

**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 4a

Title:

Recommendation to approve a Proposal for a New F1 Liquor License Application for Kava Diem Located at 1 W. Illinois Street, St. Charles.

Presenter:

Police Chief James Keegan

Meeting: Government Operations Committee

Date: November 19, 2018

Proposed Cost: \$

Budgeted Amount: \$

Not Budgeted: ☐**Executive Summary** *(if not budgeted please explain):*

This is a new liquor license request for Kava Diem, which is located 1 W. Illinois Street.

*Pursuant to this item being presented at the Government Operations Committee meeting for approval; it will be brought before the Liquor Control Commission at a meeting scheduled at 4:30 p.m., the same day, November 19, 2018, to process and move it forward to this Committee. This item will then continue on to the City Council meeting scheduled on December 3, 2018 for final approval.*

**Attachments** *(please list):* Summary, Memo, Application, Certificate of Insurance, Floorplan, Lease

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to approve a Proposal for a New F1 Liquor License Application for Kava Diem Located at 1 W. Illinois Street, St. Charles.



# Memo

Date: 11/13/2018  
To: The Honorable Ray Rogina, Mayor-Liquor Commissioner  
From: James Keegan, Chief of Police  
Re: Background Investigation-Liquor Establishment (Kava Diem-1 W. Illinois #180/F-1)

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The purpose of this memorandum is to document and forward to your attention the results of the background investigation conducted by members of the St. Charles Police Department concerning the above mentioned establishment.


As is customary procedure, a detective was assigned this investigation and reviewed both the site location/floor plans and the corresponding application material.

We found nothing of a derogatory nature that would preclude either the site location or the applicant from moving forward with on-site consumption, subject to City Council approval. The BYOB license (F-1) is further strengthened by both Basset training and liquor liability insurance. This location is in Fox Island Square and will act as both a coffee house and organic food restaurant.

Thank you in advance for your consideration in this matter.



# Memo

Date: 11/12/18  
To: Chief Keegan  
From: Commander Pierce   
Re: Liquor License Background, Kava Diem 1 W. Illinois St #180.

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The purpose of this memo is to outline steps taken during the background investigation for a liquor license application. This investigation was done based on the application submitted by Kava Diem LLC, for a Class F-1 BYOB liquor license. This business is to be located at 1 W. Illinois Street.

## **Applicants:**

Janes, Andrea M.



Jenski, Leah P.



## **Application:**

The application was received on or around 10/29/18. The application appears to be complete, including a floor plan and a business plan.

There is an attached lease which was signed 01/03/18. A quote for Illinois Liquor Liability insurance was also included, but has yet to be purchased. Jenski was advised that she would need to have a Certificate of Insurance before being issued a license. Both Janes and Jenski hold a valid BASSET Certification and copies have been provided with the application.

## **Records Checks:**

Both Janes and Jenski have been fingerprinted. Responses from both the FBI and Illinois Bureau of Identification showed nothing that would preclude either from obtaining a liquor license.

A check of St. Charles and Kane County records showed no police contacts of concern for either Janes or Jenski. Jenski did have an arrest for driving while license suspended in 2014. Jenski said it was due to an unpaid seat belt ticket.

*Service, Courage, Professionalism, Dedication*



A Police records check of Janes home town, Trail Creek, Indiana, showed no police reports other than a traffic crash report. The town Marshall I spoke to personally knows Janes as an acquaintance and relayed no concerns.

A Police records check with Lockport police department, where Jenski previously resided, showed no police contacts.

A check of the Illinois Liquor Control Commission showed no current license and no record of license revocation.

A check of TLO and I-Clear (law enforcement databases) showed the information concerning Janes and Jenski's identity to be accurate and no areas of concern were noted. TLO did show Jenski at one time was part owner of ELPJ LLC. ELPJ LLC shows "involuntarily dissolved" in the Secretary of State website. A Google search revealed "involuntarily dissolved" in Illinois can have several meanings. The two most common is non-payment of fees or failure to file an annual report.

A check of the Illinois Secretary of State (SOS) website shows Kava Diem LLC to currently be in good standing. I checked ELPJ LLC and found SOS showed the LLC as "Involuntarily dissolved", with no explanation. I also checked Jenski's other business "Salternative LLC" through SOS and found they were in good standing.

#### **INTERVIEW WITH APPLICANT:**

On 11/05/18 at approximately 1:00pm, I met with Janes and Jenski at the police department front desk. Both advised that they have rented the space at 1 W. Illinois St. #180 with the intent to open their business, Kava Diem. The two describe the business as a coffee house, café, "juicery", serving strictly organic food, coffee, and juice. They have hired a chef to prepare a wide range of organic entrees. They will be opening the business with or without the liquor license as their business plan does not depend on alcohol. Both Janes and Jenski are U.S. citizens. Janes has lived in the same house in Trail Creek, Indiana for the past 61 years. Jenski has lived in her rural St. Charles home for the past 5 years. Prior to unincorporated St. Charles, Jenski lived in Lockport, Illinois for 5 years. They have never held a liquor license before. Jenski said she also owns "Salternative" in Geneva, Illinois.

#### **SITE VISIT:**

On 11/12/18, I visited the location. During the site visit I met with Janes and Jenski. I found the business lay out to be exactly as the floor plan provided with the application. Jenski said their final occupancy inspection is 11/16/18, after which they plan on opening even without the liquor license (no liquor will be allowed on site until the license is approved).

This concludes this background investigation. Recommend approval.



Date: \_\_\_\_\_  
( ) New Application

CITY OF ST. CHARLES  
LIQUOR CONTROL COMMISSIONER  
TWO EAST MAIN STREET  
ST. CHARLES, ILLINOIS 60174-1984



City BYOB License Application (rev. 9/15) ☒ Class F1 – Wine Only \$150  
☐ Class F2 – Wine & Spirits \$250

Application must be completed in full

Incomplete applications will be rejected

Business Type: Circle one Individual Partnership Corporation Other LLC (single member)  
Business Name Kava Diem LLC Sales Tax # [REDACTED]  
Business Address 1 West Illinois #180 60174 Business Phone # pending  
Contact Person Andrea Janes Title owner Phone # [REDACTED]  
If Corporation, Corporate Name \_\_\_\_\_

Corporation Address \_\_\_\_\_  
Corporate Officers, plus Manager of Establishment, Officers must include President, Vice President, Secretary and Treasurer  
Or Sole Proprietor

Have you had a business within the City of St. Charles under any other corporate name: \_\_\_\_\_ Yes ☒ No  
If yes, list address of business \_\_\_\_\_

Full Name, include Middle Initial Andrea M. Janes Title Owner  
Birth Date [REDACTED] Birthplace Chicago, IL Driver's License [REDACTED] Home Phone # [REDACTED]

Home Address [REDACTED]  
Michigan City, IN 46360

Full Name, include Middle Initial Leah Jenski Title Manager  
Birth Date [REDACTED] Birthplace Valparaiso, IN Driver's License [REDACTED] Home Phone # [REDACTED]

Home Address [REDACTED]  
St Charles, IL 60175

Full Name, include Middle Initial \_\_\_\_\_ Title \_\_\_\_\_

Birth Date \_\_\_\_\_ Birthplace \_\_\_\_\_ Driver's License # \_\_\_\_\_ Home Phone # \_\_\_\_\_

Home Address \_\_\_\_\_

Type of Establishment: ☒ Restaurant ( ) Hotel/Banquet/ ( ) Other \_\_\_\_\_

Check as Applicable to Type of Establishment ( ) Live Entertainment [5.08.010-H] ☒ Outside Dining [17.20.020-R]

Brief Business Plan Description based on type of establishment listed above:



We are a coffee house/cafe/juicery serving  
strictly organic food, coffee and juice. We  
would like to offer our guests the BYOB table  
service.



Initial: Liq Comm \_\_\_\_\_

Police Chief \_\_\_\_\_

### B.A.S.S.E.T. TRAINING

Please list employees required to have B.A.S.S.E.T training on this page – include all managers, assistant managers, bartenders, and clerks who are permitted to make alcoholic liquor sales (Include copies of certificates and add another page if needed.)

Name: Andrea Janes Mariz  
First Last Middle  
Birth date:   
Home Street Address:   
City, State, Zip: Michigan City, IN 46360  
Date of Course: October 18, 2018 Place Taken: On line  
Certificate Granted: Yes Expiration: \_\_\_\_\_

Name: Leah Jenski Paige  
First Last Middle  
Birth date:   
Home Street Address:   
City, State, Zip: St. Charles, IL 60175  
Date of Course: October 23, 2018 Place Taken: On line  
Certificate Granted: Yes Expiration: \_\_\_\_\_

Name: \_\_\_\_\_  
First Last Middle  
Birth date: \_\_\_\_\_  
Home Street Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Date of Course: \_\_\_\_\_ Place Taken: \_\_\_\_\_  
Certificate Granted: \_\_\_\_\_ Expiration: \_\_\_\_\_

Name: \_\_\_\_\_  
First Last Middle  
Birth date: \_\_\_\_\_  
Home Street Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Date of Course: \_\_\_\_\_ Place Taken: \_\_\_\_\_  
Certificate Granted: \_\_\_\_\_ Expiration: \_\_\_\_\_



# City of St. Charles Retail Liquor Dealer License Application

**Important! Application must be completed in full. Incomplete applications will be rejected.**

- 5.08.070 (2) If applicant is an individual or partnership, is each and every person a United States citizen? yes  
Is any individual a naturalized citizen? No  
If yes, print name(s), date(s) and place(s) of naturalization: N/A
- 5.08.070 (3) List the type of business of the applicant: Coffee house / cafe
- 5.08.070 (4) Number of years in business for the above listed type of business: 0 (opening November)  
Corporations Only: Date of Certificate of Incorporation: NA
- 5.08.070 (6) Location/Address and description of business to be operated under this applied for license: cafe + coffee shop  
1 West Illinois Unit # 180  
St. Charles, IL 60174
- 5.08.070 (6A) Is the premises owned or leased? leased  
If premises are leased, it is **mandatory** that a copy of the lease be provided and that the lease term exceeds the term of the liquor license requested in this application.  
Does it? yes
- 5.08.070 (6B) If premises are leased, list the names and addresses of all direct owners or owners of beneficial interests in any trusts, if premises are held in trust: Shodeen Group LLC  
77 N. 1st Street, Geneva IL 60134
- 5.08.070 (7) Has applicant applied for a similar or other license on the premises other than the one for which this license is sought? No If yes, what was the disposition of the application? Explain as necessary:
- 5.08.070 (8) Has applicant (and all persons listed on page 1 of this application) ever been convicted of a felony under any Federal or State law, or convicted of a misdemeanor opposed to decency or morality? No  
Is applicant (and all persons listed on page 1 of this application) disqualified from receiving a liquor license by reason of any matter contained in Illinois State law and/or City of St. Charles Municipal Ordinances? No
- 5.08.070 (9) List previous liquor licenses issued by Federal Government, any State Government or any subdivision thereof. Use additional paper if necessary.  
Government Unit: N/A  
Date: \_\_\_\_\_ Location, City/State: \_\_\_\_\_  
Special Explanations: \_\_\_\_\_
- Government Unit: \_\_\_\_\_  
Date: \_\_\_\_\_ Location, City/State: \_\_\_\_\_  
Special Explanations: \_\_\_\_\_
- 5.08.070 (9) Have any liquor licenses ever been revoked? No  
If yes, list all reasons on a separate, signed letter accompanying this application.
- 5.08.070 (10) Date of Incorporation (Illinois Corporations): 1-2-2018  
Date qualified under Illinois Business Corporation Act to transact business in Illinois (Foreign Corporations): 1-3-2018
- 5.08.070 (11) Has the applicant and all designated managers read and do they all understand and agree not to violate any liquor laws of the United States, the State of Illinois and any of the ordinances of the City of St. Charles in conducting business? yes
- 5.08.070 (A12) **Mandatory:** All individual owners, partners, officers, directors and/or persons holding directly or beneficially more than five (5) percent in interest of the stock or owners by interest listed on page 1 of this application must be fingerprinted by the City of St. Charles Police Department.  
Has this been done? yes If yes, date(s) 8-16-2018

5.08.060 **Mandatory:** Has applicant attached proof of Dram Shop Insurance to this application or already furnished it to the City of St. Charles? yes. If already furnished, date of delivery emailed on 10/26/18  
5.08.230 Is the premises within 100 feet of any real property of any church; school; hospital; home for the aged or indigent persons; home for veterans, their wives/husbands or children; and/or any military or naval station? No

Signature of Applicant(s)  
Corporation Signatures

Signature of Applicant(s)  
Individual or Partnership Signatures

President:: \_\_\_\_\_

Secretary: \_\_\_\_\_

Andra Jones

**Affidavit**

State of Illinois )  
                          ) SS  
County of Kane )

I/We, the undersigned, being first duly sworn, say that I/we have read the foregoing application and that the statements therein are true, complete, and correct and are upon my/our personal knowledge and information and are made for the purpose of inducing the City of St. Charles to issue the Retail Liquor Dealer License to me/us for the location hereinbefore indicated; that I am/we are qualified under the ordinances of the City of St. Charles and the laws of the State of Illinois to receive such license; that the answers made to questions in this application are applicable insofar as they relate to the sale of alcoholic liquor at retail. I/We have committed no act (nor omitted performing any act required by law to be performed) that disqualifies me/us to receive, by reason of any matter or thing contained in the ordinances of the City of St. Charles or the Illinois Liquor Control Act, a City Retail Liquor Dealer License for the sale of alcoholic liquor at the address hereinbefore shown. I/We further understand that any misrepresentation or failure to notify the Mayor of any fact requested in this application or omission of any fact pertinent to this application shall constitute good cause for the Mayor to deny this application and/or revoke any license issued pursuant to this application.

Leah Janski

I, Karen Muehlfelt, a Notary Public, in and for said County and State, do hereby certify that Leah Janski personally known to me to be the same applicant(s), appeared before me this day in person and acknowledged that he/she/they signed the foregoing application as his/her/their free and voluntary act for the use and purposes therein set forth.

Given under my hand and notarial seal this 26<sup>th</sup> day of October, 2018.



Karen Muehlfelt  
Notary Public



# Certificate of Completion



Has diligently and with merit completed the

from the American Safety Council.

  
Jeff Palran

# Certificate of Completion



LEAH JENSKI

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Has diligently and with merit completed the  
On-Premise BASSET Alcohol Certification on 10/24/2018

from the American Safety Council.

A handwritten signature in blue ink, appearing to read "Jeff Pairan", written over a horizontal line.

Jeff Pairan

Our business description is as follows:

Kava Diem is a cafe featuring a fresh and healthy menu of organic foods and beverages. The main focus of Kava Diem is threefold: the cleanest and most delicious coffees and cocoas, meals with a wide variety of fresh and very tasty ingredients to satisfy any diet be it ketogenic, Paleo, vegan or any other and a cold press juicery with juices containing high levels of fresh and living nutrients.

Kava Diem is open seven days a week. Our open hours are: Monday through Thursday 6am until 9 pm, Friday 6am until 8pm and Saturday and Sunday 7am until 8pm.

We plan to open on November 28, 2018.

We are finalizing the menu now and will be able to provide one at the meeting on the 19th.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/14/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> CRH Insurance Agency, LLC 1381 Wind Energy Pass Batavia IL 60510		<b>CONTACT NAME:</b> Michele King <b>PHONE (A/C, No., Ext.):</b> (630) 208-8496 <b>E-MAIL ADDRESS:</b> admin@crinsurance.net <b>FAX (A/C, No.):</b> (630) 208-8497	
<b>INSURED</b> Kava Diem LLC 1 Illinois St. St. Charles IL 60174		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Pekin Insurance <b>INSURER B:</b> Westchester Specialty Insurance Services <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X		BU62524	03/20/2018	03/20/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BU62524	03/20/2018	03/20/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WC0020716	03/20/2018	03/20/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
A	<b>Business Personal Property</b>			BU62524	03/20/2018	03/20/2019	\$200,000
B	<b>Liquor Liability</b>			LQRILF146720594	10/26/2018	10/26/2019	\$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Additional Insured: City of St. Charles

**CERTIFICATE HOLDER****CANCELLATION**City of St. Charles  
2 E Main St

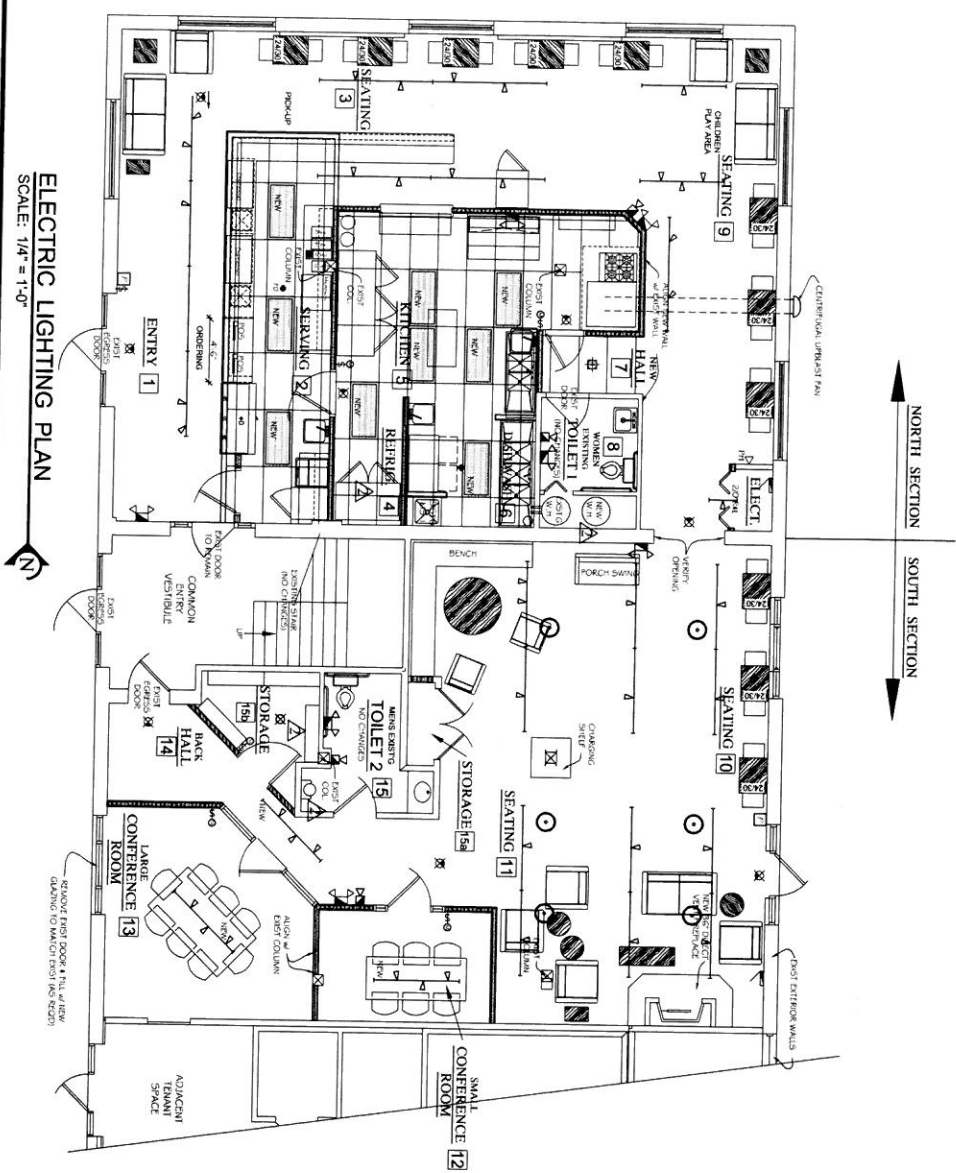
St. Charles, IL 60174

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



**HEATING, COOLING & AIR CONDITIONING NOTE:**  
 HVAC UNITS & DUCTWORK ARE EXISTING FOR BOTH THE NORTH & SOUTH SECTIONS OF SPACE. HVAC CONTRACTOR SHALL CONSULT W/ THE TENANT & ARCHITECT REGARDING SIZING OF THE UNITS & REWORKING THE DUCTWORK AS REQUIRED.



**ELECTRIC LIGHTING PLAN**  
 SCALE: 1/4" = 1'-0"

ELECTRICAL SYMBOLS	
①	ALARM
②	THERMOSTAT
③	1' LOW WIRECONNECTED INDOOR DETECTOR
④	DUPLEX OUTLET MID 15' AFF
⑤	EXISTING DUPLEX OUTLET
⑥	DUPLEX OUTLET (RELOCATED)
⑦	DUPLEX OUTLET (GROUND FAULT)
⑧	OUTLET w/USB CHARGING PORT
⑨	ELECTRICAL SWITCH MID 46" AFF
⑩	WIRELESS DETECTOR ELECTRICAL SWITCH
⑪	ELECTRICAL SHUTTER
⑫	EMERGENCY LIGHT BATTERY BACKUP
⑬	EXIT SIGN
⑭	PULL STATION MID 46" AFF
⑮	STROBE/TROB
⑯	STROBE
⑰	CABLE OUTLET
⑱	START POINT OF SALES REGISTER
⑲	SURFACE MOUNTED INCANDESCENT
⑳	RECESSED CAN LIGHT
㉑	WALL MOUNTED SCONCE
㉒	FANLIGHT
㉓	GRANDFIRE (BY TENANT)
㉔	TRACK LT. MID - A.F.F.
㉕	2'x4 (4 - 40W TUBES) FLUORESCENT

**ELECTRICAL NOTES**  
 1. Electric Service: Existing 200 amp, 120/240V, 3-phase, 4-wire.  
 2. Electrical outlets shall be installed in accordance with the building code and the manufacturer's instructions.  
 3. All wiring shall be in accordance with the building code and the manufacturer's instructions.  
 4. All wiring shall be in accordance with the building code and the manufacturer's instructions.  
 5. All wiring shall be in accordance with the building code and the manufacturer's instructions.  
 6. All wiring shall be in accordance with the building code and the manufacturer's instructions.

**LIGHTING NOTE:**  
 TRACK LIGHT & ROUND PENDANT LIGHTS SHOWN ARE EXISTING. TENANT & ELECTRICAL CONTRACTOR MAY RELOCATE THEM FOR BETTER COVERAGE OF THE NEW SPACES. LIGHTING & ALARMS IN THE EXISTING TOILETS IS EXISTING w/ NO CHANGES ANTICIPATED. LIGHTING IN THE KITCHEN AND BOTH CONFERENCE ROOMS & BACK HALL IS TO BE NEW.

**FIRE ALARM SYSTEM NOTES:**  
 1. Fire alarm system shall be installed in accordance with the building code and the manufacturer's instructions.  
 2. Fire alarm system shall be installed in accordance with the building code and the manufacturer's instructions.  
 3. Fire alarm system shall be installed in accordance with the building code and the manufacturer's instructions.

**TO BE COMPLETED BY THE CITY OF ST. CHARLES**  
**ADDENDUM TO RETAIL LIQUOR LICENSE • CITY OF ST. CHARLES DEPARTMENT OF POLICE**

Date: \_\_\_\_\_ Name of Applicant: \_\_\_\_\_  
Name of Business: \_\_\_\_\_  
Address of Business: \_\_\_\_\_

To Liquor Control Commissioner, City of St. Charles, Illinois

Pursuant to the provision of the City of St. Charles Municipal Code, Chapter 5.08, Alcoholic Beverages, the following guide shall be in effect for the investigation of an applicant for a Retail Dealers Liquor License:

1. Date on which applicant will begin selling retail alcoholic liquors at this location: \_\_\_\_\_
2. Is the location within 100 feet of any church; school; hospital; home for the aged or indigent persons; home for veterans, their wives/husbands or children; or any military or naval station? \_\_\_\_\_
3. If the answer to question 2 is yes, answer the following: Is applicant's place of business a hotel offering restaurant service, a regularly organized club, a restaurant, a food shop, or other place where the sale of alcoholic liquors is not the principal business? \_\_\_\_\_  
If so, answer (a), (b), and (c):
  - a. State the kind of such business: \_\_\_\_\_
  - b. Give date on which applicant began the kind of business named at this location: \_\_\_\_\_
  - c. Has the kind of business designated been established at this location for such purpose prior to February 1, 1934, and carried on continuously since such time by either the applicant or any other person? \_\_\_\_\_
4. If premises for which an alcoholic liquor license is herein applied for are within 100 feet of a church, have such premises been licensed for the sale of alcoholic liquor at retail prior to the establishment of such church? \_\_\_\_\_  
If yes, have the premises been continuously operated and licensed for the sale of alcoholic liquor at retail since the original alcoholic liquor license was issued therefore? \_\_\_\_\_
5. Is the place for which the alcoholic liquor license is sought a dwelling house, flat, or apartment used for residential purposes? \_\_\_\_\_
6. Is there any access leading from premises to any other portion of the same building or structure used for dwelling or lodging purposes and which is permitted to be used or kept accessible for use by the public? (Connection between premises and such other portion of building or structure as is used only by the applicant, his/her family and personal guests not prohibited) \_\_\_\_\_
7. If applicant conducts or will conduct in the same place any other class of business in addition to that of City Retailer of Alcoholic Liquor, state the kind and nature of such business: \_\_\_\_\_
8. Are all rooms where liquor will be sold for consumption on the premises continuously lighted during business hours by natural light or artificial white light so that all parts of the interior shall be clearly visible? \_\_\_\_\_
9. Are premises located in any building belonging to or under the control of the State of Illinois or any other political subdivision thereof, such as county, city, etc? \_\_\_\_\_
10. Are the premises for which license is herein applied for a store or place of business where the majority of customers are minors of school age or where the principal business transacted consists of school books, school supplies, food or drinks for such minors? \_\_\_\_\_
11. It is required by the City of St. Charles that all employees undergo BASSET training. Provide copy of Certificate of training completion. \_\_\_\_\_
12. From your observation and investigation, has applicant—to the best of your knowledge—truthfully answered all questions? \_\_\_\_\_  
If no, state exceptions: \_\_\_\_\_
13. Have all persons named in this application been fingerprinted? \_\_\_\_\_  
Fingerprinted by: \_\_\_\_\_ Date: \_\_\_\_\_
14. Other necessary data: \_\_\_\_\_

Investigating Officer: \_\_\_\_\_

Star Number/Rank: \_\_\_\_\_

Ward Number: \_\_\_\_\_

**Endorsement of the Chief of Police**

Recommended Issuing: Yes \_\_\_\_\_ No \_\_\_\_\_ Date \_\_\_\_\_  
Chief of Police: \_\_\_\_\_

## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made as of the 3rd day of January, 2018 between SHODEEN GROUP, LLC, a Delaware LLC, as agent for Fox Island Limited Partnership (the "Landlord"), and Kava Diem LLC (the "Tenant").

1. PREMISES. In consideration of the rents, terms, provisions and covenants of this Lease, Landlord hereby leases unto Tenant and Tenant hereby rents and accepts from Landlord those certain premises containing approximately 3,072 rentable square feet which are outlined on the floor plan attached hereto as Exhibit "A" and incorporated herein by reference. The Premises are contained in that certain building located at 1 W. Illinois Street, Suite 170 and Suite 180, St. Charles, Illinois (the "Building"), which Building contains approximately 30,119 rentable square feet of space. The land on which the Building is situated, together with all improvements located thereon (collectively the "Property"), is more particularly described on Exhibit "B" attached hereto and incorporated herein by reference.

2. TERM.

(a) Subject to and upon the terms and conditions set forth below, the term of this Lease shall be for a period of Ten (10) Lease Years (as hereinafter defined), commencing on the Gross Rent Commencement Date (as hereinafter defined) and ending on the last day of the Tenth (10th) Lease Year.

(b) For purposes of this Lease, the following terms shall have the following meanings:

- (i) "Commencement Date" shall mean the date of Lease Execution;
- (ii) "Build Out Period" shall mean One Hundred Five (105) days after the Commencement Date as defined above or the date the certificate of occupancy is issued for the Premises, whichever date occurs first.
- (iii) "Gross Rent Commencement Date" shall mean ninety (90) days after the expiration of the Build Out Period as defined above. Upon determination of the Gross Rent Commencement Date, Landlord and Tenant shall execute a memorandum, setting forth the Gross Rent Commencement Date and the expiration date of this Lease, in form and substance substantially similar to that attached hereto as Exhibit "C" and incorporated by reference.;
- (iv) "Lease Year" shall mean each twelve (12) month period commencing on the first day of the first full month after the Gross Rent Commencement Date and each anniversary thereafter during the Term (as hereinafter defined) of this Lease; provided, however, that if the Gross Rent Commencement Date is the first day of the month, the first Lease Year shall commence on the Gross Rent Commencement Date. The first Lease Year shall commence on the Gross

Rent Commencement Date and end on the last day of the last month of the first Lease Year regardless of whether the first Lease Year is longer than twelve (12) months.

- (v) "Term" shall mean the initial term of this Lease and any renewals or extensions thereof.

### 3. RENTAL.

(a) Base Rental. Tenant shall pay to Landlord, as base rental (the "Base Rental") during the Term of this Lease as follows:

<u>Period</u>	<u>Monthly Base Rent</u>	<u>\$ p/s/f</u>
Gross Rent Commencement Date		
– Month 12	\$2,560.00	\$10.00
Month 13 – Month 24	\$2,636.80	\$10.30
Month 25 – Month 36	\$2,715.90	\$10.61
Month 37 – Month 48	\$2,797.38	\$10.93
Month 49 – Month 60	\$2,881.30	\$11.26
Month 61 – Month 72	\$2,967.74	\$11.59
Month 73 – Month 84	\$3,056.77	\$11.94
Month 85 – Month 96	\$3,148.47	\$12.30
Month 97 – Month 108	\$3,242.93	\$12.67
Month 109 – Month 120	\$3,340.22	\$13.05

Each such monthly installment shall be due and payable in advance, on or before the first (1st) day of each and every month during the Term, without notice, demand or set-off. All payments received from the Tenant shall be applied by the Landlord in the following order of priority: restoring any deficit in the Tenant's security deposit; any expenses paid by Landlord which are required to be paid by Tenant pursuant to the terms of this Lease; past due rent, and current rent.

(b) Additional Rental. Tenant shall pay to Landlord Tenant's Proportionate Share (as hereinafter defined) of the Operating Expenses (the "Additional Rental") payable in equal monthly installments of Two Thousand Four Hundred Thirty Two and 00/100 Dollars (\$2,432.00) beginning on the Gross Rent Commencement Date and until such amount is adjusted in accordance with the terms herein upon determination of a variation in the Tenant's Proportionate Share of the Operating Expenses. If this Lease commences or terminates on a date other than January 1, the annual Operating Expenses shall be prorated by multiplying one-twelfth (1/12) of the annual Operating Expenses by the number of full or partial months between the Commencement Date and December 31 of the year of commencement or between January 1 of the year of termination and the termination date, as the case may be. As used in this Lease, "Proportionate Share" shall mean a percentage factor, determined by dividing the net rentable square footage contained in the Premises by the net square footage contained in the Building.



(i) Operating Expenses. "Operating Expenses" shall include those expenses paid by or on behalf of Landlord in respect to the management, operation, service and maintenance of the Property, including the Premises, in accordance with generally accepted principles of retail building management as applied to the operation and maintenance of office buildings similar to the type and nature of the Property and in the general market area as the Property. Operating Expenses shall include, but not be limited to, (A) Real Estate Taxes (as hereinafter defined); (B) premium costs for liability, boiler, extended coverage, casualty and other insurance covering the Property to be maintained by Landlord and required by the terms of this Lease; (C) electricity, gas, water and other utility charges for the Property; (D) repair and maintenance of HVAC systems, elevators, irrigation systems and other mechanical systems; (E) repair and maintenance of the Common Areas (as hereinafter defined) and the Building structure and roof; (F) trash removal and snow removal; (G) janitorial service; (H) wages, salaries and fees of operating, auditing, accounting, maintenance and management personnel in connection with the Property; (I) all payroll charges for such personnel, such as unemployment and social security taxes, workers' compensation, health, accident and group insurance, and other so-called fringe benefits; (J) rental charges for office space chargeable to the operation and management of the Property; (K) license permits and inspection fees; (L) supplies and materials used in the operation and management of the Property; (M) furnishings and equipment not treated by Landlord as capital expenditures of the Property; (N) depreciation and the cost of any labor saving devices that may, from time to time, be placed in operation as a part of Landlord's maintenance program; (O) personal property taxes on property used in the operation, maintenance, service and management of the Property; (P) the cost, as reasonably amortized by Landlord, with interest at the rate of ten per cent (10%) per annum on the unamortized amount, of any capital improvement made after completion of initial construction of the Building which reduces Operating Expenses, but in an amount not to exceed such reduction for the relevant year; (Q) management fees relating to the Property; (R) the cost of any installation or improvement required by reason of any law, ordinance or regulation, which requirement did not exist on the date of the Lease and is generally applicable to similar office buildings; and (S) all other expenses reasonably necessary for the operation and management of the Property.

(ii) Real Estate Taxes. "Real Estate Taxes" shall include all taxes, including state equalization factor, if any, and assessments, special or otherwise, exclusive of penalties or discounts levied upon or with respect to the Property, including the Premises, imposed by any federal, state or local governmental agency, and including any use, occupancy, excise, sales or other like taxes (other than general income taxes on rent or other income from the Building).

Real Estate Taxes also shall include the expense of contesting the amount or validity of any such taxes, charges or assessments, such expense to be applicable to the period of the item contested. Real Estate Taxes shall not, however, include income, franchise, capital stock, estate or inheritance taxes unless Landlord reasonably determines that such taxes are in lieu of real estate taxes, assessments, rental, occupancy and other like excise taxes. For purposes of this Lease, Real Estate Taxes for any calendar year shall be those taxes which are assessed against the Property for such calendar year even though the payment date for such taxes occurs in the subsequent calendar year.

Landlord shall retain the sole right to participate in any proceedings to establish or contest the amount of Real Estate Taxes. If a complaint against valuation, protest of tax rates or other action increases or decreases the Real Estate Taxes for any calendar year, resulting in an increase or decrease in rent hereunder, the Real Estate Taxes for the affected calendar year shall be recalculated accordingly and the resulting increased rent plus the expenses incurred in connection with such contest, or decreased rent, less the expenses incurred in connection with such contest, shall be paid simultaneously with or applied as a credit against, as the case may be, the rent next becoming due.

(c) Payment of Proportionate Share. To provide for current payments of Operating Expenses, Tenant shall pay Tenant's Proportionate Share of the Operating Expenses, as estimated by Landlord from time to time, in twelve (12) monthly installments, commencing on Gross Rent Commencement Date and then the first day of the month following the month in which Landlord notifies Tenant of the amount of its estimated Proportionate Share thereafter. Landlord shall estimate the amount of Operating Expenses for each year and then reconcile such estimated expenses in the following year based on actual Operating Expenses for the prior year paid by Landlord. If Tenant's Proportionate Share of the actual Operating Expenses shall be greater than or less than the aggregate of all installments so paid on account to Landlord for such twelve (12) month period, then within ten (10) days of Tenant's receipt of Landlord's statement of reconciled Operating Expenses, Tenant shall pay to Landlord the amount of such underpayment, or Landlord shall credit Tenant for the amount of such overpayment against the next maturing installment(s) of rent, as the case may be. The obligation of Tenant with respect to the payment of Tenant's Proportionate Share of the Operating Expenses shall survive the termination of this Lease. Any payment, refund, or credit made pursuant to this subparagraph 3(c) shall be made without prejudice to any right of Tenant to dispute the statement as hereinafter provided, or of Landlord to correct any item(s) as billed pursuant to the provisions hereof. Landlord's failure to give such statement shall not constitute a waiver by Landlord of its right to recover rent that is due and payable pursuant to this subparagraph 3(c).

(d) Dispute of Operating Expenses. If Tenant questions in writing any such notice of reconciled Operating Expenses (or revised notice thereof), and if the question is not amicably settled between Landlord and Tenant within thirty (30) days after said notice of reconciled Operating Expenses (or revised notice) has been given and as Tenant's only option, Tenant shall submit a formal written request to Landlord of its intent to conduct a formal audit of Landlord's books and records. Tenant shall, during the sixty (60) days next following the expiration of such thirty (30) day period, employ an independent certified public accountant, at Tenant's expense, to audit Operating Expenses. The determination of such accountant shall be final, conclusive and binding upon Landlord and Tenant. Tenant understands that the actual itemization of, and the amount of individual items constituting, Operating Expenses is confidential; and while Landlord shall keep and make available to such accountant all records in reasonable detail, and shall permit such accountant to examine and audit such of Landlord's records as may reasonably be required to verify such reconciled Operating Expenses, at reasonable times during business hours, Landlord shall not be required to (and the accountant shall not be permitted to) disclose to any person, firm or corporation, including to Tenant, any such details (it being the intent of the parties that such accountant shall merely certify to Landlord and to Tenant the correct amount of adjusted additional Operating Expenses for the calendar year). Any change in the reconciled Operating Expenses required by such

accountant's determination shall be made within thirty (30) days after such determination has been rendered. The expenses involved in such determination shall be borne by Tenant and deemed to be Additional Rental under this Lease, unless the results of such audit determine that the difference between the Operating Expenses as determined by the audit and the Operating Expenses as determined by Landlord is greater than five percent (5%) of the Operating Expenses as determined by Landlord, in which case such expenses shall be borne by Landlord. If Tenant does not, in writing, question the reconciled Operating Expenses within the thirty (30) days after such notice has been given, Tenant shall be deemed to have approved and accepted such reconciled Operating Expenses. This waiver is given with Tenant's full knowledge and consent.

(1) Landlord's Books and Records. Landlord shall make available to Tenant or Tenant's lease auditor, the following books and records:

- (i) Operating expense ledger;
- (ii) Reconciliation of operating expense ledger and amount billed as [Operating Expenses/CAM Costs];
- (iii) Cash disbursement journals;
- (iv) Accounts payable or distribution journals;
- (v) Journal entries relating to [Operating Expenses/CAM Costs], as shall be reasonable requested by Tenant;
- (vi) Accounts payable and accruals;
- (vii) Copies of paid real estate property tax bills;
- (viii) Vendor paid bills;
- (ix) Vendor contracts;
- (x) Management agreement and calculations of management fees;
- (xi) Calculations of Tenant's Rent increase based on CPI or porter's wage;
- (xii) Gross-up calculations, if applicable;
- (xiii) Work order tickets;
- (xiv) Paid and outstanding billings to Tenant;
- (xv) Pending and received recoveries from insurers, vendors, others;
- (xvi) Documentation regarding insurance claims;
- (xvii) Occupancy records, if applicable;
- (xviii) Sub-metering records, if applicable;
- (xix) HVAC overtime records;
- (xx) Payroll records, limited to the following:
  - (a) Census of number of employees by category (e.g. maintenance, janitorial, security, administrative, and building engineers);
  - (b) Allocation to other properties or to departments not included in [Operating Expenses/CAM Costs];
  - (c) Total annual compensation by category; and
  - (d) Report (from the payroll service bureau) of the final payroll period of the year, with a reconciliation due to employee turnover, change in number of personnel per department, and change in rates;
- (xxi) Identification of electrical meters;
- (xxii) Method and details for expense allocations;
- (xxiii) Method of space measurement;

- (xxiv) Copies of reports of independent CPAs, if applicable; and
- (xxv) 'As build' plans.

(2) Excluded Books and Records. Tenant acknowledges and agrees that neither Tenant nor Tenant's lease auditor shall have the right to review any income tax returns of Landlord, leases of other tenants in the [Building/Center], and books or records not listed in Paragraph 1 hereof.

(e) Adjustments to Operating Expenses. If a clerical error occurs or Landlord or Landlord's accountants discover new facts, which error or discovery causes Operating Expenses for any period to increase or decrease, upon notice by Landlord to Tenant of the adjusted additional Operating Expenses for such calendar year, the adjusted additional Operating Expenses shall apply and any deficiency or overpayment of Tenant's Proportionate Share of the Operating Expenses, as the case may be, shall be paid by Tenant or taken as a credit by Tenant according to the provisions set forth above. This provision shall survive the termination of the Lease.

(f) Percentage Rental. N/A

(g) Other Charges. All costs, expenses and other sums that Tenant assumes or agrees to pay to Landlord pursuant to this Lease ("Other Charges") shall be deemed rental and, in the event of nonpayment thereof, Landlord shall have all the rights and remedies herein provided for in case of nonpayment of Base Rental and Additional Rental. If a monthly installment of rent is not received on or before the tenth (10<sup>th</sup>) day of the month in which it is due, other remedies for nonpayment of rent notwithstanding, Tenant shall pay to Landlord, a late charge of ten percent (10%) of such installment as rent for the purpose of defraying Landlord's administrative expenses incident to the handling of such overdue payment. For purposes of this Lease, "rent" shall mean Base Rental, Additional Rental, and Other Charges.

(h) Place of Payment. Tenant shall pay all rent and other charges due under this Lease without demand, deduction or set off to Landlord at 77 North First Street, Geneva, Illinois 60134, or at such other place as Landlord may designate from time to time hereafter by written notice to Tenant.

#### 4. CONSTRUCTION.

(a) Improvements to be Constructed. Landlord, at its own cost and expense, shall perform the work and make the installation in the Premises that are designated as Landlord's Work in Exhibit "D", attached hereto and incorporated herein by reference. Except as expressly set forth in Exhibit "D", Landlord has made no promise to alter, remodel or improve the Premises, the Building or the Property.

(b) Work Prior to Commencement Date. Landlord shall not be required to deliver actual possession of the Leased Premises to Tenant unless and until Tenant has delivered to Landlord the certificate of insurance as required pursuant to Paragraph 13.

(c) Tenant's Work. The Tenant shall be solely responsible for performing any and all work and installation (the "Tenant's Work"). Within Twenty (20) days after execution of this Lease the Tenant shall submit to the Landlord for approval the plans and specification for the Tenant's Work (the "Plans"), the general contractor contract for the Tenant's Work (the "Construction Contracts"), and evidence of the Tenant's ability to pay for the cost of the Tenant's Work (the "Tenant's Contribution") in excess of the Landlord's Contribution (as hereinafter defined).

The Tenant shall diligently pursue completion of the Tenant's Work in accordance with the Plans and Construction Contracts approved by the Landlord and all applicable governmental laws and regulation, free and clear of any claims for mechanic's liens.

The Landlord, its agents and employees shall have the right, but not the obligation, to inspect the construction of the Tenant's Work as it progresses from time to time, but such inspection shall not relieve the Tenant of any liability if the Tenant's Work does not conform to the approved Plans, the Construction Contracts and/or applicable governmental laws and regulations.

(d) Landlord's Contribution. Tenant shall have one draw on the Tenant Improvement Allowance upon certificate of occupancy provided that Tenant is not then in default hereunder, in accordance with the approved Plans, the Construction Contracts, applicable governmental laws and regulation and free and clear of any claims for mechanics' liens and receipt of Final Lien Waivers from all Sub-Contractors, the Landlord shall reimburse the Tenant for an amount equal to the "Landlord's Contribution":

Landlord's Contribution shall be Eighty Thousand and 00/100 Dollars (\$80,000.00) to be applied towards improvements to the Premises as follows;

- Electrical distribution
- Acoustical ceiling
- Mechanical
- Plumbing
- Interior framing
- Drywall
- Doors and trim
- Lighting
- Bathroom improvements
- Utility upgrades
- Fire life and safety
- Flooring
- Demolition
- Paint

Landlord must have final approval on the architectural plans, and materials and fixtures paid for under this provision. If build-out costs exceed Landlord contribution, Tenant, at its sole cost, will be responsible for said amount. If build-out costs do not exceed Landlord contribution, Tenant



will not be entitled to credit or monetary difference. Landlord must have final approval on the architectural plans, and materials and fixtures paid for under this provision.

All improvements stated herein may not be removed from the Premises and must remain with the Property upon termination of the Lease.

The Tenant has the option to take the Tenant Improvement allowance and hire a third party contractor to complete the build out as specified above or the Tenant may choose to hire Shodeen Group, LLC to complete the build out on the following terms:

- a. Shodeen Group, LLC will charge 12% profit;
- b. Shodeen Group, LLC will require execution of a construction contract between Shodeen and the Tenant within 14 days of lease execution;
- c. Shodeen Group, LLC will require payment of any amount over the TI allowance to be paid at the time of execution of the construction contract (This number will be based upon the original budget in place at the time of execution of the construction contract);
- d. The tenant will be responsible for any amount over the original budget number and will pay a change order fee as specified in the construction contract for any modifications to the scope of work after the contract is executed.

**If Landlord and Tenant cannot agree on a signed set of construction plans evidencing the Tenant Improvements within 20 business days of Lease execution then this Lease shall be rendered null and void and be of no effect.**

## 5. USE OF THE PREMISES.

(a) Use. The Premises shall be used only for a **quick service organic food and coffee establishment** and for no other purpose or purposes without the prior written consent of Landlord. The Tenant shall not at any time leave the Premises vacant, but shall in good faith continuously throughout the term of this Lease conduct and carry on in the entire Premises the type of business for which the Premises are leased. The Tenant shall operate its business in an efficient, high class and reputable manner so as to produce the maximum amount of sales from the Premises, and shall except during reasonable periods of repairing, cleaning and decorating keep the premises open to the Public for business with adequate and competent personnel in attendance on all days from the hours of 5:21 a.m. until 10 p.m. or as otherwise determined by Tenant utilizing Tenant's reasonable business judgment except for public holidays and to the extent the Tenant may be prohibited from being open for business by applicable law, ordinance or government regulation.

(b) Prohibitions on Use. The Tenant shall not conduct within the Premises any fire, auction or bankruptcy sales or operate within the Premises a "wholesale" or "factory outlet" store, a cooperative store, a "second hand" store, a "surplus" store or a store commonly referred to as "discount house". The Tenant shall not advertise that it sells products or services at "discount", "cut-price", or "cut-rate" prices. The Tenant shall not permit any objectionable or unpleasant odors

to emanate from the Premises, nor place or permit any radio, television, loud-speaker or amplifier on the roof or outside the Premises or where the same can be seen or heard from outside the building or distribute leaflets or other advertising material in the Common Area; nor take any other action which in the exclusive judgment of Landlord would constitute a nuisance or would disturb or endanger other tenants of the Building or unreasonably interfere with their use of their respective premises, nor do anything which would tend to injure the reputation of the Building.

(c) Display Windows. The Tenant shall maintain all display windows in a neat, attractive condition, and shall keep all display windows, exterior electric signs in front of the Premises lighted from dusk to 10 p.m. every day, including Sundays and holidays.

(d) Advertising. Tenant shall include the address and identity of its business activities in the Premises in all advertisements made by the Tenant in which the address and identity of any similar local business activity of Tenant is mentioned.

(e) Permits. The Tenant shall procure, at its sole expense, any permits and licenses required for the transaction of business in the Premises and otherwise comply with all applicable laws, ordinances and governmental regulations. The Lease shall be contingent upon Tenant obtaining all permits, certificates, and licenses necessary for the occupancy of the Premises and operation of the business. Tenant shall be obligated to apply for all such permits and licenses within thirty (30) days after execution of the Lease.

## 6. ALTERATIONS.

(a) Prohibition. Tenant shall not make any alterations, additions or improvements (collectively, the "Alterations") in or to the Premises, or in or to the Building without the express prior written consent of Landlord; provided, however, that Landlord shall not be unreasonable in withholding consent to nonstructural Alterations.

(b) Indemnification. In addition to the indemnity set forth in Paragraph 12 of this Lease, Tenant hereby specifically agrees to indemnify and hold harmless Landlord from and against any and all liabilities, costs and expenses of every kind and description, including attorneys' fees, that may arise out of or in any manner be connected with any Alterations made by Tenant. Tenant shall pay the cost of all such Alterations and all costs associated with decorating the Premises that may be occasioned thereby. Upon completion of any such Alterations, Tenant shall furnish Landlord with receipted bills covering all labor and materials used, together with such documentation as is necessary to comply fully with the mechanics' lien law of the state in which the Premises are located.

Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanic's or other lien for such labor or material shall attach to or affect the reversion or other estate or interest of Landlord in and to the Premises.

(c) Compliance and Supervision of Alterations. All Alterations made by Tenant hereunder shall be installed in a good and workmanlike manner, using only materials of the same or higher quality as those installed in the Building. All Alterations shall comply with all requirements

of Landlord's insurance carriers and with all laws, rules, ordinances and regulations of any lawful authority. Tenant shall permit Landlord to supervise construction operations in connection with any such Alterations, if Landlord requests the right to do so (but Landlord shall have no obligation to make such requests, or having done so, to supervise construction). Landlord's supervision of construction shall be done solely for the benefit of Landlord and shall not alter Tenant's liability and responsibility under this Paragraph 6.

(d) Landlord's Property. All Alterations, including hardware, non-trade fixtures and wall and floor coverings, whether placed in or upon the Premises by Landlord or Tenant, shall become Landlord's property and shall remain with the Premises at the termination of this Lease, whether by lapse of time or otherwise, without compensation, allowance or credit to Tenant; provided however, that notwithstanding the foregoing, Landlord may request that any or all of said Alterations in or upon the Premises made by Tenant be removed by Tenant at the termination of this Lease. If Landlord requests such removal or if Tenant removes its trade fixtures, Tenant shall remove the same prior to the end of the Term and shall repair all damage to the Premises, the Building or the Property caused by such removal. Tenant shall not, however, be required to remove pipes and wires concealed in floors, walls or ceilings, provided that Tenant properly cuts and caps the same, and seals them off in a safe, lawful and workmanlike manner, in accordance with Landlord's reasonable requirements and all applicable building codes. If Tenant does not remove any Alterations when requested by Landlord to do so, Landlord may remove the same and repair all damage caused thereby, and Tenant shall pay to Landlord the cost of such removal and repair immediately upon demand therefor by Landlord, plus fifteen per cent (15%) of the cost of such removal to reimburse Landlord for its administrative expense. Tenant's obligation to observe or perform this covenant shall survive the expiration or termination of this Lease.

(e) Wiring. Landlord will direct electricians as to where and how telephone and computer wires are to be introduced. No boring or cutting for wires will be allowed without Landlord's consent. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to Landlord's approval.

## 7. MECHANICS' LIENS.

(a) If, because of any act or omission of Tenant, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against any portion of the Premises, Tenant, at its own cost and expense, shall cause the same to be discharged of record within ten (10) days of the filing thereof unless Tenant shall contest the validity of such lien by appropriate legal proceedings diligently conducted in good faith and without expense to Landlord and shall bond or insure Landlord against any such liens; and Tenant shall indemnify and save harmless Landlord against and from all costs, liabilities, suits, penalties, claims and demands, including attorneys' fees, on account thereof.

(b) If Tenant shall fail to cause such liens to be discharged of record within the aforesaid ten (10) day period or shall fail to satisfy such liens within ten (10) days after any judgment in favor of such lien-holders from which no further appeal might be taken, then Landlord shall have the right

to cause the same to be discharged. All amounts paid by Landlord to cause such liens to be discharged, plus interest on such amounts at the Default Rate shall constitute Other Charges payable by Tenant to Landlord.

8. MAINTENANCE AND REPAIR.

(a) Tenant's Maintenance. Tenant, at its sole cost and expense, shall maintain, replace and repair during the Term of this Lease the Premises and every part thereof and any and all appurtenances thereto, including, but not limited to, the doors, doorways, locks, emergency exit signs, lights, bulbs, fire extinguishers, window casement, plate glass windows and interior walls of the Premises; special light fixtures; kitchen fixtures; heating, ventilation, and associated duct work; private bathroom fixtures and any other type of special equipment, together with related plumbing or electrical services; and rugs, carpeting, wall coverings, and drapes within the Premises, whether installed by Tenant or by Landlord on behalf of Tenant, and whether or not such items will become Landlord's property upon expiration or termination of this Lease. Notwithstanding the provisions hereof, in the event that repairs required to be made by Tenant become immediately necessary to avoid possible injury or damage to persons or property, Landlord may, but shall not be obligated to, make repairs to such items at Tenant's expense, which shall constitute Other Charges payable by Tenant to Landlord. Within ten (10) days after Landlord renders a bill for the cost of said repairs, Tenant shall reimburse Landlord. Tenant shall obtain, at Tenant's expense, and shall maintain throughout the Lease Term and any extensions thereof, a service contract, with a contractor reasonably acceptable to Landlord, for the repair and maintenance of said HVAC systems, said maintenance contract to conform to the requirements under the warranty, if any, on said system. Landlord shall replace or repair any outside HVAC or air conditioning units in the event that such units fail to operate and such failure is not the result of failure to maintain such units by Tenant. Tenant shall secure Landlord's approval to access roof for maintenance, repair and installation of any apparatus.

(b) Landlord's Maintenance. Subject to Paragraph 8(a) above, Landlord shall keep, repair and maintain the Building (including the roof and structural members, the Common Areas, mechanical and electrical equipment, the exterior and architectural finish, and all items except those excepted elsewhere in this Lease) of which the Premises are a part, and the lawn, shrubs and other landscaping on the Property, all in good and tenantable condition during the Term of this Lease. Landlord shall, in addition, supply reasonable snow removal for the walkways of the Property during Normal Business Hours (as hereinafter defined). Tenant shall notify Landlord immediately when any repair to be made by Landlord is necessary. If any portion of the Building or the Premises is damaged through the fault or negligence of Tenant, its agents or employees, then Tenant shall promptly and properly repair the same at no cost to Landlord; provided, however, that Landlord may, at its option, make such repairs and Tenant shall, on demand, pay the cost thereof, together with interest at the Default Rate to Landlord as Other Charges which shall be considered additional rent. Tenant shall immediately give Landlord written notice of any defect or need for repairs, after which notice Landlord shall have reasonable opportunity to repair the same or cure such defect. For the purposes of making any repairs or performing any maintenance, Landlord may block, close or change any entrances, doors, corridors, elevators, or other facilities in the Building or in the Premises, and



may close, block or change sidewalks, driveways or parking areas of the Property. Landlord shall not be liable to Tenant, except as expressly provided in this Lease, for any damage or inconvenience and Tenant shall not be entitled to any abatement of rent by reason of any repairs, alterations or additions made by Landlord under this Lease

(c) Inspection. Tenant shall permit Landlord, its agents, employees and contractors, at any time in the event of an emergency, and otherwise at reasonable times, to take any and all measures, including inspections, repairs, alterations, additions and improvements to the Premises or to the Building, as may be necessary or desirable to safeguard, protect or preserve the Premises, the Building or Landlord's interests; to operate or improve the Building; to comply on behalf of Tenant with all laws, orders and requirements of governmental or other authority (if Tenant fails to do so); to examine the Premises to verify Tenant's compliance with all of the terms, covenants, obligations and conditions of this Lease; or to exercise any rights with respect to the Premises that Landlord may exercise in the event of default by Tenant.

## 9. COMMON AREAS.

(a) Grant. During the Term of this Lease, Landlord grants to Tenant, its employees, customers and invitees, a nonexclusive license to use, in common with all others to whom Landlord has granted or may hereafter grant a license to use, the common areas of the Property, including but not limited to, the sidewalks, halls, passages, exits, entrances, stairways, restrooms, parking areas [except as provided for in subparagraph (b) below], driveways and landscaped areas (collectively the "Common Areas") subject to reasonable rules and regulations respecting the Common Areas as Landlord may from time to time promulgate. The Common Areas shall not be obstructed by Tenant or used for any purpose other than for ingress to and egress from the Premises. The Common Areas are not for the use of the general public and Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence, in the judgment of Landlord, shall be prejudicial to the safety, character, reputation and interests of the Building and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom Tenant normally deals in the ordinary course of Tenant's business unless such persons are engaged in illegal activities. Neither Tenant nor its employees, customers or invitees shall go upon the roof or mechanical floors or into mechanical areas of the Building.

(b) Parking. Non-exclusive parking will be provided in the parking area of the Property. Landlord shall not be liable for any vehicle of Tenant or its employees that the Landlord shall have towed from the Premises when illegally parked. Landlord shall have no liability to Tenant for any damages or claims arising from the use of the parking area or roadways by Tenant, other tenants, or their customers, invitees or employees. Landlord may from time to time impose, including, but not limited to, the designation of specific areas in which cars owned by Tenant, its permitted concessionaires, officers, employees and agents must be parked. Landlord shall have the right to close the common area or any part thereof, for repairs on such days or during such hours as Landlord shall, at its sole discretion determine. **In addition, Landlord agrees to provide two (2) short term parking spaces in the North parking lot for Tenant's use. The location of such spots shall be entirely to the Landlord's sole discretion but in close proximity to the Premises.**

(c) Right to Change Common Areas. Landlord may do and perform such acts in and to the Common Areas as, Landlord, in its good business judgment, shall determine to be advisable. Landlord hereby reserves the right to make alterations, additions, deletions or changes to the Common Areas, including, but not limited to, changes in its size and configuration.

10. BUILDING SERVICES.

(a) Utilities Tenant shall pay for all water, gas, electric, heat, light, power, sewer charges, telephone service and all other services and utilities supplied to the Leased Premises, together with any taxes thereon. Tenant shall place all meters that directly service the Premises into tenant's name as soon as possible after the Lease Execution Date. If any such services are not separately metered to Tenant, Tenant shall pay a reasonable proportion, to be determined by Landlord, of all charges jointly metered with other premises. Tenant shall pay all electric charges for its exterior signs.

(b) Air-Conditioning and Heat. Landlord shall provide air conditioning and heat to the Building's Common Area for comfortable occupancy during all days the Tenant is open for business subject at all times, however, to restrictions placed upon Landlord by any duly constituted governmental agency and/or by any utility supplier.

(c) Interruption of Services. Tenant hereby acknowledges that any one or more of the utilities or building services specified in this Paragraph 10 may be interrupted or diminished temporarily by Landlord or other person until certain repairs, alterations or other improvements to the Premises or other parts of the Property can be made or by any event or cause which is beyond Landlord's reasonable control, including, without limitation, any ration or curtailment of utility services; that Landlord does not represent, warrant or guarantee to Tenant the continuous availability of such utilities or building services; and that any such interruption shall not be deemed or construed to be an interference with Tenant's right of possession, occupancy and use of the Premises, shall not render Landlord liable to Tenant for damages or entitle Tenant to any reduction of Base Rental, and shall not relieve Tenant from its obligation to pay Base Rental and to perform its other obligations under this Lease.

(d) Energy Curtailment. Landlord and Tenant specifically acknowledge that energy shortages in the region in which the Property is located may from time to time necessitate reduced or curtailed energy consumption on the Property. Tenant shall comply with all such rules and regulations as may be promulgated from time to time by any governmental authority with respect to energy consumption, and during such period of time as such governmental authority may so require, Tenant shall reduce or curtail operations in the Premises as shall be directed by Landlord or such governmental authority. Compliance with such rules and regulations and/or such reduction or curtailment of operation shall not constitute a breach of Landlord's covenant of quiet enjoyment or otherwise invalidate or affect this Lease, and Tenant shall not be entitled to any diminution or abatement in Base Rental during the periods of reduction or curtailment of operations.

11. ESTOPPEL CERTIFICATES. Within ten (10) days after written request by Landlord, Tenant shall execute, acknowledge and deliver to Landlord or to Landlord's mortgagee, prospective mortgagee, land lessor or prospective purchaser of the Property or any part thereof, an estoppel certificate, in form and substance substantially similar to that attached as Exhibit "E" and incorporated herein by reference. Tenant shall make such modifications to such estoppel certificate as may be necessary to make such certificate true and accurate, it being intended that any such statement delivered pursuant to this Paragraph 11 may be relied upon by any such mortgagee, prospective mortgagee, prospective purchaser, or land lessor of the Property. If Tenant fails to provide such estoppel certificate with ten (10) days after Landlord's request, Tenant shall be deemed to have approved the contents of any such certificate submitted to Tenant by Landlord and Landlord is hereby authorized to so certify on behalf of Tenant.

12. INDEMNIFICATION; WAIVER OF CLAIMS.

(a) Tenant shall protect, indemnify, and hold harmless Landlord, its agents, servants, employees, officers, directors and partners forever against and from (i) any penalty, damages, charges or costs imposed or resulting from any violation of any law, order or ordinance of any governmental agency, or by the use and occupancy of the Premises by Tenant, whether occasioned by the neglect of Tenant or those holding under Tenant; (ii) all claims, losses, costs, damages and expenses, including attorneys' fees, arising out of or from any accident or other occurrence on or about the Premises or the Property causing injury to any person or property, except caused by the negligent or intentional act or omission of Landlord or its servants, agents or employees; (iii) all claims, losses, costs, damages and expenses, including attorneys' fees, arising out of any failure of Tenant in any respect to comply with or perform all the requirements and provisions of this Lease or arising out of any use of the Premises or the Property by Tenant or any one claiming by, through or under Tenant.

Landlord shall protect, indemnify, and hold harmless Tenant, its agents, servants, employees, officers, directors and partners forever against and from (i) any penalty, damages, charges or costs imposed or resulting from any violation of any law, order or ordinance of any governmental agency, or by the use and occupancy of the Premises by Landlord or other tenants in the Building, whether occasioned by the neglect of Landlord or those holding under Landlord; (ii) all claims, losses, costs, damages and expenses, including attorneys' fees, arising out of or from any accident or other occurrence on or about the Premises or the Property causing injury to any person or property, except caused by the negligent or intentional act or omission of Tenant or its servants, agents or employees; (iii) all claims, losses, costs, damages and expenses, including attorneys' fees, arising out of any failure of Landlord in any respect to comply with or perform all the requirements and provisions of this Lease or arising out of any use of the Premises or the Property by Landlord or any one claiming by, through or under Landlord.

(b) Landlord shall not be liable for, and Tenant hereby waives all claims against Landlord, (i) for any and all damage or loss to fixtures, equipment or other property of Tenant and its servants, agents, employees, contractors, suppliers, invitees, patrons and guests, in, upon or about the Premises or the Property; or (ii) for injury or death to any person, occurring in, upon or about the Premises or the Property; resulting from any cause whatever (except caused by the negligent or

intentional act or omission of Landlord or its servants, agents or employees), including, but not limited to, water, snow, frost, ice, explosion, falling plaster, fire or gas, smoke or other fumes, nor by reason of the leaking, breaking, backing up or other malfunction of any lines, wires, pipes, tanks, boilers, lifts or any other appurtenances, regardless by whom installed or maintained (Tenant hereby expressly assuming all responsibility for the safety and security of the person and property of Tenant, and its servants, agents, employees, contractors, suppliers, invitees, patrons and guests, while in, upon or about the Premises). The occurrence of any event described in this Paragraph 12 shall not constitute a breach of Landlord's covenant of quiet enjoyment set forth in Paragraph 17.

13. INSURANCE.

(a) Tenant's Insurance. Tenant, at its sole cost and expense, shall carry during the entire Term of this Lease, and provide to Landlord a certificate of insurance prior to Possession, the following types of insurance:

(i) Commercial general liability insurance against injuries to persons occurring in, upon or about the Premises, with minimum coverage of One Million Dollars (\$1,000,000.00) per occurrence and One Million Dollars (\$1,000,000.00) aggregate coverage per one (1) accident or disaster, and One Million Dollars (\$1,000,000.00) for property damage;

(ii) Fire, extended coverage, vandalism and malicious mischief, and sprinkler damage and all-risk insurance coverage on all personal property, trade fixture, floor coverings, wall coverings, furnishings, furniture, and contents for their full insurable value on a replacement cost basis;

(iii) Workers' Compensation or similar insurance, if and to the extent required by law and in form and amounts required by law;

(iv) Such other insurance reasonably required by Landlord due to the nature of Tenant's use of the Premises.

(b) Landlord as Additional Insured. All such insurance required to be maintained by Tenant shall name Landlord as an additional insured and shall be written with a company or companies reasonably satisfactory to Landlord, having a policyholder rating of at least "A" and be assigned a financial size category of at least "Class XIV" as rated in the most recent edition of "Best's Key Rating Guide" for insurance companies, and authorized to engage in the business of insurance in the state in which the Premises are located. Tenant shall deliver to Landlord copies of such policies and customary insurance certificates evidencing such paid-up insurance. Such insurance shall further provide that the same may not be canceled, terminated or modified unless the insurer gives Landlord and Landlord's mortgagee(s) at least thirty (30) days prior written notice thereof.

(c) Landlord's Insurance. Landlord shall maintain in force, at all times during the Term of this Lease, a policy or policies of fire and casualty insurance to the extent of at least eighty percent (80%) of the insurable value of the Building.



(d) Increase in Premiums. If insurance premiums payable by Landlord are increased as a result of any breach of Tenant's obligations under this Lease or as a result of Tenant's use and occupancy of the Premises, Tenant shall pay to Landlord an amount equal to any increase in such insurance premiums.

14. WAIVER OF SUBROGATION. Neither Landlord nor Tenant shall be liable to the other for any business interruption or any loss or damage to property or in any manner growing out of or connected with Tenant's use and occupation of the Premises, the Building or the Property or the condition thereof, or of the adjoining property, whether or not caused by the negligence or other fault of Landlord or Tenant or of their respective agents, employees, subtenants, licensees or assignees; provided, however, that this release shall apply only to the extent that such business interruption or loss or damage is covered by insurance, regardless of whether such insurance is payable to or protects Landlord or Tenant or both. Nothing in this Paragraph 14 shall be construed to impose any other or greater liability upon either Landlord or Tenant than would have existed in the absence hereof. Because this Paragraph 14 will preclude the assignment of any claim mentioned in it by way of subrogation (or otherwise) to an insurance company (or any other person), each party to this Lease agrees immediately to give to each insurance company that has issued to it policies of fire and extended coverage insurance, written notice of the terms of the mutual waivers contained in this paragraph, and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages because of the mutual waivers contained in this Paragraph 14.

15. HOLDING OVER. If Tenant retains possession of the Premises or any part thereof after the termination of this Lease, Tenant shall, from that day forward, be a tenant from month to month and Tenant shall pay Landlord rent at two (2) times the monthly amount of Base Rental and Additional Rent in effect immediately prior to the termination of this Lease for the time the Tenant remains in possession. No acceptance of rent by, or other act or statement whatsoever on the part of Landlord or its agent or employee, in the absence of a writing signed by Landlord, shall be construed as an extension of or as a consent for further occupancy. Tenant shall indemnify Landlord for all damages, consequential as well as direct, sustained by reason of Tenant's retention of possession. The provisions of this Paragraph 15 do not exclude pursuit of Landlord's right of re-entry or any other right hereunder.

16. ASSIGNMENT AND SUBLEASE.

(a) Prohibition. Tenant shall not assign, convey, mortgage, pledge, encumber or otherwise transfer this Lease or any interest therein, sublet the Premises or any part thereof, or permit the use or occupancy of the Premises or any part thereof by anyone other than Tenant, without receiving Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. In the event of any assignment, subletting, transfer or occupancy by someone other than Tenant, whether or not expressly or impliedly approved by Landlord, Tenant shall, nevertheless, at all times, remain fully responsible and jointly and severally liable for the payment of the rent and for compliance with all other obligations imposed upon Tenant under the terms, provisions and covenants of this Lease. Any assignment or sublease shall contain a provision whereby the assignee

or subtenant agrees to comply with and be bound by all of the terms, covenants, conditions, provisions and agreements of this Lease to the extent applicable, and Tenant shall deliver to Landlord, promptly after execution, an executed copy of each assignment or sublease and an agreement of compliance by each assignee or subtenant. Any sublease shall also contain a provision that in the event of default by Tenant hereunder and a termination of this Lease by Landlord, such subtenant shall, at Landlord's option, attorn to Landlord as if Landlord were the lessor under the sublease.

(b) **INTENTIONALLY DELETED.**

(c) **Right to Collect Rents Directly.** Upon the occurrence of an "event of default" as set forth in Paragraph 21 hereof, if all or any part of the Premises is then assigned, sublet, transferred or occupied by someone other than Tenant, then, in addition to any other remedies provided in this Lease or provided by law, Landlord, at its option, may collect directly from the assignee, subtenant, transferee or occupant all rent becoming due to Tenant by reason of the assignment, sublease, transfer or occupancy. Any collection directly by Landlord from the assignee or subtenant shall not be construed to constitute a novation or a release of Tenant from the further performance of its obligations under this Lease.

(d) **Excess Rent.** If Tenant assigns this Lease or sublets all or a portion of the Premises for an amount in excess of the Base Rental (or the prorata share of Base Rental in the case of a sublease of a portion of the Premises), then Tenant shall pay to Landlord, as rent, one hundred percent (100%) of such excess received by Tenant.

17. **QUIET ENJOYMENT.** If Tenant shall pay the rents and other sums due to be paid by Tenant hereunder as and when the same become due and payable, and if Tenant shall keep, observe and perform all of the other terms, covenants and agreements of this Lease on Tenant's part to be kept, observed and performed, Tenant shall, at all times during the Term herein granted, peacefully and quietly have and enjoy possession of the Premises without any encumbrance or hindrance by, from or through Landlord, except for regulations imposed by any governmental or quasi-governmental agency on the occupancy of Tenant or the conduct of Tenant's business operations.

18. **COMPLIANCE WITH LAWS AND WITH RULES AND REGULATIONS.**

(a) **Laws.** Tenant, at its sole cost and expense, shall procure any permits and licenses required for the transaction of Tenant's business in the Premises. Tenant, at its sole cost and expense, shall promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of all state, federal, municipal and other agencies or bodies having jurisdiction relating to the use, condition and occupancy of the Premises, the Building and the Property at any time in force, applicable to the Premises or to Tenant's use thereof, except that Tenant shall not be under any obligation to comply with any law, ordinance, rule or regulation requiring any structural alteration of the Premises, unless such alteration is required because of a condition that has been created by, or at the instance of, Tenant, or is required by reason of a breach of any of Tenant's covenants and agreements under this Lease. Landlord shall not be

required to repair any injury or damage by fire or other cause, or to make any repairs or replacements of any panels, decoration, office fixtures, railing, ceiling, floor covering, partitions, or any other property installed in the Premises by Tenant.

(b) Rules and Regulations. Tenant shall comply with all rules and regulations for the Building, which current rules and regulations are attached hereto as Exhibit "F" and with such reasonable modifications thereof and additions thereto as Landlord may make hereafter, from time to time. Notwithstanding anything contained in this Lease, Landlord shall not be responsible nor liable to Tenant, its agents, representatives, employees, invitees or licensees, for the nonobservance by any other tenant of any rules and regulations.

19. FIRE AND CASUALTY.

(a) If the Premises or the Building or any substantial part of either is damaged or destroyed by fire or other casualty, cause or condition whatsoever, and such damage or destruction cannot be repaired within one hundred twenty (120) days, Landlord may terminate this Lease, by written notice to Tenant given within thirty (30) days after such damage. If the Premises are damaged or destroyed or access thereto or use thereof is affected by the damage, then Landlord's termination shall be effective as of the date of such damage; otherwise said termination shall be effective thirty (30) days after such notice.

(b) If the Common Areas in the Building are damaged or destroyed by fire or other casualty, cause or condition whatsoever, to such an extent as to substantially interfere with Tenant's use of the Premises or if the Premises or a substantial part thereof are made untenable, and such damage or destruction cannot be repaired within one hundred twenty (120) days, then Tenant may terminate this Lease by giving written notice to Landlord within thirty (30) days after such damage, said termination to be effective as of the date of such damage.

(c) In the event of a termination of the Lease under sub prior paragraphs (a) and (b), each party releases the other for any cause of action arising from said termination.

(d) Unless this Lease is terminated as herein above provided, Landlord shall proceed with due diligence to restore, repair and replace the Premises and the Building to the same condition as they were in as of the Commencement Date. Provided such damage or destruction was not caused or contributed to by an intentional act or negligence of Tenant, its agents, employees, invitees or those for whom Tenant is responsible, from and after the date of such damage to date of completion of said repairs, replacements and restorations, a just proportion of the rent shall abate according to the extent the full use and enjoyment of the Premises are rendered impossible by reason of such damage. Landlord shall be under no duty to restore any alterations, improvements or additions made by Tenant. In all cases, due allowance shall be given to Landlord for any reasonable delays caused by adjustment of insurance loss, strikes, labor difficulties or any cause beyond Landlord's control.

20. EMINENT DOMAIN.

(a) If all the Premises or a substantial part thereof shall be taken for any public or quasi-public use under any statute or by rights of eminent domain or by private purchase in lieu thereof, this Lease shall terminate as of the date of vesting of title. Landlord shall be entitled to receive the entire award paid for such taking or condemnation, Tenant hereby assigning to Landlord all Tenant's right, title and interest therein, if any. Nothing contained herein shall be deemed to give Landlord any interest in or to require Tenant to assign to Landlord any award made to Tenant for the taking of personal property or fixtures belonging to Tenant, for the interruption of or damage to Tenant's business or for Tenant's moving expenses but only if such award shall be in addition to the award for the Property and the Building (or portion thereof) containing the Premises.

(b) If fifty percent (50%) or more of the Building other than the Premises shall be condemned, taken or purchased in lieu thereof, then Landlord may terminate this Lease by notifying Tenant of such termination within sixty (60) days after the date of vesting of title. This Lease shall expire on the date specified in such notice of termination, which date shall be not less than sixty (60) days after the giving of such notice. The rent hereunder shall be apportioned as of such termination date.

(d) Any such taking, condemnation or temporary requisition which does not result in a termination of this Lease, as hereinbefore provided in this Paragraph 20, shall not be cause for any reduction or diminution of the rental payment hereunder.

## 21. DEFAULT.

(a) If (i) Tenant fails to pay when due any rent, or any other sums required to be paid hereunder by Tenant; or (ii) Tenant defaults in the performance or observance of any other agreement or condition on its part to be performed or observed; or (iii) Tenant files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent, or files any petition or answer seeking any arrangement, composition, liquidation or dissolution under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties, or of the Premises, or makes any general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due; or (iv) a court enters an order, judgment or decree approving a petition filed against Tenant seeking any arrangement, composition, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated or unstayed for an aggregate of sixty (60) days; or (v) Tenant fails to operate or closes its business upon the Premises, for reasons other than fire or other casualty or condemnation, for a period of fifteen (15) consecutive days; or (vi) Tenant abandons or vacates the Premises; then in any such event and at any time thereafter, Landlord may, without notice to Tenant, and in addition to and not in lieu of any other rights or remedies available to Landlord at law or in equity, exercise any one or more of the following rights:



(b) Landlord may (A) terminate this Lease and the tenancy created hereby by giving notice of such election to Tenant, and (B) reenter the Premises, by summary proceedings or otherwise, remove Tenant and all other persons and property from the Premises and store such property in a public warehouse or elsewhere at the sole cost and expense of and for the account of Tenant without Landlord being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby; or

(c) Landlord may reenter and take possession of the Premises, without terminating this Lease and without relieving Tenant of its obligations under this Lease, and divide or subdivide the Premises in any manner Landlord may desire and lease or let the Premises or portions thereof, alone or together with other premises, for such term or terms (which may be greater or less than the balance of the remaining portion 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 discretion, may determine.

(d) If this Lease is terminated by Landlord pursuant to this Paragraph 21, Tenant nevertheless shall remain liable for any Base Rental, Additional Rental and Other Charges required to be paid hereunder and damages that may be due or sustained prior to such termination, and for all reasonable costs, fees and expenses incurred by Landlord in pursuit of its remedies hereunder, including attorneys', brokers' and other professional fees (all such rents, damages, costs, fees and expenses being referred to herein collectively as "Termination Damages"). Termination Damages shall be due and payable immediately upon demand by Landlord following any termination of this Lease pursuant to this Paragraph 21.

(e) If Landlord reenters and takes possession of the Premises pursuant to this Paragraph 21, without terminating this Lease, and re-lets the Premises or any part thereof (which Landlord shall have no obligation to do), the net rentals from such letting shall be applied first to the costs, fees and expenses incurred by Landlord in pursuit of its remedies hereunder, including attorneys', brokers' and other professional fees, in renting the Premises or part thereof to others from time to time (including the cost and expense of making such improvements to the Premises as may be necessary, in Landlord's sole discretion, to enable Landlord to re-let same). The balance, if any, shall be applied by Landlord from time to time on account of the rent and other payments due from Tenant hereunder, with the right reserved to Landlord to bring such actions or proceedings for the recovery of any deficits remaining unpaid as Landlord may deem favorable from time to time without being obligated to await the end of the Term for the final determination of Tenant's account. Landlord shall not be liable for, nor shall Tenant's obligations be diminished by reason of, any failure by Landlord to re-let the Premises or any failure of Landlord to collect any rent due upon such re-letting.

(f) Upon the termination of this Lease or of Tenant's right to possession of the Premises by lapse of time or earlier termination as herein provided, Tenant shall remove its property from the Premises. Any such property of Tenant not removed from the Premises by Tenant at the end of the term or of Tenant's right to possession of the Premises, however

terminated, whichever occurs earlier, shall be conclusively deemed to have been forever abandoned by Tenant and either may be retained by Landlord as its property or may be disposed of in such manner as Landlord may see fit.

(g) If Tenant at any time fails to make any payment or perform any other act on its part to be made or performed under this Lease, Landlord may, but shall not be obligated to, and without waiving or releasing Tenant from any obligation under this Lease, make such payment or perform such other act to the extent Landlord may deem desirable, and in connection therewith to pay expenses and employ counsel. Tenant shall pay upon demand all of Landlord's costs, charges and expenses, including the fees of counsel, agents and others retained by Landlord, incurred in enforcing Tenant's obligations hereunder or incurred by Landlord in any litigation, negotiations or transactions in which Tenant causes Landlord, without Landlord's fault, to become involved or concerned, which amount shall be deemed to be rent due and payable by Tenant, upon demand by Landlord, and Landlord shall have the same rights and remedies for the nonpayment thereof, as in the case of default in the payment of rent.

(h) All rights and remedies of Landlord herein enumerated shall be cumulative, and none shall exclude any other right or remedy allowed by law. In addition to the other remedies in this Lease provided, Landlord shall be entitled to the restraint by injunction of the violation or attempted violation of any of the covenants, agreements or conditions of this Lease.

**THE TENANT HEREBY WAIVES ANY RIGHT TO NOTICE OF ANY DEFAULT BY THE LANDLORD INCLUDING ANY NOTICES REQUIRED BY THE ILLINOIS FORCIBLE ENTRY AND DETAINER ACR, 735 ILCS 5/9-101 ET SEQ. THE LANDLORD MAY GIVE NOTICE TO THE TENANT AS AN ACCOMMODATION; HOWEVER, ANY SUCH NOTICE SHALL NOT CONSTITUTE A WAIVER OF THE LANDLORD'S RIGHT TO ENFORCE THE TENANT'S WAIVER OF NOTICE.**

22. WAIVER OF DEFAULT OR REMEDY. No waiver of any covenant or condition or of the breach of any covenant or condition of this Lease shall be taken to constitute a waiver of any subsequent breach of such covenant or condition nor to justify or authorize the nonobservance on any other occasion of the same or of any other covenant or condition hereof, nor shall the acceptance of rent by Landlord at any time when Tenant is in default under any covenant or condition hereof be construed as a waiver of such default or of Landlord's right to terminate this Lease on account of such default, nor shall any waiver or indulgence granted by Landlord to Tenant be taken as an estoppel against Landlord, it being expressly understood that if at any time Tenant shall be in default in any of its covenants or conditions hereunder an acceptance by Landlord of rental during the continuance of such default or the failure on the part of Landlord promptly to avail itself of such rights or remedies as Landlord may have, shall not be construed as a waiver of such default, but Landlord may at any time thereafter, if such default continues, terminate this Lease or assert any other rights or remedies available to it on account of such default in the manner hereinbefore provided.

23. FORCE MAJEURE. If Landlord or Tenant shall be delayed, hindered in or prevented from the performance of any act required hereunder (other than the payment of rent and other charges payable by Tenant) by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, riots, insurrection, the act, failure to act or default of the other party, war or any other reason beyond the reasonable control of the party who is seeking additional time for the performance of such act, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a reasonable period, in no event to exceed a period equivalent to the period of such delay. No such interruption of any service to be provided by Landlord shall ever be deemed to be an eviction, actual or constructive, or disturbance of Tenant's use and possession of the Premises, the Building or the Property.

24. SUBORDINATION OF LEASE.

(a) This Lease shall be subject and subordinate to any first mortgage, first deed of trust or land lease now existing upon or that may be hereafter placed upon the Premises and the Property and to all advances made or to be made thereon and all renewals, modifications, consolidations, replacements or extensions thereof and the lien of any such first mortgage, first deed of trust or land lease shall be superior to all rights hereby or hereunder vested in Tenant, to the full extent of all sums secured thereby, and the Tenant's rights hereunder shall not be disturbed as long as it is not in default. In confirmation of such subordination, Tenant shall, on request of Landlord or the holder of any such mortgages, deed(s) of trust and land leases, execute and deliver to Landlord within ten (10) days any instrument of subordination, non-disturbance and attornment that Landlord or such holder may reasonably request.

(b) If the interest of Landlord under this Lease shall be transferred by reason of foreclosure, deed in lieu of foreclosure, or other proceedings for enforcement of any first mortgage or deed of trust on the Premises, Tenant shall be bound to the transferee (the "Purchaser") under the terms, covenants and conditions of this Lease for the balance of the Term remaining, and any extensions or renewals, with the same force and effect as if the Purchaser were the landlord under this Lease, and at the option of Purchaser, Tenant shall attorn to the Purchaser (including the mortgagee under any such mortgage, if it be the Purchaser), as its landlord, the attornment to be effective and self-operative without the execution of any further instruments upon the Purchaser succeeding to the interest of Landlord under this Lease. The respective rights and obligations of Tenant and the Purchaser upon the attornment, to the extent of the then remaining balance of the Term of this Lease, and any extensions and renewals, shall be and are the same as those set forth in this Lease.

25. NOTICES AND CONSENTS. All notices contemplated by Illinois Forcible Entry and Detainer Law shall be given in accordance with such law. All other notices, demands, requests, consents and approvals that may or are required to be given by either party to the other shall be in writing and shall be served when sent by United States certified or registered mail, postage prepaid, or by overnight courier or personal delivery by designated agent at premise or other known address associated with such (a) if for Tenant, addressed to Tenant at the Building, or at such other place as Tenant may from time to time designate by notice to Landlord; or (b) if for Landlord, addressed to Shodeen Group, LLC, 77 North First Street, Geneva, Illinois 60134, or at such other place as Landlord may from time to time designate by notice to Tenant. All consents and approvals provided for herein must be in writing to be valid. All such other notices shall be deemed to have been given if addressed and mailed as above provided and shall be effective on the date two (2) days after deposit in the United States mail or one (1) day after deposit with an overnight courier, or at the time of delivery if personally served.

26. SECURITY DEPOSIT AND PRE PAID BASE RENT.

(a) Tenant has deposited with Landlord the sum of Four Thousand Nine Hundred Ninety Two and 00/100 Dollars (\$4,992.00) as security for the full and faithful performance of every provision of this Lease to be performed by Tenant. The security deposit is payable upon the Lease Execution Date. If Tenant defaults with respect to any provision of this Lease, including, but not limited to, the provisions relating to the payment of rent, Landlord may use, apply or retain all or any part of this security deposit for the payment of any rent or any other sum in default or for the payment of any other amount that Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss, cost or damage that Landlord may suffer by reason of Tenant's default. If any portion of said deposit is so used or applied, Tenant shall, within five (5) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the security deposit to its original amount and Tenant's failure to do so shall be a default under this Lease. Landlord shall not, unless otherwise

required by law, be required to keep this security deposit separate from Landlord's general funds, nor pay interest to Tenant. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the security deposit or any balance thereof shall be returned to Tenant (or, at Landlord's option, to the last transferee of Tenant's interest hereunder) within sixty (60) days at the expiration of the Term and upon Tenant's vacation of the Premises; provided, however, that Landlord shall be entitled to deduct from the security deposit any past due rent or other payments due to Landlord, including but not limited to estimated payments for common area maintenance, real estate taxes and insurance premiums. In the event of bankruptcy or other debtor-creditor proceedings against Tenant, such security deposit shall be deemed to be applied first to the payment of rent and other charges due Landlord for all periods prior to filing of such proceedings.

(b) Landlord may deliver the security deposit to the purchaser of Landlord's interest in the Premises in the event that such interest be sold and thereupon Landlord shall be discharged from any further liability with respect to such deposit, and this provision shall also apply to any subsequent transferees of Landlord

27. MISCELLANEOUS TAXES. Tenant shall pay, prior to delinquency, all taxes assessed against or levied upon its occupancy of the Premises, or upon the fixtures, furnishings, equipment and all other personal property of Tenant located in the Premises, if nonpayment thereof shall give rise to a lien on the Premises, and when possible Tenant shall cause said fixtures, furnishings, equipment and other personal property to be assessed and billed separately from the property of Landlord. In the event any or all of Tenant's fixtures, furnishing, equipment and other personal property, or upon Tenant's occupancy of the Premises, shall be assessed and taxed with the property of Landlord, Tenant shall pay to Landlord its share of such taxes within ten (10) days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's fixtures, furnishings, equipment or personal property.

28. BROKERAGE COMMISSION. Except for Shodeen Group, LLC, Landlord and Tenant represent and warrant each to the other that each has dealt with no other broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction. Tenant agrees to indemnify and hold Landlord harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction. The provisions of this Paragraph 28 shall survive the termination of this Lease.

29. HAZARDOUS DEVICES AND CONTAMINANTS.

(a) Prohibition. Tenant and its agents, employees, contractors and invitees shall not use, store, release, generate or depose of or permit to be used, stored, released, generated or disposed of any Contaminants (as hereinafter defined) on or in the Premises.

(b) Indemnification. Tenant shall indemnify and hold harmless Landlord, its agents, servants, employees, officers and directors forever from and against any and all liability, claims, demands and causes of action, including, but not limited to, any and all liability, claims, demands and causes of action by any governmental authority, property owner or any other third person and any and all expenses, including attorneys' fees [including, but not limited to, attorneys' fees to enforce Tenant's obligation of indemnification under this Paragraph 29 (b)], relating to any environmental liability resulting from (i) any Release (as hereinafter defined) of any Contaminant at the Premises or emanating from the Premises to adjacent properties or the surrounding environment during the Term of this Lease; (ii) during the Term of this Lease, any generation, transport, storage, disposal, treatment or other handling



of any Contaminant at the Premises, including, but not limited to, any and all off-site transport, storage, disposal, treatment or other handling of any Contaminant generated, produced, used and/or originating in whole or in part from the Premises; and (iii) any activities at the Premises during the Term of this Lease that in any way might be alleged to fail to comply with any Requirements of Law.

Landlord shall indemnify and hold harmless Tenant, its agents, servants, employees, officers and directors forever from and against any and all liability, claims, demands and causes of action, including, but not limited to, any and all liability, claims, demands and causes of action by any governmental authority, property owner or any other third person and any and all expenses, including attorneys' fees [including, but not limited to, attorneys' fees to enforce Landlord's obligation of indemnification under this Paragraph 29 (b)], relating to any environmental liability resulting from (i) any Release (as hereinafter defined) of any Contaminant at the Premises or emanating from the Premises to adjacent properties or the surrounding environment during the Term of this Lease; (ii) during the Term of this Lease, any generation, transport, storage, disposal, treatment or other handling of any Contaminant at the Premises, including, but not limited to, any and all off-site transport, storage, disposal, treatment or other handling of any Contaminant generated, produced, used and/or originating in whole or in part from the Premises; and (iii) any activities at the Premises during the Term of this Lease that in any way might be alleged to fail to comply with any Requirements of Law.

(c) Definitions.

(i) "Contaminant" shall mean any substance or waste containing hazardous substances, pollutants, and contaminants as those terms are defined in the federal Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. and any substance similarly defined or identified in any other federal, provincial or state laws, rules or regulations governing the manufacture, import, use, handling, storage, processing, release or disposal of substances or wastes deemed hazardous, toxic, dangerous or injurious to public health or to the environment. This definition includes friable asbestos and petroleum or petroleum-based products.

(ii) "Requirements of Law" shall mean any federal, state or local law, rule, regulation, permit, agreement, order or other binding determination of any governmental authority relating to the environment, health or safety.

(iii) "Release" shall have the same meaning as in the federal Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601, et seq.

30. SIGNS; STORE FRONTS. Tenant shall, at its sole cost and expense, have the right to install standard City of St. Charles approved signage that conform to the Landlord's specifications. Tenant shall, at its sole cost and expense, have the right to display a Grand Opening sign and other promotional banners from time to time. All external signs and banners must be approved in writing by the Landlord. Tenant may not erect or install any signage, of any nature or design, without Landlord's prior written consent, which consent may be given or withheld in Landlord's sole discretion. Tenant may not, under any circumstances, (a) place any signage on the building roof, canopy roofs extending over the building roof, penthouse walls or so as to project above the parapet, canopy or top of the wall upon which it is mounted or place any signage at any angle to the building; provided, however, the immediately foregoing sentence shall not apply any sign located under a sidewalk canopy if such sign is at least eight (8) feet above the sidewalk; (b) paint any signs on the surface of the Leased Premises or any other surfaces of the Shopping Center; (c) install any flashing, moving or audible signs; (d) install any signs employing exposed raceways, neon tubes, ballast boxes or transformers; or (e) install any paper or cardboard signs, temporary signs,

stickers or decals, whether in the windows of the interior or on the exterior of the Leased Premises (provided, however, the foregoing shall not prohibit the placement at the entrance of the Leased Premises of a small sticker or decal, indicating hours of business, emergency telephone numbers, acceptance of credit cards and other similar bits of information). At no time may any signs or other advertising materials visible from outside of the Leased Premises occupy or obstruct more than twenty percent (20%) of the total window area of the Leased Premises. Tenant may not install any exterior sign that identifies leased departments and/or concessionaires operating under the Tenant's business or trade name, nor identify specific brands or products for sale or services offered within the Leased Premises, unless such identification is used as part of Tenant's trade name. Tenant shall, at its expense, maintain its signs in good condition and repair. Landlord shall have the right to remove any unauthorized signs and to charge Tenant, as additional Rent under this Lease, for the cost of such removal.

The Tenant agrees to have erected and/or installed and fully operative on or before the Commencement Date of this lease all signs in accordance with landlord's sign criteria. The Tenant, upon vacation of the Premises, or the removal or alteration of its sign for any reason, shall be responsible for the repair, painting, and/or replacement of the building fascia surface where signs are attached.

The Tenant shall be responsible for having signs which comply with all applicable laws and apply for all local sign permits required within local ordinances.

If any Tenant sign is left on the leased Premises for more than thirty (30) days after the date on which Tenant vacates the Leased Premises, Landlord may remove and dispose of said signage at Tenant's expense.

31. LOCKS. No additional locks or similar devices shall be attached to any door or window without Landlord's prior written consent. Except for those keys provided by Landlord, no keys for any door shall be made. If more than two keys for one lock are desired, Landlord will provide the same upon payment by Tenant. All keys must be returned to Landlord at the expiration or Termination of this Lease. Tenant shall see that the doors and windows, if operable, of the Premises are closed and securely locked before leaving the Building.

32. PLUMBING. Tenant must observe strict care and caution that all water faucets and water apparatus are shut off before Tenant or its employees leave the Building to prevent waste or damage. Plumbing fixtures and appliances shall be used only for purposes for which constructed, and no sweepings, rubbish, rags or other unsuitable material shall be thrown or placed therein. Damage resulting to any such fixtures or appliances from misuse by Tenant shall be paid by Tenant and Landlord shall not in any case be responsible therefore.

33. REPORTS BY TENANT. Intentionally Deleted

34. CERTAIN RIGHTS RESERVED TO LANDLORD. Landlord reserves the following rights:

(a) To name the Building and to change the name or street address of the Building;

(b) To designate all sources furnishing sign painting and lettering, ice, drinking water, towels, toilet supplies, shoe shining, vending machines, mobile vending service, catering, and like services used on the Premises or in the Building;

(c) On reasonable prior notice to Tenant, to exhibit the Premises to prospective tenants during the last twelve (12) months of the Term, to install leasing signs identifying the Premises as available within the Premises

and/or about the Property, and to exhibit the Premises to any prospective purchaser, mortgagee, or assignee of any mortgage on the Property and to others having a legitimate interest at any time during the Term; and

(d) To install vending machines of all kinds in the Property, including, without limitation, and to provide mobile vending service therefore, and to receive all of the revenue derived there from; provided, however, that no vending machines shall be installed by Landlord nor shall any mobile vending service be provided therefore, unless Tenant so requests.

35. MISCELLANEOUS.

(a) No receipt of money by Landlord from Tenant alter the termination of this Lease or after the service of any notice or after the commencement of any suit, or after final judgment for possession of the Premises shall reinstate, continue or extend the Term of this Lease or affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required.

(b) The term "Landlord" as used in this Lease, so far as covenants or agreements on the part of Landlord are concerned, shall be limited to mean and include only the owner (or ground lessor, as the case may be) for the time being of the Premises. If the Premises or the underlying lease, if any, be sold or transferred, the seller thereof shall be automatically and entirely released of all covenants and obligations under this Lease from and after the date of conveyance or transfer, provided the purchaser on such sale has assumed and agreed to carry out all covenants and obligations contained in this Lease to be performed on the part of Landlord hereunder, it being hereby agreed that the covenants and obligations, contained in this Lease to be performed on the part of Landlord, hereunder it being hereby agreed that the covenants and obligations contained in this Lease shall be binding under Landlord, its successors and assigns, only during their respective successive period of ownership.

(c) It is understood that Landlord may occupy portions of the Building in the conduct of Landlord's business. In such event, all references herein to other tenants of the Building shall be deemed to include Landlord as occupant.

(d) All of the covenants of Tenant hereunder shall be deemed and construed to be "conditions" as well as "covenants" as though the words specifically expressing or implying covenants and conditions were used in each separate instance.

(e) In the event of variation or discrepancy among counterparts, Landlord's original copy of this Lease shall control.

(f) This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided that this provision shall in no manner enlarge Tenant's rights of assignment, which right of assignment has been restricted under the foregoing provisions of this Lease.

(g) Landlord represents that to the best of its knowledge Landlord has received no notice of violation of the Americans with Disabilities Act from any governmental body having jurisdiction for such matters.

36. RELATIONSHIP OF PARTIES. Any intention to create a joint venture, partnership or principal and agent relationship between the parties hereto is hereby expressly disclaimed. This Lease shall create the relationship of landlord and tenant between Landlord and Tenant.

37. GENDER AND NUMBER. Whenever words are used herein in any gender, they shall be construed as though they were used in the gender appropriate to the context and the circumstances, and whenever words are used herein in the singular or plural form, they shall be construed as though they were used in the form appropriate to the context and the circumstances.

38. TOPIC HEADINGS. Headings and captions in this Lease are inserted for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor constitute any part of this Lease and are not to be considered in the construction of this Lease.

39. COUNTERPARTS. Several copies of this Lease may be executed by all of the parties. All executed copies constitute one and the same Lease, binding upon all parties.

40. ENTIRE AGREEMENT. This Lease contains the entire understanding between the parties and supersedes any prior understanding or agreements between them respecting the subject matter. No representations, arrangement, or understandings except those specifically expressed herein, are or shall be binding upon the parties. No changes, alterations, modifications, additions or qualifications to the terms of this Lease shall be made or be binding unless made in writing and signed by each of the parties.

41. RECORDING. The parties agree that this Lease shall not be recorded.

42. NO OFFER. The submission of this Lease for examination does not constitute an offer to enter into a lease, and this Lease shall become effective only upon execution and delivery hereof by Landlord and Tenant.

43. RELOCATION OF PREMISES. Landlord may, at any time after execution of this Lease, change the location of the Leased Premises to another area of the Shopping Center (the "New Premises"), provided that the New Premises are similar in area to the Leased Premises and suitable, in the reasonable opinion of Landlord, for the conduct of Tenant's business. If Landlord exercised the relocation right granted under this Paragraph 43 at any time after the Possession Date, Landlord shall reimburse Tenant for those reasonable and documented moving expenses of Tenant which are directly incident to such substitution, and Landlord shall also pay the cost incurred in order to improve the New Premises so that the New Premises are substantially similar to the Leased Premises. Landlord shall give Tenant no less than thirty (30) days' prior written notice of Landlord's exercise of its relocation right under this Paragraph 43. Tenant shall cooperate with Landlord, in all reasonable respects, so as to facilitate Tenant's relocation to the New Premises. If Tenant fails to cooperate with Landlord, Landlord shall be absolutely relieved of any and all responsibilities or any and all damages or injury to Tenant, its agents or employees, or to the property or business of Tenant during such move.

44. WAIVER OF TRIAL BY JURY. To the full extent permitted by law, Landlord and Tenant hereby waive all right to trial by jury in any claim, action, proceeding or counterclaim by either Landlord or Tenant against each other and any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, or Tenant's use and occupancy of the Leased Premises and/or any emergency or statutory remedy.

45. GOVERNING LAW; INVALIDITY OF ANY PROVISIONS. This Lease shall be subject to and governed by the laws of the state in which the Premises are located. If any term or provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the other terms of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is

held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

46. EXCULPATION. This Lease is executed by Shodeen Management Company, not individually, but solely on behalf of, and as agent for State Bank of Geneva U/T.A dated August 30, 2002, known as Trust 905 and in consideration for entering into this Lease, Tenant hereby waives any rights to bring a cause of action against Shodeen Management Company (except for any cause of action based upon lack of authority or fraud), and all persons dealing with Landlord must look solely to the Property for the enforcement of any claim against Landlord, and the obligations hereunder are not binding upon, nor shall resort be had to the private property of any of, the trustees, officers, directors, employees or agents of Landlord.

47. TIME OF THE ESSENCE. Time is of the essence of this Lease. If the time for performance of any obligation hereunder shall fall on a Saturday, Sunday or holiday (national or State of Illinois) such that the action contemplated herein cannot be performed, the time for performance shall be extended to the next such succeeding day where performance is possible.

48. JOINT PARTICIPATION. The parties hereto participated jointly in the negotiation and preparation of this Lease and each party has obtained the advice of legal counsel to review and comment upon the terms and conditions contained herein. Accordingly, it is agreed that no rule of construction shall apply against or in favor of any party. This Lease shall be construed as if it was jointly prepared by the parties and any uncertainty or ambiguity shall not be interpreted against one party and in favor of the other.

49. SEVERABILITY. If any provision of this Lease shall be determined void or invalid by a court of competent jurisdiction, then the remainder of this Lease shall not be affected thereby and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

50. FURTHER ASSURANCES. Landlord and Tenant agree to execute all documents and instruments reasonably required in order to consummate the leasing and occupancy of the Premises.

51. CORPORATE AUTHORITY. Each individual signing this Lease represents and warrants that he has the requisite authority to sign on behalf of the company for whom he is executing this Lease and to bind such company to this Lease.

(SIGNATURES ON THE FOLLOWING PAGE)



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

LANDLORD:

SHODEEN GROUP, LLC, a Delaware LLC, as agent for Fox Island  
Limited Partnership

Date: 1/3/18

By:  \_\_\_\_\_  
Title: President

TENANT:

Kava Diem, LLC

Date: \_\_\_\_\_

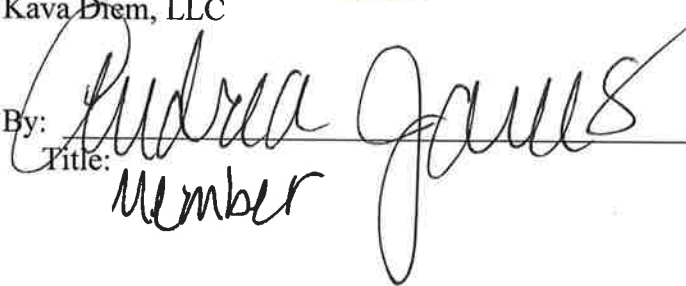
By:  \_\_\_\_\_  
Title: member

EXHIBIT "A"

FLOOR PLAN

EXHIBIT "B"

LEGAL DESCRIPTION

1 W. Illinois Street, St. Charles, IL

Tax Id# 09-34-12-001 & 09-34-129-004

EXHIBIT "C"

GROSS RENT COMMENCEMENT DATE AGREEMENT

THIS GROSS RENT COMMENCEMENT DATE AGREEMENT ("Agreement") dated January 3, 2018 is between SHODEEN GROUP, LLC, a Delaware LLC, as agent for Fox Island Limited Partnership (the "Landlord"), and Kava Diem, LLC (the "Tenant") whose address is 1 W. Illinois Street, Suite 170 and Suite 180, St. Charles, Illinois.

W I T N E S S E T H:

A. Landlord and Tenant executed a certain Lease dated January 3, 2018 (the "Lease").

B. The Lease provides that the Gross Rent will commence ninety (90) days after the expiration of the Build Out Period as defined in the Lease;

C. Landlord and Tenant now desire to set forth in writing the actual expiration of the Build Out Period and the actual Gross Rent Commencement Date of the Lease.

NOW THEREFORE in consideration of the mutual covenants and promises contained herein and other valuable consideration, the parties agree that the Build Out Period expired on \_\_\_\_\_, \_\_\_\_\_ and that the Gross Rent will commence on \_\_\_\_\_, \_\_\_\_\_ and the Lease shall terminate on \_\_\_\_\_, \_\_\_\_\_.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed on the day and year first above written.

LANDLORD:

SHODEEN GROUP, LLC, a Delaware LLC, as agent for Fox Island Limited Partnership

By: \_\_\_\_\_  
Title: President

TENANT:

Kava Diem, LLC

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

EXHIBIT "D"

LANDLORD IMPROVEMENTS

Tenant shall take the Premises "as-is".

## EXHIBIT "F"

### RULES AND REGULATIONS

1. Any sign, lettering, picture, notice or advertisement installed on or in any part of the Premises and visible from the exterior of the Building, or visible from the exterior of the Premises, shall be installed at Tenant's sole cost and expense and in such manner, character and style as Landlord may approve in writing. Any approved door or window lettering must not exceed 2" in height and the sign may only indicate store name, hours, phone number and approved credit cards. In the event of a violation of the foregoing by Tenant, Landlord may remove the same without any liability and may charge to Tenant the expense incurred by such removal.
2. No awning or other projection shall be attached to the outside walls of the Building. No curtains, blinds, shades or screens shall be visible from the exterior of the Building, or hung in, or used in connection with any window or door of the Premises without the prior written consent of Landlord. Such quality, type, design and color of window treatments shall be approved by Landlord and shall be attached in a manner approved by Landlord.
3. Tenant shall not place objects against glass partitions, doors or windows of the exterior of the Building and shall promptly remove any such objects upon notice from Landlord.
4. Tenant shall not make excessive noises, cause disturbances or vibrations or use or operate any electrical or mechanical devices that emit excessive sound or other waves or disturbances or create obnoxious odors, any of which may be offensive to other tenants and occupants of the Building, or that would interfere with the operation of any device, equipment, radio, television broadcasting or reception from or within the Building or elsewhere and shall not place or install any projections, antennas, aerials or similar devices inside or outside of the Premises or on the Building.
5. Tenant assumes full responsibility for protecting its space from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed and secured after normal business hours.
6. No person or contractor not employed by Landlord shall be used to perform janitorial work, window washing, cleaning, maintenance, repair or similar work in the Premises without the written consent of Landlord, which consent shall not be unreasonably withheld.
7. Landlord shall have the right to prohibit any advertising by Tenant which in Landlord's reasonable opinion tends to impair the reputation of the Building or its desirability for office use, and upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising.
8. Any carpeting cemented down by Tenant shall be installed with a releasable adhesive. In the event of a violation of the foregoing by Tenant, Landlord may charge the expense incurred by such removal to Tenant.
9. No electric circuits for any purpose shall be brought into the Premises without Landlord's written permission specifying the manner in which same may be done.
10. No bicycle or other vehicle, and no dog or other animal other than service animals for persons with disabilities, shall be allowed in offices, halls, corridors, or elsewhere in the Building.



11. Tenant shall not throw anything out of the door or windows, or down any passageways or elevator shafts.

12. All loading, unloading, receiving or delivering of goods, supplies or disposal of garbage or refuse shall be made only through entryway and freight elevators provided for such purposes and indicated by Landlord. Tenant shall be responsible for any damage to the Building or the property of its employees or others and injuries sustained by any person whomsoever resulting from the use or moving of such articles in or out of the Premises, and shall make all repairs and improvements required by Landlord or governmental authorities in connection with the use or moving of such articles.

13. All garbage and refuse shall be kept in the kind of containers specified by Landlord, and shall be placed outside of the Leased Premises prepared for collection in the manner and at the times and places specified by Landlord. If Landlord shall provide or designate a service for picking up refuse and garbage, Tenant shall use same at Tenant's cost. Tenant shall pay the costs of removal of any of Tenant's refuse or rubbish. Tenant shall not permit any dumping, disposing, incineration or reduction of garbage, except as set forth in these Rules and Regulations. Landlord reserves the right, at any time, to charge for garbage removal as part of CAM costs or direct bill tenants based on their size, sales per square feet, use of space and seasonal sales.

14. All safes, equipment or other heavy articles shall be carried in or out of the Premises only at such time and in such manner as shall be prescribed in writing by Landlord. Any such safe, equipment or other heavy article shall only be used by Tenant in a manner which will not interfere with or cause damage to the Premises or the Building in which they are located, or to the other tenants or occupants of the Building. Tenant shall be responsible for any damage to the Building or the property of its employees or others and injuries sustained by any person whomsoever resulting from the use or moving of such articles in or out of the Premises, and shall make all repairs and improvements required by Landlord or governmental authorities in connection with the use or moving of such articles.

15. Vending machines shall not be installed without permission of the Landlord except for food and soft drink vending machines which are for the sole and exclusive use of Tenant's employees.

16. Wherever in these Building Rules and Regulations the word "Tenant" occurs, it is understood and agreed that it shall mean Tenant's servants, employees, agents, customers, invitees, successors and assigns. Wherever the word "Landlord" occurs, it is understood and agreed that it shall mean Landlord's servants, employees, agents, customers, invitees, successors and assigns.

17. Landlord shall have the right upon notice to Tenant at least twenty-four (24) hours in advance, which notice may be oral, telephonic or otherwise, to enter upon the Premises at all reasonable hours for the purpose of inspecting the same.

18. Tenant shall, when using the common parking facilities, if any, in and around the building, observe and obey all signs regarding fire lanes and no parking zones, and when parking always park between the designated lines. All vehicles shall be parked at the sole risk of the owner, and Landlord assumes no responsibility for any damage to or loss of vehicle. No vehicles shall be parked overnight.

19. At all times Landlord's property manager shall be in charge of the Building and (a) persons may enter the Building only in accordance with Landlord's regulations, (b) persons entering or departing from the Building may be questioned regarding their business in the Building, and the right is reserved to require the use of an identification card or other access device and the registering of such persons as to the hour of entry and departure, nature of visits, and other information deemed necessary for the protection of the Building, and (c) all entries into and departures from the Building will take place through such one or more entrances as Landlord shall from time to time designate; provided, however, anything herein to the contrary notwithstanding, Landlord shall not be liable for any lack of security in respect to the Building whatsoever. Landlord will normally not enforce clauses (a), (b) and (c) above from 7:00 am. to 6:00 p.m., Monday through Friday, and from 8:00 a.m. to 1:00 pm. on Saturdays, but it reserves the right to do so or not to do so at any time at its sole discretion. In case of invasion, mob riot, public excitement, or other commotion, Landlord reserves the right to prevent access to the Building during the continuance of the same by closing the doors or otherwise, for the safety of the tenants or the protection of the Building and the property therein. Landlord shall in no case be liable for damages for any error or other action taken with regard to the admission to or exclusion from the Building of any person.

20. No auction, fire, bankruptcy, going-out-of-business or distress sales shall be conducted on or about the Leased Premises.

21. Except as specifically provided in the Lease, Tenant shall not affix anything to the roof of the Leased Premises and Building and shall not bore any holes through the roof for any purpose whatsoever.

22. No person shall use the Leased Premises as sleeping quarters, sleeping apartments or lodging rooms.

23. The outside sidewalk area immediately adjoining the Leased Premises shall be kept clean and free from snow, ice, dirt and rubbish by Tenant to the satisfaction of Landlord, and Tenant shall not place or permit any obstructions or merchandise in such areas.

24. Tenant shall use, at Tenant's sole cost and expense, such pest extermination contractor as Landlord may direct and at such intervals as Landlord may require.

25. Tenant shall not use any of the Building common areas for display and/or sale of merchandise without the express written approval of Landlord, which approval may be given or withheld in Landlord's sole discretion.

26. Landlord reserves the right at any time and from time to time to rescind, alter or waive, in whole or in part, any of these Rules and Regulations when it is deemed necessary, desirable, or proper, In Landlord's judgment, for its best interest or for the best interest of the tenants of the Building.

27. Tenant shall observe fairly and comply strictly with the foregoing rules and regulations and such other and further appropriate rules and regulations as Landlord and Landlord's additional rules and regulations shall be given in such manner as Landlord may reasonably elect.

EXHIBIT "G"

WAIVER OF RIGHT TO TRIAL BY JURY

The Lease dated the 3<sup>rd</sup> day of January 2018, between SHODEEN GROUP, LLC a Delaware LLC, as agent for Fox Island Limited Partnership (the "Landlord"), and Kava Diem, LLC (the "Tenant") and \_\_\_\_\_, (the "Guarantor") hereby agree as follows:

We hereby each waive any right to trial by jury in any action, proceeding, or counterclaim in any way connected with the Lease, the Guaranty, and any related documents.

In Witness Whereof, the parties have executed this Waiver as of the day and year first written above.

LANDLORD:

SHODEEN GROUP, LLC a Delaware LLC, as agent for Fox Island Limited Partnership


Date: 1.3.18

By:   
Title: President

TENANT:

Kava Diem, LLC

Date: \_\_\_\_\_

By:   
Print: Andrea James

GUARANTOR:

Date: \_\_\_\_\_

By:   
Print: Andrea James

### LEASE GUARANTY

In consideration of the execution and delivery of a Lease for the Premises commonly known as 1 W. Illinois Street, Suite 170 and Suite 180, St. Charles, Illinois 60174 dated as of January 3, 2018 (the "Lease") by and between SHODEEN GROUP, LLC a Delaware LLC, as agent for Fox Island Limited Partnership (the "Landlord"), and Kava Diem LLC (the "Tenant") as Lessee, in which the undersigned has a substantial interest and will receive a substantial benefit from the execution of the Lease, and the payment of the sum of One (\$1.00) Dollar and other good and valuable consideration paid by the Lessor to Guarantor, Guarantor hereby guarantees to Lessor, its successors and assigns, (a) the full and prompt payment of all rent, additional rent and any and all other sums and charges which Lessee is obligated to pay under the terms of the Lease; and, (b) the full and faithful performance by Lessee of each of Lessee's covenants, agreements and obligations pursuant to the Lease.

Guarantor hereby covenants and agrees to and with Lessor, its successors and assigns, that if Lessee shall, at any time be in default in the payment of any of such rent or other sums and charges payable by Lessee under the Lease, or in any manner is in default under its obligation thereunder, Guarantor shall, within ten (10) days after receipt of written notice from Lessor of default and demand for such payment or performance, pay such rent or such sums or charges, or any arrears thereof, to Lessor, its successors or assigns.

The liability under this Guaranty shall be limited to the Tenant Improvement amount of eighty thousand dollars (\$80,000.00) and any lease commission amounts paid by Landlord. The amount due under this guarantee shall burn off as base rent is paid on the Premises. This Guaranty shall be legally binding upon Guarantor and Guarantor's successors and assigns and shall inure to the benefit of Lessor and its successors and assigns. This Guaranty shall be governed by and construed in accordance with the laws of the State of Illinois.

Any Notice to be given to Guarantor shall be given in the name and as prescribed in the Lease to Lessee, and shall be addressed to the Guarantor at 36W650 Whispering Trail Drive, \_St. Charles, Illinois 60175.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on this January 3, 2018.

GUARANTOR:

A handwritten signature in cursive script, appearing to read "Andrea Jones", written over a horizontal line.

SS# \_\_\_\_\_