs of this Lease are not a part of the Lease and shall have no effect upon the construction or interpretation of any part hereof.

40. TIME: Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

41. INABILITY TO PERFORM: This Lease and the obligations of the Tenant and Landlord hereunder, except for payment of Rent, shall not be affected or impaired because Landlord is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of the Landlord.

42. AUTHORITY OF TENANT: If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that (i) he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with the bylaws Authority to Conduct Business of the Corporation of said corporation; (ii) this Lease is binding upon said corporation.; and (iii) a corporate resolution to that effect in form reasonably acceptable to Landlord shall be provide immediately upon request.

43. LANDLORD EXCULPATION: Landlord and all partners, shareholders, or members, as the case may be, shall have absolutely no personal liability with respect to any provision of this Lease, or any obligation or liability arising in connection herewith. Tenant shall look solely to the equity in the Premises for the satisfaction of any remedies of Tenant in the event of a breach by the Landlord of any of its obligations. Such exculpation of liability shall be absolute without any exception whatsoever.

44. LANDLORD'S LIEN: Tenant hereby grants to Landlord a lien against and a security interest in and to any and all of Tenant's furniture, fixtures, equipment and inventory whenever acquired, their proceeds and the proceeds of any and all insurance policies carried thereon as and for additional security for the faithful performance by Tenant of all of its obligations hereunder. Tenant agrees to execute and deliver to Landlord, upon request, such additional documents as Landlord may require to establish and perfect such security interest including, without limitation, a financing statement in form satisfactory to Landlord, which is to be executed and delivered by Tenant to Landlord. The exercise by Landlord of any rights in and to such furniture, fixtures, equipment and inventory upon default hereunder shall be governed by Article IX of the Colorado Uniform Commercial Code, as in effect at the time of such default, but such exercise shall not preclude Landlord from exercising any or all other rights and remedies hereunder or as provided by law or herein.

45. RECORDING: This Lease shall not be recorded except that if either party requests the other party to do so, the parties shall execute a Memorandum of Lease in recordable form. If such Memorandum is recorded, Tenant shall execute and deliver to Landlord, upon request on the expiration or termination of this Lease, a quit claim deed to the Premises in recordable form, designating Landlord as grantee. If Tenant fails to execute and deliver such quit claim deed within fifteen (15) days of Landlord's request for same, Tenant irrevocably appoints Landlord as Tenant's special attorney-in-fact to execute and deliver such instrument.

46. WAIVER OF JURY TRIAL: **LANDLORD AND TENANT HEREBY MUTUALLY WAIVE ANY AND ALL RIGHTS WHICH EITHER PARTY MIGHT OTHERWISE HAVE TO REQUEST A TRIAL BY**

**JURY IN ANY PROCEEDING AT LAW OR IN EQUITY IN ANY COURT OF COMPETENT JURISDICTION IN ANY ACTION ARISING FROM OR PERTAINING TO THIS LEASE.**

47. TIME: In computing any period of time prescribed or allowed by this Lease, the day of the act or triggering event from which the designated time begins to run shall not be included and all references to days shall be business days.

48. COUNTERPART SIGNATURES: This Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same document. The signature, including facsimile signatures, of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

49. ENTIRE AGREEMENT: The Lease, with the Schedules and addenda annexed hereto, contains the entire understanding and agreement between Landlord and Tenant and supersedes and incorporates all prior understandings, discussions, agreements, representations and other communications between Landlord and Tenant concerning the subject matter hereof and any agreement hereafter made between Landlord and Tenant shall be ineffective to change, waive, release, discharge, terminate or effect an abandonment of the Lease, in whole or in part, unless such agreement is in writing and signed by the party against whom it is sought to be enforced.

50. SEVERABILITY: If any provision, sentence, phrase, or word of the Lease or application thereof to any person or circumstance, shall be held invalid, the remainder of the Lease or the application of such provision, sentence, phrase or word to persons or circumstance other than those as to which it is held invalid shall not be affected thereby.

51. INTERPRETATION: When necessary for proper construction, the masculine of any word used in the Lease shall include the feminine and neuter gender, and the singular shall include the plural and vice versa.

52. BINDING EFFECT: Except as is otherwise provided for herein, the Lease shall be binding upon and inure to the benefit of the heirs, devisees, personal representatives, successors and assigns of Tenant and the successors and assigns of Landlord.

53. DUMPSTER USE: Tenant agrees not to place equipment, furniture, cabinetry, or other large items in, near, at, or about any dumpster serving the Project or the Premises. All trash must be cut up or broken down into pieces with maximum measurements of 3'x 5' and placed in an appropriate dumpster. Under no circumstance shall any trash of any kind be placed outside the dumpster units. Tenant shall not transport and dump Tenant's offsite project trash into Project Common Area dumpsters. The Landlord, at its sole discretion, may assess a \$500.00 charge against Tenant for each violation of this Section 53. Landlord, the Town of Frisco, the waste management provider servicing the Project, or other governmental agency may require Tenant to obtain and use one or more

special use dumpsters or waste receptacles. In such event, all cost associated with such special use dumpster or waste receptacle shall be borne by Tenant, and such dumpster or receptacle shall be placed and maintained in a manner and location as reasonably required by the Landlord. In such event, and so long as Tenant is still permitted by Landlord to use the Project Common Area dumpsters, Tenant shall remain responsible for C.A.M. dumpster fees.

54. **OVERNIGHT PARKING:** No outside, overnight parking or storage of any vehicle, product, trash, and or equipment under the control of Tenant or Tenant’s employees, agents, guests, customers, or invitees is allowed. The Landlord, at its sole discretion, may assess a \$500.00 charge for each violation of this Section 54.

55. **HAZARDOUS ACTIVITIES:** Tenant shall not do anything or permit anything to be done in or about the Premises or the Project that is hazardous or that in any manner will violate, suspend, void or make inoperative or tend to increase the rate of any insurance policies carried by Landlord upon the Premises or any part of the Project. Without limiting the foregoing, Tenant will comply with all applicable local, state and Federal environmental laws, rules and regulations, and permitting requirements impacting the operations of Tenant on the Premises, and Tenant shall indemnify and hold Landlord harmless from any claims, suits, proceedings, actions, causes of actions, responsibility, liability, demands, judgments, and executions (all of which shall constitute “Claims”) arising out of Tenant’s use or disposal of toxic or hazardous materials on the Project. It is understood and agreed that this indemnity by Tenant shall not cover and Claims to the extent they arise from the actions of Landlord or any other tenant in the Project or another party not controlled by Tenant.

56. **CONDOMINIUMIZATION:** Landlord specifically reserves the right to condominiumize the Project, the Premises, and/or the Building in which the Premises is located into one or more condominium units, at Landlords sole and absolute discretion, and, in such event, to reclassifying and/or restructure all or part of the costs and expenses otherwise includable as Additional Rent as common expense assessments which shall thereafter be paid by Tenant as Additional Rent due hereunder.

Signed in \_\_\_\_\_, Colorado, \_\_\_\_\_, 200\_\_

LANDLORD:

TENANT:

**FRISCO TEN MILE DRIVE LLC**

By: \_\_\_\_\_  
Tyler J. Myers, Manager

By: \_\_\_\_\_  
\_\_\_\_\_

U:\Clients 6200-end\6208\04\ftmd master lease v4 07-25-05.DOC

**GUARANTEE**  
**FRISCO TEN MILE DRIVE LLC**

For good and valuable consideration received and as an inducement for FRISCO TEN MILE DRIVE (“Landlord”) to enter in the attached lease (“Lease”), commencement date of \_\_\_\_\_, 200\_\_\_\_, with \_\_\_\_\_ (“Tenant”), the undersigned \_\_\_\_\_ (“Guarantor”) hereby absolutely, unconditionally and if there is more than one Guarantor, jointly and severally, guarantees the timely and complete performance of all of the obligation of Tenant under the Lease, including all renewals thereof or extensions of the term thereof. Guarantor further agrees to pay all costs of collection and of enforcement, including reasonable attorney’s fees and costs of deposition, incurred by Landlord concerning or associated with the enforcement of such obligations and the interest that may accrue thereon. This guarantee and such obligations, costs, fees and interest are hereinafter referred to as the “Indebtedness”.

No renewal or extension of time of payment of performance of the Indebtedness, no release or surrender of any security for Indebtedness or this guarantee, no release of any personal primarily or secondarily liable on Indebtedness, no delay in the enforcement of payment or performance of Indebtedness or this guarantee and no delay or omission in exercising any right or power with respect to the Indebtedness or this guarantee shall affect the liability of the Guarantor.

The Guarantor waives presentment, protest, demand, notice of dishonor or default, notice of acceptance of this guarantee, notice of any extensions granted or other actions taken in reliance hereon and all demands and notices of any kind in connection with this guarantee or the Indebtedness.

Signed in \_\_\_\_\_, Colorado, \_\_\_\_\_, 200\_\_\_\_ .

\_\_\_\_\_  
Name Social Security Number

STATE OF COLORADO }

} ss.

County of \_\_\_\_\_ }

The foregoing has been subscribed and affirmed before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by

\_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

Notary Public