Lease Agreement for Commercial Properties

LEASE AGREEMENT

This **LEASE AGREEMENT** (the Lease) is made this 7 day of August 2018 by and between

LANDLORD: City of Tempe
P.O. Box 5002, 200 East Fifth Street, Tempe, AZ 85281

TENANT: Fifth Street Market & Deli, LLC, Dba. Fifth Street Market & Deli
5123 W. Redbird Rd, Phoenix, AZ 85083

1. **PREMISES.** The Landlord leases to the Tenant, as lessee, that certain Premises located at 200 East Fifth Street, Tempe, AZ 85281 hereafter referred to as "Building", Space #120 Suite 1 (South End, including Patio), Suite 2 (Middle) and Retail Storage Space # 115 & #117, hereafter referred to as "Premises." The Premises shall encompass the land and all improvements upon the land. The approximate square footage of the Premises is 2,600 square feet of retail space and 314 square feet of storage space, which is a part of the total gross leasable Premises space of approximately 3,600 square feet.

   LANDLORD'S WORK: New entry and replacement of existing entry of sliding glass door on South and East side respectively of building as placed in Tenant architectural drawings. Install delivery entry/exit ramp on west side of existing patio space. Work to be completed concurrently with Tenant Work.

   TENANTS WORK: Tenant shall be responsible for the completion of the improvements of its' Convenience Store and Deli Service area within the Premises to a finished condition (including all furniture, fixtures, equipment and décor) and in compliance with all zoning and such other applicable governmental, municipal, state, and county laws, codes and regulations. Except as provided in Section 5(b) below, Tenant shall construct and install all leasehold improvements to the Premises (collectively, the "Tenant's Work") in accordance with the Work Letter attached to this Lease, made a part hereof and marked Exhibit "B." Tenant's Work and the finished condition of the Premises (including all furniture, fixtures, equipment and décor) shall be consistent with the Preliminary Construction Drawings (as defined in Exhibit "B" section 4) and approved by Landlord.

2. **CONDITION OF PREMISES:** Landlord shall deliver the Premises to Tenant on Sept 1st, 2018 (the "Delivery Date") pending final execution of lease signing.

3. **PERMITS, CONSTRUCTION PERIOD and OPERATION RENTAL ABATEMENT PERIOD:**

   a) Tenant shall have one hundred and twenty days (120) from delivery of Premises to obtain all necessary building permits, City approval and complete improvements to the space (hereinafter referred to as "Permits & Construction Period"). During the Permit and Construction no Rent or expenses shall be owed by Tenant to Landlord. Permits and Construction Period will end on December 31st ,2018. Tenant will obtain all necessary permits and approvals from the City prior to construction.

   b) Tenant shall have one hundred and fifty days (150) from end of Permit and Construction Period to Rent Commencement Date to operate business (hereinafter referred to as "Operation Rental Abatement Period"). During Operation Rental Abatement Period no Rent or expense shall be owed by Tenant. Rental Abatement Period will end on May 31st, 2019.

4. **TENANT IMPROVEMENT ALLOWANCE:** Landlord shall supply Tenant with an improvement allowance in the amount not to exceed fifty thousand dollars ($50,000) for front business signage, demolition of existing freestanding bar & demolition/relocation of west side ADA ramp to east side of premises. Also refer to Exhibit B.

5. **TERM**

a) The Base Term of this Lease will commence upon execution of this lease and Landlord's Delivery of Premises to Tenant (the "Delivery Date"). The Base Term of this Lease will expire on 08/30/2023.

b) Tenant may be granted the right to extend/renew the Lease of the Premises at Tenant election and Landlord discretion. The right to extend/renew is for (4) five (5) year extensions not to exceed 15% of Base Rent per extension commencing with the end of the Base Term. Tenant must notify the Landlord of Tenant's intention to extend/renew the Lease in writing at least one hundred and twenty (120) days prior to the end of the Base Term and Landlord must also agree in writing to extend Base Term for any option period. All other terms and conditions of the Lease, as of the end of the Base Term, will remain in full force and effect.

6. **RENT COMMENCEMENT:** Rent Commencement Date shall begin on June 1st, 2019, five (5) months following the Operation Rental Abatement Period of January 1st, 2019.

7. **RENT.** Tenant shall pay to the Landlord designated property manager on the 1st day of each month thereafter following the Rent Commencement Date, at its office or at such other place as the Landlord may from time to time designate in writing, the Rental Rate for the Premises, without any deductions or offsets, the following amounts (Minimum Rent):

Table 1

Period - Month/Year	Billing Period	Retail Sq. Ft.	Storage Sq. Ft.	Monthly Base Rent Amount	Common Area Maint. Mo.	City/County Sales Tax	Montly Lease Payments
Permit, Construction Period: Sept 2018 - Dec 2018	1-4	2,600	314	$ -	$ -	$ -	$ -
Rent Abatment Period: Jan 2019 - May 2019	5-10	2,600	314	$ -	$ -	$ -	$ -
Rent Period: June 2019 - Aug 2023	11-60	2,600	314	$ 3,900.00	$ 650.00	$ 89.70	$ 4,639.70

8. **RENTAL INCREASE.** Tenant's base Minimum Rent shall remain fixed during Base Term of lease. Base Minimum Rate may change on extensions.

9. **DELIVERY OF POSSESSION.** Tenant has accepted the Premises for occupancy and that the condition of the Premises and appurtenant areas were at the time satisfactory and in conformity with the provisions of this Lease in all respects.

10. **USE.** The Premises will be used and occupied by Tenant for the operation of convenience store and deli. Use is only permitted subject to applicable zoning laws, rules, regulations and ordinances of the City of Tempe and the State of Arizona and for no other purpose. Tenant will, at its sole cost, comply with and faithfully observe all requirements of municipal, state and federal authorities now or in the future in force pertaining to the use of the Premises. A judgment of any court having jurisdiction, or the admission by the Tenant, whether as a party or witness in any legal action or proceeding that the Tenant has violated any such requirements, will be conclusive of that fact as between the Landlord and Tenant.

a) Tenant agrees to occupy on or before the Delivery Date of the Lease and to operate its business in the Premises throughout the Lease during regular and customary hours for such type of business on all business days. Tenant agrees to conduct its business at all times in a reputable manner and to provide the best management possible. Tenant will not cause or allow any liens of any kind to be filed against the Premises resulting from acts of the Tenant. If any such liens are filed, the Tenant at its expense will promptly remove such liens. If Tenant fails to open for business on any business day without Landlord's prior written consent, then in addition to all other

remedies available to Landlord hereunder, Landlord may impose on Tenant liquidated damages in the amount of $100 per occurrence for each day Tenant is not open for business, to be paid by Tenant upon demand.

b) Pursuant to Tempe City Code, Tenant shall not allow smoking inside the Premises. Additionally, Tenant will not allow the use of dangerous machinery, hazardous chemicals, or other items hazardous to the Premises without first receiving permission from the Landlord and assuring safeguards are being undertaken to protect the Premises and obey all pertaining federal, state, and local regulations.

c) Tenant will not use sidewalks adjacent to the Premises or any common area for business purposes, except ingress and egress, without the express written permission of the Landlord. Tenant will not display or sell merchandise nor allow carts, portable signs, devices or any other objects to be stored or to remain outside the defined exterior walls and permanent doorways of the Premises. In addition, Tenant will not solicit in any manner in any of the automobile parking and common areas of the Premises to include bus and rail stations. No auction, distress, going out of business, fire or bankruptcy sales will be conducted on the Premises without the advance written consent of the Landlord.

d) Storage space in the Premises shall be limited to that necessary for the business purpose set forth above.

e) Tenant shall conduct Tenant's business only under the Franchise name of Tenant "Fifth Street Market & Deli " as set forth above. Tenant must request in writing Landlord approval to conduct business under any name other than "Fifth Street Market & Deli ".

11. PARKING: The parties acknowledge that the Rules and Regulations contain additional provisions governing the use of the parking areas. Parking for tenants, employees and visitors is available at the City Hall Garage, 117 E. 5th Street, at an hourly rate. Monthly parking passes are available to the Tenant in the parking garage at prevailing market rate (currently $60/month, per space). Parking passes can be purchased through the Downtown Tempe Authority (DTA), (480) 355-6066.

12. COMMON AREA AND TENANT EXPENSES

a) Tenant will pay to the Landlord, a charge for such common area expenses as follows. From and after the date the Lease commences, but subject to adjustment as provided below, Tenant will pay on the first day of each calendar month (as shown in Section 7, Table 1) of the term of this Lease an amount computed on a base $3.00 per square foot of gross leased retail space annually for common area expenses. The foregoing CAM rate will be fixed for lease Base Term.

b) Tenant, its employees and invitees are, except as otherwise specifically provided in this Lease, privileged to use the Common Area during the term of this Lease. The term "Common Area" means the entire area designated for common use or benefit within the outer property limits of the Building, including, but not limited to, parking lots, landscaped areas, passages for trucks and automobiles, areaways, roads, walks curbs, corridors, garden courts, and arcades, together with public facilities such as washrooms, lounges, drinking fountains, toilets, ramps, shelters, porches, and loading docks, with facilities appurtenant to each; Common Area specifically excludes the bus plaza drive-way. The Common Area may be expanded, contracted or changed by Landlord from time to time as required or deemed desirable. The Landlord will keep the Common Area in a clean condition, properly lighted and landscaped and will repair any damage, but all expenses in connection with the Common Area will be charged and prorated in the manner set forth in this Lease. The phrases "expenses in connection with the Common Area expenses" include, but are not limited to, all sums expended in connection with liability or other insurance for the entire property and all sums expended in connection with the Common Area for all maintenance and repair; resurfacing; painting; re-striping; cleaning, sweeping, and janitorial services; trash removal; planting, sprinkling, and landscaping; lighting and other utilities; directional signs and other markers and bumpers; fire protection, lighting, storm drainage, and any other utility systems; personnel to implement such services, including, if the City, as real property owner, deems necessary, the cost of security guards; real and personal property taxes and assessments on the improvements and land comprising the Common Area; all costs and expenses pertaining to a security alarm system for the Common Area; heating and air conditioning systems preventative maintenance; depreciation on maintenance and operating machinery and equipment or rental paid for such machinery and equipment; public liability and property damage insurance, total fire and extended coverage

insurance premiums charged to the City for insuring the Premises and improvements of the Premises for any such year and a reasonable allowance for Landlord's supervision of the Common Area in an amount equal to ten percent (10%) of the total of the expenses for each lease year. The City may cause any or all of the services to be provided by an independent contractor or contractors. Should the City make available additional land for parking or other Common Area purposes, then Common Area expenses will also include all expenses incurred in connection with such additional land.

c) Tenant shall not directly or indirectly conduct business in the Common Area or make any use of the Common Area that interferes in any way with the use of the Common Area by other parties. Tenant's use of the Common Area shall be subject to other provisions of this Lease, including, without limitation, the Rules and Regulations set forth in the annexed Exhibit "A". Tenant's right to use the Common Area shall terminate upon the expiration or earlier termination of this Lease or Tenant's right to possession of the Premises. Landlord shall be entitled to make such changes in the Common Areas as it deems appropriate and to determine the nature and extent of all Common Areas. To the extent permitted by law, Landlord shall have the right to close all or any portion of the Common Area to prevent a dedication thereof to public use or prevent the acquisition of any public or private rights in such area. Landlord reserves the right to use or permit or deny the use of Common Area for any purpose that in Landlord's sole opinion may be in the best interests of the property.

d) Should Landlord determine that there is a need for added Common Area Maintenance services as a direct result of actions by Tenant, its employees, customers or invitees, then Landlord shall have the right to contract such services for items such as additional security guard personnel and day porter maintenance, and charge back Tenant such added cost.

e) Common Area expenses shall not include janitorial, gas, telephone, suite electric, interior plumbing, maintenance of A/C or heating equipment for the Premises, broken window repair, or other charges for services provided by and for the Tenant at Tenant's own cost for the purpose of Tenant's business usage. The Landlord will not pay the costs of these expenses as part of the Common Area charges and Tenant will contract for and pay for such services as Tenant warrants and needs.

f) Landlord will have the right to establish, and from time to time change, and to enforce against Tenant such reasonable rules and regulations (Exhibit A) as may be deemed necessary or advisable for the proper operation and maintenance of the Common Areas. The Landlord will have the right to close all or a portion of such areas to such extent as may be legally sufficient to prevent a dedication or the acquisition of any rights by a person or by the public, but such closing will not unreasonably interfere with the conduct of Tenant's business.

g) The Landlord will not be liable for any damage to motor vehicles of Tenant's customers or Tenant's employees or for loss of property from within such motor vehicles.

h) Maintenance by Tenant notwithstanding anything contained in this Lease to the contrary, Tenant shall provide the following services at Tenant's sole cost and expense: (a) cleaning and maintenance of all equipment used in the Premises in compliance with health codes and any applicable laws, and in all events in a manner satisfactory to Landlord; (b) janitorial services and cleaning for the Premises (including, but not limited to, regular periodic all vents, flues, furniture and equipment; (c) pest and rodent extermination and control service on a prearranged scheduled basis to maintain satisfactory control over any pest and rodent problems resulting from the conduct of Tenant's business in the Premises; provided, however, Landlord shall have the right to approve the janitorial services and pest and rodent extermination and control service contracts and have named as additional insured in such contracts, Landlord, Landlord's management agent, and any lenders. In the event that Tenant fails to perform such services set forth in (a) through (c) above on a regular basis and up to the standards established by Landlord, Landlord, at its option, may contract for such service on behalf of Tenant. If Landlord elects to provide said services, Tenant shall pay Landlord for the cost of such service on a monthly basis as Additional Rent hereunder. Tenant shall obtain Landlord's approval of (i) any janitorial and cleaning service used by Tenant, and (ii) both the pest and rodent extermination and control service used by Tenant and the frequency and timing of the prearranged service calls. Any janitorial, cleaning service, and pest and rodent extermination and control service must possess and provide to Landlord or produce for inspection by Landlord a certificate of insurance indicating insurance coverage deemed acceptable to Landlord. It is the responsibility of the Tenant to establish an indoor integrated pest management (IPM) plan that uses the least-toxic chemical pesticides; minimal chemical use; and is

used in target locations for specific pest species. The plan must include the preferred use of nonchemical methods; definition of emergency conditions and a notification method for normal conditions and in emergencies cases before applying a pesticide (other than least toxic pesticides) the Building or around Tenant's space; establish Tenant's knowledge about pests, the environment, and pest prevention and control methods to minimize pest infestation and damage; and efforts to minimize hazards to people, property, and the environment. In no event shall the pest and rodent extermination and control service use chemicals which are illegal or generally considered unsafe or improper for use in an office Building, considering the quantities or method of application used. Landlord may prohibit the use of specified chemicals by the pest and rodent extermination and control service. Tenant shall provide Landlord with a copy of any fully executed janitorial service and pest and rodent extermination and control service contracts entered into by Tenant. In lieu of employing a janitorial and cleaning service as provided above, Tenant may utilize its own personnel to perform such services in the manner described in this Lease provided that Tenant (I) establishes, to the reasonable satisfaction of Landlord, that Tenant's personnel are qualified to perform such services and that, in each instance, such personnel meet Landlord's requirements for approval, which shall include, but not be limited to, (A) entering into a service contract acceptable to Landlord; (B) obtaining, at Tenant's cost and expense, licensure and such other governmental approvals, where applicable, to perform such services; and (C) Tenant providing and maintaining a certificate of insurance indicating coverage acceptable to Landlord, and (II) maintains the Premises in accordance with the terms and conditions contained in this Lease at all times during the Term.

i) Tenant, at its sole expense, shall obtain all federal, state, and local licenses and permits required for its operations within the Premises.

13. TAXES AND OTHER PAYMENTS BY TENANT

a) The Premises may be a "Government Property Improvement" under A.R.S. §42-6201(2), Landlord may be a "Government Lessor" under A.R.S. §42-6201(1), and Tenant may be a "Prime Lessee" under A.R.S. §42-6201(4). The State of Arizona levies a Government Property Lease Excise Tax pursuant to A.R.S. § 42-6201 through 42-6209 (the "GPLET"). Premises are exempt from the GPLET because they constitute an interest in transportation facility that is constructed or operated pursuant to title 28, chapter 22 under A.R.S. §42-6208(7). Tenant may be required to submit the return referenced in A.R.S. § 42-6204(B), as exempt status. A.R.S. § 42-6209 ("GPLET") may not be applicable to this lease.

b) Tenant will pay to the City any excise, transaction, sales, Rental or privilege tax now or in the future imposed by any government or agency and attributed to or measured by Rent or pro-rations payable by Tenant (Section 7 – Table 1).

14. LATE CHARGES. Tenant hereby acknowledges that late payment by Tenant to the Landlord of Rent and any other sums due hereunder to the Landlord will cause the Landlord to incur costs not contemplated by this Lease, the exact amount of which may be difficult to calculate. Such costs include, but may not be limited to: processing and accounting charges, default charges, vendor late fees, and late charges imposed on the Landlord by any mortgage or trust deed covering the Premises. Accordingly, if any installment of Rent or any other sum due to the Landlord from Tenant shall not be received by the Landlord within five (5) calendar days after such amount is due, Tenant shall pay to the Landlord a late charge equal to five percent (5%) of such overdue amount, plus interest, as provided herein. The parties hereby agree that such late charges represent a fair and reasonable estimate of costs the Landlord and City will incur by reason of late payment by Tenant. Acceptance on such late charge by the Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted in this Lease.

15. DEFAULT AND RE-ENTRY REMEDIES

(a) Default by Tenant. The occurrence of any one or more of the following events shall be a default and breach of this Lease by Tenant:

(i) Tenant shall fail to pay any monthly installment of Base Rent, Additional Rent or Rent Adjustment within ten (10) days after the same shall be due and payable;

(ii) Tenant shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Lease for a period of thirty (30) days after notice thereof from Landlord; provided, however, that if the term, condition, covenant or obligation to be performed by Tenant is of such nature that the same cannot reasonably be performed within such thirty-day period, such default shall be deemed to have been cured if Tenant commences such performance within said thirty-day period and thereafter diligently undertakes to complete the same, but in any event completes cure within ninety (90) days after notice from Landlord;

(iii) Tenant shall vacate or abandon or fail to occupy, for a period of ten (10) days, the Premises or any substantial portion thereof;

(iv) Tenant makes an assignment for the benefit of creditors; or substantially all of Tenant's assets in, on or about the Premises or Tenant's interest in this Lease are attached or levied upon under execution [and Tenant does not discharge the same within thirty (30) days thereafter]; or

(v) Tenant causes or permits a hazardous condition to exist on the Premises and fails to cure such condition immediately after notice thereof from Landlord.

(b) Remedies of Landlord. Landlord shall have the following rights and remedies, in addition to those allowed by law, any one or more of which may be exercised without further notice to or demand upon Tenant:

(i) Landlord may apply the security deposit or re-enter the Premises and cure any default of Tenant, in which event Tenant shall reimburse Landlord as additional Rent for any costs and expenses which Landlord may incur to cure such default; and Landlord shall not be liable to Tenant for any loss or damage which Tenant may sustain by reason of Landlord's action, regardless of whether caused by Landlord's negligence or otherwise;

(ii) Landlord may terminate this Lease as of the date of such default, in which event: (A) neither Tenant nor any person claiming under or through Tenant shall thereafter be entitled to possession of the Premises, and Tenant shall immediately thereafter surrender the Premises to Landlord; and (B) Landlord may re-enter the Premises and dispossess Tenant or any other occupants of the Premises by summary proceedings, ejectment or otherwise, and may remove their effects, without prejudice to any other remedy which Landlord may have for possession or arrearages in Rent.

(iii) Landlord may terminate Tenant's right of possession of the Premises and may repossess the Premises by unlawful detainer action, by taking peaceful possession or otherwise, without terminating this Lease, in which event Landlord may, but shall be under no obligation to, relet the same for the account of Tenant, for such Rent and upon such terms as shall be satisfactory to Landlord. For the purpose of such reletting, Landlord is authorized to decorate, repair, remodel or alter the Premises. If Landlord fails to so relet the Premises, Tenant shall pay to Landlord as damages a sum equal to the Rent which would have been due under this Lease for the balance of the Term or exercised renewal period as such Rent shall become due and payable hereunder from time to time during the Term. If the Premises are relet and a sufficient sum shall not be realized from such reletting after paying all of the costs and expenses of all decoration, repairs, remodeling, alterations, and additions and the expenses of such reletting and of the collection of the Rent accruing therefrom to satisfy the Rent provided for in this Lease, Tenant shall satisfy and pay the same upon demand therefor from time to time. Tenant shall not be entitled to any Rents received by Landlord in excess of the Rent provided for in this Lease.

(iv) Notwithstanding any election by Landlord of any right or remedy set forth herein, and in addition to any other remedies Landlord may have, Landlord shall be entitled at any time and from time to time after default by Tenant hereunder, to recover from Tenant:

(1) all damages Landlord may incur by reason of such default, including without limitation, all loss or damage sustained in connection with such default, costs of performing any covenant or covenants of Tenant, costs of recovering possession of, altering, repairing and reletting the Premises,

reasonable attorneys' fees and collection costs, and the value at the time of such termination of the amount of Rent and Additional Rent which would become payable under this Lease for the remainder of the full Term specified in Section 5 of the Lease, less the net amount of such Rent and Additional Rent for the remainder of the Term which Tenant proves could reasonably be recovered by Landlord from reletting the Premises under then-current and reasonably anticipated market conditions; or

(2) as liquidated damages, an amount equal to the Rent and Additional Rent which would become payable under this Lease for the remainder of the Term or exercised renewal period (if any) which shall be immediately due and payable, without deduction or diminution and without relief from valuation or appraisement laws. Tenant hereby acknowledges that the nature of Tenant's default may cause or result in damages, costs and expenses incurred by Landlord not contemplated by this Lease, the exact amount of which being extremely difficult and impractical to fix, and that such liquidated damages represent a fair and reasonable estimate of the costs which Landlord may incur due to Tenant's default.

(v) Landlord may sue for injunctive relief or to recover damages for any loss resulting from the breach.

(c) Any agreement for an extension of the Term or any additional period thereafter shall not thereby prevent Landlord from terminating this Lease for any reason specified in this Lease. If any such right of termination is exercised by Landlord during the Term or any extension thereof, Tenant's right to any further extension shall thereby be automatically canceled. Any such right of termination of Landlord contained herein shall continue during the Term and any subsequent extension hereof. Notwithstanding anything in this Lease or under applicable law to the contrary, no (1) surrender, abandonment, vacation or similar action by Tenant with respect to the Premises, or (2) acceptance by Landlord of any such surrender, abandonment, vacation or similar action by Tenant with respect to the Premises, or (3) termination of Tenant's right to possession of the Premises, or (4) any other exercise of Landlord's rights and remedies under this Lease, shall terminate or shall be deemed to terminate this Lease, except only as expressly set forth in written notice from Landlord to Tenant of Landlord's election to terminate this Lease.

(d) Default by Landlord and Remedies of Tenant. It shall be a default and breach of this Lease by Landlord if it shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Lease for a period of thirty (30) days after notice thereof from Tenant; provided, however, that if the term, condition, covenant or obligation to be performed by Landlord is of such nature that the same cannot reasonably be performed within such thirty-day period, such default shall be deemed to have been cured if Landlord commences such performance within said thirty-day period and thereafter diligently undertakes to complete the same. Upon the occurrence of any such default, Tenant may sue for injunctive relief or to recover damages for any loss resulting from the breach, but Tenant shall not be entitled to terminate this Lease or withhold or abate any Rent due hereunder.

(e) Non-Waiver of Defaults. The failure or delay by either party hereto to enforce or exercise at any time any of the rights or remedies or other provisions of this Lease shall not be construed to be a waiver thereof, nor affect the validity of any part of this Lease or the right of either party thereafter to enforce each and every such right or remedy or other provisions. No waiver of any default and breach of this Lease shall be held to be a waiver of any other default or breach. The receipt of Rent by Landlord at a time after Rent is due under this Lease shall not be construed as a waiver of such default. The receipt by Landlord of less than the full Rent due shall not be construed to be other than a payment on account of Rent then due, nor shall any statement on Tenant's check or any letter accompanying Tenant's check be deemed an accord and satisfaction, and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of the Rent due or to pursue any other remedies provided in this Lease. No act or omission by Landlord or its employees or agents during the Term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing and signed by Landlord.

(f) Attorneys' Fees. If Tenant defaults in the performance or observance of any of the terms, conditions, covenants or obligations contained in this Lease and Landlord places the enforcement of all or any part of this Lease, the

collection of any Rent due or to become due or the recovery of possession of the Premises in the hands of an attorney, or if Landlord incurs any fees or out-of-pocket costs in any litigation, negotiation or transaction in which Tenant causes Landlord (without Landlord's fault to be involved or concerned), Tenant agrees to reimburse Landlord for the attorneys' fees and costs incurred thereby, whether or not suit is actually filed.

(g) Landlord's Lien. Tenant grants to Landlord an express contractual lien on and security interest in and to all goods, equipment, furnishings, fixtures, furniture, chattels and personal property of whatever nature owned by Tenant attached or affixed to or used in and about the Premises on the date of this Lease or at any time after the date of this Lease or otherwise located in the Premises or relating to Tenant's use of the Premises and all renewals or replacements or substitutions for any of the foregoing, all Premises materials and equipment now or hereafter delivered to the Premises and intended to be installed in the Premises and all security deposits and advance Rentals under lease agreements on the date of this Lease or at any time after the date of this Lease covering or affecting the Premises and held by or for the benefit of Tenant, and all proceeds of the foregoing (including by way of illustration, but not limitation, proceeds of any insurance which may accrue to Tenant by reason of damage or destruction of any such property). Upon Landlord's request, Tenant shall execute and deliver to Landlord two (2) originals of a financing statement in form sufficient to perfect the security interest granted hereunder. A carbon, photographic or other reproduction of this Lease or this provision is sufficient and may be filed as a financing statement. Landlord shall have all the rights and remedies of a secured party under the Uniform Commercial Code as adopted in the State where the Premises is located and this lien and security interest may be foreclosed by process of law. The requirement of reasonable notice prior to any sale under Article 9 of the applicable Uniform Commercial Code shall be met if such notice is given in the manner prescribed herein at least ten (10) days before the day of sale. To the greatest extent permitted under applicable law, any public sale made pursuant to the provisions of this Section shall be deemed to have been conducted in a commercially reasonable manner if held in the Premises after the time, place and method of sale and a general description of the types of property to be sold have been advertised for ten (10) consecutive days prior to the date of sale in a daily newspaper published in the county where the Premises is located.

16. SIGNS: Tenant will not place identification, advertising, notice or other signs in, on or about the Premises without Landlord's prior written consent and receipt of any permits or other applicable requirements of any governmental body having jurisdiction over the Premises. If consent is granted, such signs, advertisements or notices shall be installed and maintained at Tenant's expense. Signs installed without prior written permission may be removed by the Landlord at Tenant's expense without notice. Landlord is researching options for constructing and installing a "Building" digital marquee sign to include Building designation, City offices & Tenants.

17. MAINTENANCE AND SANITATION

a) Tenant will repair any damage to the Premises caused by the Tenant or by any of Tenant's employees, agents, customers, invitees or licensees, other than from ordinary wear. Tenant will maintain the interior of the Premises and all doors, windows, walls, flooring, plumbing, lighting fixtures, signs, and trade fixtures. The Landlord agrees whenever possible to extend to Tenant the benefit of any enforceable manufacturer's warranties on such improvements. If Tenant refuses or neglects to make repairs and/or maintain the Premises, in a manner reasonably satisfactory to the Landlord, the Landlord will have the right, upon giving Tenant thirty (30) days written notice of its election to do so, to make such repairs or perform such maintenance on behalf of or for the account for Tenant. In such event the work will be paid for by Tenant. Payment will be made either within thirty (30) days after receipt of a written statement from the Landlord setting forth the amount in reasonable detail or on a monthly basis, with such alternative to be chosen by the Landlord. Such bill will be based on the Landlord's costs plus a twenty percent (20%) charge as an overhead fee. Tenant will not decorate or paint the exterior of the Premises, except in the manner and color approved by the Landlord.

b) The Tenant will maintain the Premises including heating and air conditioning units. The Landlord will be under no obligation to make any repairs, alterations, renewals, replacements, or improvements to or upon the Premises or upon the mechanical equipment service the Premises except as is expressly provided in the Lease. Landlord will not in any way be liable to Tenant for failure to make repairs unless Tenant has previously notified Landlord in writing of the need for such repairs and Landlord has failed to commence and complete such repairs within a reasonable period of time following receipt of such notification. .

c) Tenant will cause such trash to be removed as often as required to maintain a sanitary condition but in no instance less than twice weekly. Tenant will not place or allow to be placed, any trash outside the trash receptacles. Tenant will place only trash generated from the ongoing business located within the Premises in the trash receptacles.

18. ALTERATION/REPAIR

a) Tenant will not make any alterations or additions to the Premises without the prior written consent of the Landlord and then only in compliance with all applicable Premises codes and zoning regulations. The Landlord, as a condition of giving written consent to Tenant for alterations and repairs may require the Tenant to furnish appropriate bonds or lien waivers. Tenant will at its expense make any alterations or repairs required by governmental authorities in order to comply with any governmental laws, orders, or regulations.

b) The Landlord has the right at any time to repair, alter and improve the Building of which the Premises form a part at the Landlord's expense. For such purpose, the Landlord may enter in and upon the Premises and the Building of which the Premises form a part as the Landlord may deem necessary. Tenant waives any claim for damages; including loss of business, resulting from the Landlord's actions pursuant to this Section provided such work is done in a workmanlike manner so as to interfere as little as possible with the conduct of Tenant's business.

19. UTILITY SERVICES

a) Electricity, water and gas servicing Premises that is separately metered, shall be paid for by Tenant. Tenant will pay for all utilities, including water, sewer, electric, gas and telephone, which may be furnished to or used in or about the Premises and will keep the same free and clear of any lien or encumbrance of any kind whatsoever created by Tenant's actions or omissions.

b) Energy Conservation. Notwithstanding anything to the contrary in this Section or elsewhere in this Lease, Landlord shall have the right to institute such policies, programs and measures as may be necessary or desirable, in Landlord's discretion, for the conservation and/or preservation of energy related services, or as may be required to comply with any applicable codes, rules and regulations, whether mandatory or voluntary, and Tenant shall comply with the reasonable regulations promulgated from time to time by Landlord regarding such conservation and/or preservation of energy related services.

c) Services. Landlord shall be under no obligation to provide any services to the Premises, except that Landlord shall provide routine maintenance and cleaning in the common areas and utility service lines and hookups to the Building, the costs of which shall be included in Operating Expenses.

20. FIRE OR OTHER CASUALTY; CASUALTY INSURANCE

(a) Substantial Destruction of the Building. If the Building should be substantially destroyed (which, as used herein, means destruction or damage to at least seventy-five percent (75%) of the Building) by fire or other casualty, Landlord may, at its option, terminate this Lease by giving written notice thereof to Tenant within thirty (30) days of such casualty. In such event, the Rent shall be apportioned to and shall cease as of the date of such casualty. If Landlord does not exercise this option, then the Premises shall be reconstructed and restored, at Landlord's expense, to substantially the same condition as existed upon the Delivery Date to the extent insurance proceeds are available therefor.

(b) Substantial Destruction of the Premises. If the Premises should be substantially destroyed or rendered wholly untenable for the purpose for which they were leased, by fire or other casualty and the Building is not substantially destroyed as provided above, then the parties hereto shall have the following options:

(i) Tenant may require that Landlord's reconstruct and restore, at Landlord's expense, but subject to the availability of insurance proceeds, to substantially the same condition as upon the Delivery Date, except for repair or replacement of Tenant's personal property, equipment, leasehold improvements and trade fixtures, which shall remain Tenant's responsibility. This option shall be exercised by Tenant by giving written notice to Landlord within thirty (30) days after the date of the casualty, and upon the exercise thereof, Rent shall be abated from the date of the casualty until substantial completion of the reconstruction of the Premises (provided that Rent

shall be abated only to the extent Landlord is compensated for such Rent by loss of Rents insurance, if any), whereupon this Lease shall continue in full force and effect for the balance of the Term upon the same terms, conditions and covenants as are contained herein. If this option is not so exercised by Tenant, Landlord shall then have the right and option, to be exercised within thirty (30) days following the expiration of Tenant's option period, by giving of written notice to Tenant, to reconstruct and restore the Premises to substantially the same condition as existed upon the Delivery Date, or Landlord, at its option, shall make available reasonably comparable space in the Building or Project to accommodate Tenant. In either such event, this Lease shall continue in full force and effect for the balance of the Term upon the same terms, conditions, and covenants as are contained herein; provided, however, that the Rent shall be abated from the date of the casualty until substantial completion of the reconstruction of the Premises by Landlord as noted above, or notice by Landlord that comparable space is ready for Tenant to occupy. If Landlord fails to exercise either of these aforementioned options, this Lease shall be terminated as of the date of the casualty, to which date Rent shall be apportioned and shall cease. Notwithstanding Landlord's restoration obligation under this Section, in the event any mortgagee under a deed of trust, security agreement or mortgage on the Building should require that the insurance proceeds be used to retire or reduce the mortgage debt or if the insurance company issuing Landlord's fire and casualty insurance policy fails or refuses to pay Landlord the proceeds under such policy, Landlord shall have no obligation to rebuild and this Lease shall terminate upon notice by Landlord to Tenant.

(ii) If the casualty occurs during the last twelve (12) months of the Term, either party shall have the right and option to terminate its Lease as of the date of the casualty, which option shall be exercised by written notice to be given by either party to the other party within thirty (30) days therefrom. If this option is exercised, Rent shall be apportioned to and shall cease as of the date of the casualty.

(c) Partial Destruction of the Premises. If the Premises should be rendered partially untenable for the purpose for which they were leased [which, as used herein, means such destruction or damage as would prevent Tenant from carrying on its business on the Premises to an extent not exceeding forty percent (40%) of its normal business activity] by fire or other casualty, then such damaged part of the Premises shall be reconstructed and restored, at Landlord's expense, but subject to the availability of insurance proceeds, to substantially the same condition as existed upon the Delivery Date, except for repair or replacement of Tenant's personal property, equipment, leasehold improvements and trade fixtures, which shall remain Tenant's responsibility. Rent shall be abated in the proportion which the approximate area of the damaged part bears to the total area in the Premises from the date of the casualty until substantial completion of the reconstruction repairs (provided that Rent shall be abated only to the extent Landlord is compensated for such Rent by loss of Rents insurance, if any); and this Lease shall continue in full force and effect for the balance of the Term. Landlord shall use reasonable diligence in completing such reconstruction repairs. Notwithstanding Landlord's restoration obligation under this Section, in the event any mortgagee under a deed of trust, security agreement or mortgage on the Building should require that the insurance proceeds be used to retire or reduce the mortgage debt or if the insurance company issuing Landlord's fire and casualty insurance policy fails or refuses to pay Landlord the proceeds under such policy, Landlord shall have no obligation to rebuild and this Lease shall terminate upon notice by Landlord to Tenant.

(d) Casualty Insurance. Landlord shall be responsible for insuring and shall, at all times during the Term, carry as an Operating Expense of the Building a policy of insurance which insures the Building, including the Premises, against loss or damage by fire or other casualty ("all risk" insurance); provided, however, that Landlord shall not be responsible for, and shall not be obligated to insure against, any loss or damage to personal property (including, but not limited to, any furniture, machinery, equipment, goods or supplies) of Tenant or which Tenant may have on the Premises or any trade fixtures installed by or paid for by Tenant on the Premises or any additional improvements which Tenant may construct on the Premises. If Tenant's operation or the improvements installed by Tenant pursuant to the provisions of Section 1 hereof or any alterations or improvements made by Tenant pursuant to the provisions of Section 1 result in an increase in the premiums charged during the Term on the casualty insurance carried by Landlord on the Building, then the cost of such increase in insurance premiums shall be borne by Tenant, who shall reimburse Landlord for the same as Additional Rent after being billed therefore, Tenant shall, at all times during the Term, carry at its own expense "all risk" property insurance covering plate glass, its personal property, leasehold improvements and trade fixtures installed by or paid for by Tenant, or any additional improvements which Tenant may construct on the Premises, which coverage shall be no less than one hundred percent (100%) of replacement value. Tenant shall also carry business interruption insurance for a minimum period of 12 months in an amount that will reimburse Tenant for

direct or indirect loss of earnings and extra expense. Tenant shall effect and maintain any other form of insurance that Landlord may reasonably require from time to time in form and amounts and for insurance risks acceptable to Landlord. All such insurance requirements must be reasonably satisfactory to Landlord. Prior to the Delivery Date or Tenant's entry upon the Premises, whichever is earlier, and thereafter as provided in this Section 21, Tenant shall furnish Landlord with certificates of insurance evidencing that such coverage's are in full force and effect. Should Tenant fail to carry such insurance and furnish Landlord with copies of all such policies or certificates thereof (i) prior to the Delivery Date or the date upon which Tenant first enters the Premises, whichever is earlier, or (ii) thereafter upon request to do so, Landlord shall have the right to obtain such insurance and collect the cost thereof from Tenant as Additional Rent without further notice to Tenant, notwithstanding anything in Section 18 to the contrary.

(e) Waiver of Subrogation. Landlord and Tenant hereby release each other and each other's employees, agents, customers and invitees from any and all liability for any loss, damage or injury to property occurring in, on or about or to the Premises, improvements to the Building or personal property within the Building, by reason of fire or other casualty which are covered by "all risks" property insurance policies. Because the provisions of this Section will preclude the assignment of any claim mentioned herein by way of subrogation or otherwise to an insurance company or any other person, each party to this Lease shall give to each insurance company which has issued to it one or more policies of fire and extended coverage insurance notice of the terms of the mutual releases contained in this Section, and have such insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverages by reason of the mutual releases contained in this Section.

21. LIABILITY AND INDEMNIFICATION

a) Tenant shall indemnify, defend and save harmless the Landlord and the City, from and against all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, charges, and expenses, including any attorney's fees which may be imposed upon or incurred by or asserted against Landlord arising from any use, nonuse, or condition of the Premises and the appurtenances thereto created by or attributable to Tenant or Tenant's employees, customers, agents, invitees, licensees, guests, or Tenants unless due to Landlord's negligence or intentional misconduct. In the event that any action or proceeding shall be brought against Landlord by reason of any claim referred to in this Lease, Tenant, upon written notice from Landlord, shall at Tenant's sole cost and expense, resist or defend the same through counsel selected by Landlord. Landlord shall not be liable for any damage to or theft of any personal property owned by Tenant left in or about the Premises.

b) Tenant shall, at all times during the Term, carry at its own expense for the protection of Tenant, Landlord and Landlord's management agent, as their interests may appear, one or more policies of commercial general liability insurance including bodily injury (including death) property damage, personal injury, tenants legal liability, including cross liability and severability of interest, blanket contractual, and contractors protective insurance, issued by one or more insurance companies with a rating by AM Best of A VIII or better and acceptable to Landlord, covering Tenant's use, occupancy and operations providing minimum coverages of:

a) **Commercial General Liability:**
$1,000,000 combined single limit per occurrence for bodily injury and property damage, including coverages for contractual liability (including defense expense coverage for additional insureds), personal injury, broad from property damage, products and completed operations. The general aggregate limit shall apply separately to this project/location or the general aggregate shall be twice the required occurrence limit.

b) **Workers' Compensation and Employers Liability: Workers' Compensation and Employers Liability statutory limits as required by the State of Arizona.**

c) **Property Insurance: Property Insurance against all risk of Loss to the Leased Premises including any tenant improvements or betterments, with full replacement cost with no coinsurance penalty provision. Coverage shall be extended to include 12 months loss of Rental coverage.**

d)
Tenant Improvement and Betterments – All Risk (Special form) Type Coverages; Replacement Costs.

Plate Glass – Tenant will be responsible for the maintenance/repair of the plate glass of the subject Premises but will have the option of either to insure the risk or to self-insure.

c) All policies of insurance to be provided by Tenant will be issued by insurers and agents licensed and authorized to do business in Arizona, and having a "Best's" rating of no less than A-VII. The insurance policies, except Workers' Compensation, required by this Contract shall name the Landlord, its agents, representatives, officers, directors, officials and employees, as Additional Insured's. Executed copies of such policies of insurance or certificates will be delivered to the Landlord within ten (10) days after delivery of possession of the Premises to Tenant and thereafter within thirty (30) days prior to the expiration of the term of such policy. All public liability and property coverage policies will contain a provision that the Landlord, although named as an additional insured, will nevertheless be entitled to recovery under the policies for any loss occasioned to it, its servants, agents and employees by reason of the negligence of Tenant. As often as any such policy expires or terminates, renewal or additional policies will be procured and maintained by Tenant in like manner and to like extent. All policies of insurance delivered to the Landlord must contain a provision that the company writing the policy will give to the Landlord thirty (30) thirty days notice in writing in advance of any cancellation or lapse of the effective date or any reduction in the amounts of insurance. All policies will be written as primary policies.

d) Notwithstanding anything to the contrary contained within this Lease, Tenant's obligation to carry the insurance provided for may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant. However, the Landlord will be named as an additional insured as its interests may appear and the coverage afforded by the Landlord will not be reduced or diminished because of the use of the blanket policy of insurance. Tenant agrees to permit the Real Property Owner all reasonable times to inspect the policies of insurance of Tenant covering risks upon the Premises.

e) Tenant will not carry any stock of goods or do or omit to do any act in or about the Premises which will in any way impair or invalidate the obligation of any policy of insurance on or in reference to the Premises or the Premises in which the Premises are situated. Tenant will pay upon demand, as additional Rent, any increase in premiums for insurance that may be charged during the term of this Lease on the amount of insurance to be carried by the Landlord on the Premises, or the Building in which the Premises are situated, resulting from the business carried on in the Premises by Tenant, whether or not the Landlord has consented to such business.

22. ASSIGNMENT OR SUBLETTING. Tenant shall not assign or otherwise transfer its interest in this Lease or sublet the Premises or any part thereof without the prior written consent of Landlord. The transfer of a majority or controlling interest in Tenant shall also constitute a "transfer" of Tenant's interest in this Lease. Tenant shall notify Landlord sixty (60) days in advance of its intent to transfer assign or sublet all or any portion of the Premises. In the event of any such assignment or subletting, Tenant and Guarantors shall nevertheless at all times remain fully responsible and liable for the payment of Rent and the performance and observance of all of Tenant's other obligations under the terms, conditions and covenants of this Lease, and the Guaranty shall remain in full force and effect. In the event Landlord consents to an assignment or subletting, no assignment or subletting of the Premises or any part thereof shall be binding upon Landlord unless such assignee or subtenant shall deliver to Landlord an instrument (in recordable form, if requested) containing an agreement of assumption of all Tenant's obligations under this Lease and Landlord shall execute a consent form. Any assignment or sublease consented to by Landlord shall not relieve Tenant (or its assignee) from obtaining Landlord's consent to any subsequent assignment or sublease. By way of example and not limitation, Landlord shall be deemed to have reasonably withheld consent to a proposed assignment or sublease if in Landlord's opinion (i) the Premises are or may be in any way adversely affected; (ii) the business reputation of the proposed assignee or subtenant is unacceptable; (iii) the financial worth of the proposed assignee or subtenant is insufficient to meet the obligations hereunder, or (iv) the prospective assignee or subtenant is a current tenant at the Building or any Building owned by Landlord and located within the Project or is a bona-fide third-party prospective tenant. Landlord further expressly reserves the right to refuse to give its consent to any subletting if the proposed Rent is publicly advertised to be less than the then current Rent for similar Premises in the Building. Tenant agrees and consents that, in consideration for Landlord's review of any requested assignment or sublease, Tenant shall pay to Landlord an administrative overhead fee of not less than One Thousand Five Hundred Dollars ($1,500.00), and shall also reimburse Landlord for Landlord's reasonable attorneys' fees and actual costs incurred in connection with such assignment or subletting. Upon the occurrence of an event of default, if all or any part of the Premises are then assigned or sublet, Landlord, in addition to any other remedies provided by this Lease or by law, may, at its option, collect directly from the assignee or subtenant all Rent becoming due to Landlord by reason of the assignment or subletting, and Landlord shall have a security interest in all property on the Premises to secure payment of such sums. Landlord, at its option, may also recapture any sublet space in the event of default. Any

collection by Landlord from the assignee or subtenant shall not be construed to constitute a novation or release of Tenant from the further performance of its obligations under this Lease. Any Rents received by Tenant from the assignment or subletting of the Premises which exceed Rents payable by Tenant hereunder shall be immediately paid to Landlord as additional compensation. Landlord shall, at its option, have the right to recapture all or any part of the Premises Tenant proposes to assign or sublet upon notice from Tenant of its intent to assign or sublet part of the Premises. Landlord shall have the right to transfer and assign, in whole or in part, all of its rights and obligations hereunder and in the Building and all other property referred to herein, and upon such transfer, the transferor shall have no further liability hereunder and Tenant shall attorn to any such transferee. Notwithstanding anything contained herein to the contrary, no tenant shall be permitted to assign or sublet its existing lease in the Building to any other tenant in the Building.

23. MORTGAGE, ADORNMENT

a) As a condition to the Landlord's signing this Lease, Tenant agrees to provide a Rent Surety Bond equal to eighteen (18) moths base rent amount for the first three (3) years during the initial base lease term. Bond shall name City of Tempe as payee in the event of default. Rent Surety Bond will not be required after three (3) years upon satisfactory on-time rent payment history. In lieu of Rent Surety Bond, Tenant may substitute a Guaranty of Lease. Fifth Street Market & Deli, Dba. Fifth Street Market & Deli will sign a Guaranty of Lease in the form attached to and incorporated into this Lease.

b) Notwithstanding any provisions of this Article to the contrary, and so long as Tenant is not in breach, this Lease will remain in full force and effect for the full Term. In the event any proceedings are brought for foreclosure, or to exercise the power of sale under any mortgage or deed of trust made by the Landlord covering the Premises, Tenant will adorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease. Such adornment is to be effective and self-operative without the signing of any other documents. However, the purchaser will not be liable to the Tenant for any claims the Tenant may have against the Landlord.

c) Within ten (10) days after written request by Landlord in the event that a statement is required from Tenant upon any sale, assignment or hypothecation of the Premises or the land by the Real Property Owner, Tenant agrees to sign and deliver to the Landlord in the form or such other form as is required by a lender, mortgage, beneficiary, or purchaser certifying that this Lease is in full force and effect (if such be the case) and that there are no defenses, breaches, or offsets or, if so, stating those claimed by Tenant.

24. GOVERNING LAW; CHOICE OF FORUM. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce, or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this section.

25. EMINENT DOMAIN

a) In the event the entire premise is taken under the power of eminent domain this Lease will terminate and expire as of the date of such taking. Landlord will grant Tenant ninety (90) calendar days to relocate.

b) In the event more than twenty-five percent (25%) of the floor area of the Premises is taken under the power of eminent domain, or, if by reason of any appropriation or taking, the remainder of the Premises is not one undivided parcel of property, either the Landlord or Tenant will have the right to terminate this Lease as of the date Tenant is required to vacate a portion of the Premises. Tenant may exercise this right by giving notice in writing of such election within thirty (30) days after receipt by Tenant from the Landlord of written notice that the Premises have been so appropriated or taken. In the event more than twenty-five percent (25%) of the ground area of the entire Premises is taken under the power of eminent domain, whether or not any portion of the floor area is

so taken, the Landlord will have the right to terminate this Lease as of the date of such taking upon giving Tenant written notice of such election within thirty (30) days after the Landlord has been notified of such appropriations.

c) If this Lease is terminated pursuant to subsections a and b of this Section, the Landlord will be entitled to the entire award of compensation in such proceedings. Tenant however will be entitled to receive compensation or damages for its fixtures and personal property taken pursuant to eminent domain. The Rent and other charges for the last month of Tenant's occupancy will be prorated and the Landlord agrees to refund to Tenant any Rent or other charges paid in advance. If neither the Landlord nor Tenant elects to so terminate this Lease, Tenant will remain in that portion of the Premises which was not appropriated or taken.

d) For the purposes of this Section 25, a voluntary sale or conveyance in lieu of condemnation will be deemed an appropriation or taking under the power of eminent domain.

e) Pursuant to subsections a, b, c, and d of this Section, Tenant will have a ninety (90) day period in which to relocate its business.

26. BANKRUPTCY – INSOLVENCY. It is understood and agreed that the following shall apply in the event of the bankruptcy or insolvency of Tenant:

(a) If a petition is filed by, or an order for relief is entered against Tenant under Chapter 7 of the Bankruptcy Code and the trustee of Tenant elects to assume this Lease for the purpose of assigning it, such election or assignment, or both, may be made only if all of the terms and conditions of subsections (b) and (d) below are satisfied. To be effective, an election to assume this Lease must be in writing and addressed to Landlord, and in Landlord's business judgment, all of the conditions hereinafter stated, which Landlord and Tenant acknowledge to be commercially reasonable, must have been satisfied. If the trustee fails so to elect to assume this Lease within sixty (60) days after his appointment, this Lease will be deemed to have been rejected, and Landlord shall then immediately be entitled to possession of the Premises without further obligation to Tenant or the trustee and this Lease shall be terminated. Landlord's right to be compensated for damages in the bankruptcy proceeding, however, shall survive such termination.

(b) If Tenant files a petition for reorganization under Chapters 11 or 13 of the Bankruptcy Code, or if a proceeding filed by or against Tenant under any other chapter of the Bankruptcy Code is converted to a Chapter 11 or 13 proceeding and Tenant's trustee or Tenant as debtor-in-possession fails to assume this Lease within sixty (60) days from the date of the filing of such petition or conversion, then the trustee or the debtor-in-possession shall be deemed to have rejected this Lease. To be effective, any election to assume this Lease must be in writing addressed to Landlord and, in Landlord's business judgment, all of the following conditions, which Landlord and Tenant acknowledge to be commercially reasonable, must have been satisfied:

(i) The trustee or the debtor-in-possession has cured or has provided to Landlord adequate assurance, as defined in this subsection (b), that

(1) The trustee will cure all monetary defaults under this Lease within ten (10) days from the date of assumption, and

(2) The trustee will cure all non-monetary defaults under this Lease within thirty (30) days from the date of assumption.

(ii) The trustee or the debtor-in-possession has compensated Landlord, or has provided Landlord with adequate assurance, as hereinafter defined, that, within ten (10) days from the date of assumption, Landlord will be compensated for any pecuniary loss it has incurred arising from the default of Tenant, the trustee, or the debtor-in-possession, as recited in Landlord's written statement of pecuniary loss sent to the trustee or debtor-in-possession.

(iii) The trustee or the debtor-in-possession has provided Landlord with adequate assurance of the future performance of each of Tenant's obligations under this Lease; provided, however, that:

(1) From and after the date of assumption of this Lease, the trustee or the debtor-in-possession shall pay Base Rent and Rent Adjustment payable under this Lease in advance in equal monthly installments on each date that such Rents are payable;

(2) The trustee or debtor-in-possession shall also deposit with Landlord, as security for the timely payment of Rent, an amount equal to three (3) months Base Rent, Rent Adjustment and other monetary charges accruing under this Lease;

(3) If not otherwise required by the terms of this Lease, the trustee or the debtor-in-possession shall also pay in advance, on each day that any installment of Base Rent is payable, one-twelfth (1/12) of Tenant's annual Taxes, Operating Expenses, and other obligations under this Lease; and

(4) The obligations imposed upon the trustee or the debtor-in-possession will continue for Tenant after the completion of bankruptcy proceedings.

(iv) Landlord has determined that the assumption of this Lease will not:

(1) Breach any provision in any other lease, mortgage, financing agreement, or other agreement by which Landlord is bound relating to the Building in which the Premises is located, or

(2) Disrupt, in Landlord's judgment, the tenant mix of the Building or any other attempt by Landlord to provide a specific variety of tenants in the Building which, in Landlord's judgment, would be most beneficial to all of the tenants thereof and would enhance the image, reputation and profitability thereof.

(v) For purposes of this subSection (b), "adequate assurance" means that:

(1) Landlord determines that the trustee or the debtor-in-possession has, and will continue to have, sufficient unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that the trustee or the debtor-in-possession will have sufficient funds timely to fulfill Tenant's obligations under this Lease and to keep the Premises properly staffed with sufficient employees to conduct a fully-operational, actively-promoted business in the Premises; and

(2) An order shall have been entered segregating sufficient cash payable to Landlord and/or a valid and perfected first lien and security interest shall have been granted in property of Tenant, trustee, or debtor-in-possession which is acceptable in value and kind to Landlord, to secure to Landlord the obligation of the trustee or debtor-in-possession to cure all monetary and non-monetary defaults under this Lease within the time periods set forth above.

(c) In the event this Lease is assumed by a trustee appointed for Tenant or by Tenant as debtor-in-possession under the provisions of subSection (b) above, and, thereafter, Tenant is either adjudicated bankrupt or files a subsequent petition for arrangement under Chapter 11 of the Bankruptcy Code, then Landlord may, at its option, terminate this Lease and all Tenant's rights under it, by giving written notice of Landlord's election to so terminate.

(d) If the trustee or the debtor-in-possession has assumed this Lease pursuant to subSection (a) or (b) above, to assign or to elect to assign Tenant's interest under this Lease or the estate created by that interest to any other person, such interest or estate may be assigned only if the intended assignee has provided adequate assurance of future performance, as defined in this subSection (d), of all of the terms, covenants, and conditions of this Lease.

(i) For purposes of this subSection (d), "adequate assurance of future performance" means that Landlord has ascertained that each of the following conditions has been satisfied:

(1) The assignee has submitted a current financial statement, audited by a certified public accountant, which shows a net worth and working capital in amounts determined by Landlord to be sufficient to assure the future performance by the assignee of Tenant's obligations under this Lease;

(2) If requested by Landlord, the assignee will obtain guarantees, in form and substance satisfactory to Landlord [*i.e.*, letter(s) of credit], from one or more persons who satisfy Landlord's standards of creditworthiness; and

(3) Landlord has obtained consents or waivers from any third parties which may be required, under any lease, mortgage, financing arrangement, or other agreement by which Landlord is bound, to enable Landlord to permit such assignment.

(e) When, pursuant to the Bankruptcy Code, the trustee or the debtor-in-possession is obligated to pay reasonable use and occupancy charges for the use of all or part of the Premises, it is agreed that such charges will not be less than the Base Rent as defined in this Lease, plus Rent Adjustment and other monetary obligations of Tenant included herein.

(f) Neither Tenant's interest in this Lease nor any estate of Tenant created in this Lease shall pass to any trustee, receiver, assignee for the benefit of creditors, or any other person or entity, nor otherwise by operation of law under the laws of any state having jurisdiction of the person or property of Tenant, unless Landlord consents in writing to such transfer. Landlord's acceptance of Rent or any other payments from any trustee, receiver, assignee, person, or other entity will not be deemed to have waived or waive either the requirement of Landlord's consent or Landlord's right to terminate this Lease for any transfer of Tenant's interest under this Lease without such consent.

27. SURRENDER OF PREMISES

a) Tenant will, upon expiration or termination of the Lease, surrender the Premises in good condition and repair, reasonable wear and tear excepted. Tenant will promptly surrender all keys for the Premises to include keycards for parking, security gates, Building, etc. at the place then fixed for payment of Rent and will inform the Landlord of combinations on any locks and safes on the Premises.

b) If the Premises is not surrendered upon expiration or termination, the Tenant will indemnify and defend the Landlord to the extent required by Section 21 against loss or liability resulting from delay by Tenant in so surrendering the Premises, including, without limitation, claims made by any succeeding Tenant founded on such delay.

28. FIXTURES AND PERSONAL PROPERTY. Any trade fixtures, signs and other personal property of Tenant not permanently affixed to the Premises will remain the property of Tenant. The Landlord agrees that Tenant has the right, provided Tenant is not in breach under the terms of this Lease, at any time, and from time to time, to remove any and all of its trade fixtures, signs and other personal property which it may have stored or installed in the Premises. Tenant, at its expense, will immediately repair any damage occasioned to the Premises by reason of the removal of any such trade fixtures, signs and other personal property. Upon expiration or earlier termination of this Lease, Tenant will remove all signs and trade fixtures and leave the Premises in a neat and clean condition, free of debris. All other improvements (see Exhibit B) to the Premises by Tenant including, but not limited to, floor coverings, carpeting, partitions, and fixtures and equipment fastened to or affixed to the Premises may not be removed by the Tenant except with the written consent of the Landlord. Such other improvements will become the property of the City of Tempe upon expiration or earlier termination of this Lease.

29. HOLDING OVER. If Tenant holds over after the term of this Lease, Tenant will become a tenant on a month-to-month basis upon all the terms, covenants and conditions in this Lease, including payment of percentage Rent, but exclusive of any renewal options. Tenant may not hold over unless Tenant receives written permission by the Landlord to do so; should Tenant not vacate Premises at Lease termination, Tenant will pay to the Landlord, for each month Tenant remains, one hundred fifty percent (150%) of Tenant's Minimum Rent at the time, plus all other charges of this Lease, and will remain subject to all the remedies at the Landlord's disposal for removal by law and per the terms of this Lease.

30. QUIET ENJOYMENT Except as provided in Section 22 hereof to the extent that it may be applicable, if and so long as Tenant pays the prescribed Rent and performs or observes all of the terms, conditions, covenants and obligations of this Lease required to be performed or observed by it hereunder, Tenant shall, at all times during the Term hereof, have the peaceable and quiet enjoyment, possession, occupancy and use of the Premises without any interference from Landlord or any person or persons claiming the Premises by, through or under Landlord, subject to any mortgages, underlying leases or other matters of record to which this Lease is or may become subject.

31. REIMBURSEMENT. All covenants and terms contained in this Lease to be performed by Tenant will be performed by and at its expense. If the Landlord pays any sum of money or does any act which requires the payment of money by reason of the failure of Tenant to perform such covenant or term, the money so paid will be considered as Additional Rent and will be payable by Tenant on the first of the month next succeeding payment, together with interest at the maximum rate permitted by law.

32. LEGAL FEES. In the event that at any time either the Landlord or Tenant institutes any action or proceeding against the other relating to this Lease, the prevailing party in such action or proceeding will be entitled to recover from the other party its reasonable costs, expenses, and attorney's fees.

33. SALE OF PREMISES BY THE LANDLORD. In the event of any sale or exchange of the Premises by the Landlord, Landlord may assign this Lease, whereupon the Landlord will be entirely relieved of all liability under all the terms contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Premises occurring after the consummation of such sale or exchange and assignment.

34. NOTICES.

(a) All Rent and other payments required to be made by Tenant to Landlord shall be delivered or mailed to the address specified in this Section 34, below, or at any other address within the United States as Landlord may specify from time to time by written notice given to Tenant.

(b) All payments required to be made by Landlord to Tenant shall be delivered or mailed to Tenant at the address specified in this Section 34, below, or at any other address within the United States as Tenant may specify from time to time by written notice given to Landlord.

(c) Any notice, demand or request required or permitted to be given under this Lease or by law shall be deemed to have been given if reduced to writing and mailed by Registered or Certified mail, postage prepaid, to the party who is to receive such notice, demand or request at the address specified in this Section 34, below, or at such other address as Landlord or Tenant may specify from time to time by written notice. When delivering such notice, demand or request shall be deemed to have been given as of the date it was so delivered or mailed.

Landlord's Notice Addresses:	Tenant's Notice Addresses
City of Tempe - Transportation	Fifth Street Market & Deli, LLC, Dba. Fifth Street Market & Deli
200 E. Fifth Street, 2nd Floor Tempe, AZ 85281	5123 W. Redbird Rd Phoenix, AZ 85083
Attention: Shelly Seyler	Attn: Arian Pellumbi

35. SECURITY DEPOSIT

a) Upon lease execution, Tenant shall pay an amount equal to first and last month's base minimum Rent as security deposit to be held by Landlord throughout the term of the lease and any options should Tenant choose to exercise such. Tenant has deposited with the Landlord the sum of, $4,639.70 dollars as a "security deposit" receipt of which is acknowledged. The security deposit will be held by the Landlord without liability for interest as security for the faithful performance by Tenant of all the terms of this Lease by the Tenant. The security deposit will not be mortgaged, assigned, transferred or encumbered by Tenant without the written consent of the Landlord and any

such act on the part of Tenant will be without force and effect and will not be binding upon the Landlord. The Landlord will have the right to commingle the security deposit with its other funds. No additional security deposit will be required.

b) If any of the Rent reserved or any other sum payable by Tenant to the Landlord becomes past due and unpaid or if the Landlord makes payments on behalf of Tenant, or if Tenant fails to perform any of the terms of this Lease, then the Landlord may, at its option and without prejudice to any other remedy which the Landlord may have, appropriate and apply the entire deposit or so much as may be necessary to compensate Landlord toward the payment of Rent, charges, loss, or damage sustained by the Landlord due to such breach on the part of Tenant. Tenant will forthwith upon demand restore the security to the original sum deposited. Should Tenant comply with all of the terms and promptly pay all of the Rentals as they fall due and all other sums payable by Tenant to the Landlord, the security deposit or any balance will be returned to Tenant or, at the option of the Landlord, to the last assignee of Tenant's interest in this Lease at the expiration of the Lease term.

c) In the event of bankruptcy or other debtor-creditor proceedings against Tenant, such security deposit will be deemed to be applied first to the payment of Rent and other monies due the Landlord for all periods prior to the filing of such proceedings.

d) The Landlord may deliver the security deposit to the purchaser of the Landlord's interest in the Premises in the event that such interest is sold. In such event, the Landlord will be discharged from any further liability with respect to such deposit. This provision will also apply to any subsequent transferees.

36. RIGHT OF INSPECTION. The Landlord or Landlord's agents may at reasonable times enter the Premises for the purpose of examination and inspection. The Landlord and Landlord's agent will have the right to show the Premises to persons wishing to purchase or lease the same. During the ninety (90) calendar day period prior to the expiration of the term of this Lease or any renewal, the Landlord or Landlord's agents will have the right to place the usual "for lease" sign or notice on the Premises, and Tenant will permit the same to remain without hindrance. The Landlord may place a "for sale" sign at any time on the Premises.

37. ACCESS TO THE PREMISES Landlord, its employees and agents and any mortgagee of the Building, shall have the right to enter any part of the Premises at all reasonable times for the purposes of examining or inspecting the same, showing the same to prospective purchasers, mortgagees or tenants and for making such repairs, alterations or improvements to the Premises or the Building as Landlord may deem necessary or desirable. If representatives of Tenant shall not be present to open and permit such entry into the Premises at any time when such entry is necessary or permitted hereunder, Landlord and its employees and agents may enter the Premises by means of a master key or otherwise, Landlord shall incur no liability to Tenant for such entry, nor shall such entry constitute an eviction of Tenant or a termination of this Lease, nor entitle Tenant to any abatement of Rent therefore.

38. EASEMENTS. At its sole discretion, the Landlord will retain the right to grant easements affecting the Premises. Tenant, if requested by the Landlord, will execute any and all instruments required in connection with the granting of such easement. In such event Tenant's obligations, including Tenant's liability for Rent, will remain in full force and effect and undiminished.

39. SUCCESSORS. All terms and covenants of the Lease will be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the Landlord and Tenant provided that nothing in this Article will be deemed to permit any assignment, subletting, transfer, occupancy, or use contrary to the provisions of this Lease.

40. ADVERTISING Landlord hereby agrees that Tenant may advertise and promote Tenant's business in the Premises, with Landlord's prior written approval of the manner and of the written materials for such advertising and promotion. Tenant shall not have the right to use the name, trade name, or trademark of Landlord or the Building for any reason including any promotional materials or activities without first securing the written consent of Landlord. Landlord, at no cost to Landlord, will cooperate in good faith with Tenant to assist it with such promotion. Landlord shall have the

right to include Tenant's name and business description in any promotional materials advertising the Building for lease by prospective or renewing tenants.

41. MISCELLANEOUS

a. This lease will be construed and enforced in accordance with the laws and the State of Arizona.

b. Any amendments to this Lease must be in writing and signed by the Landlord and Tenant.

c. In the event the Landlord must enforce Section 15 with written notice to Tenant due to breach of terms, there will be a charge to the Tenant of $100.00. Should it then be necessary for the Landlord to use its full remedy and lock out Tenant, there will be an additional charge of $300.00.

d. To the extent applicable, this Lease is subject to cancellation pursuant to the provisions of A.R.S. section 38-511.

e. Payments Deemed Rent. Any amounts of money to be paid by Tenant to Landlord pursuant to the provisions of this Lease, whether or not such payments are denominated "Rent" or "Additional Rent" and whether or not they are to be periodic or recurring, shall be deemed Rent or additional Rent for purposes of this Lease; and any failure to pay any of same as provided in Section 14 hereof shall entitle Landlord to exercise all of the rights and remedies afforded hereby or by law for the collection and enforcement of Tenant's obligation to pay Rent. Tenant's obligation to pay any such Rent or additional Rent pursuant to the provisions of this Lease shall survive the expiration or other termination of this Lease and the surrender of possession of the Premises after any holdover period.

f. Estoppel Letters. Tenant shall, within ten (10) days following written request from Landlord, execute, acknowledge and deliver to Landlord or to any lender, purchaser or prospective lender or purchaser designated by Landlord, a written statement certifying (i) that this Lease is in full force and effect and unmodified (or, if modified, stating the nature of such modification); (ii) the date to which Rent has been paid; (iii) that there are not, to Tenant's knowledge, any uncured defaults (or specifying such defaults if any are claimed); (iv) that any successor Landlord and/or mortgagee shall not be liable for the payment of Rent by Tenant more than one month in advance; (v) that any successor Landlord and/or mortgagee shall not be liable for the completion of any Landlord's work; (vi) the Lease contains the entire agreement between the parties; (vii) the Lease has not been assigned or subleased; (viii) no damage has occurred to the Premises as the result of a casualty; (ix) the Premises have not been reduced in size as a result of a condemnation proceeding; and (x) such further matters as may be requested by Landlord. Any such statement may be relied upon by any prospective purchaser or mortgagee of all or any part of the Building. Tenant's failure to deliver such statement within such period shall be conclusive upon Tenant that this Lease is in full force and effect and unmodified, and that there are no uncured defaults in Landlord's performance hereunder.

g. Brokers(s). Tenant covenants, warrants and represents that no broker except Colton Commercial, Inc., who represents the interests of Landlord (the "Landlord's Broker"), was instrumental in bringing about or consummating this Lease and that no other party is entitled, as a result of the actions of Tenant, to a commission or other fee resulting from the execution of this Lease. Tenant agrees to indemnify and hold harmless Landlord against and from any and all claims, costs, expenses and liabilities in connection with Tenant's breach of this representation and warranty (including, without limitation, attorneys' fees and expenses) and Tenant shall pay any compensation to any other broker or person who may be entitled thereto. Such indemnity obligation shall be deemed to include the payment of reasonable attorneys' fees and court costs incurred in defending any such claim and shall survive the expiration or earlier termination of this Lease. Landlord shall pay any brokerage commissions due Landlord's Broker pursuant to a separate agreement between Landlord and Landlord's Broker. Tenant acknowledges that no broker, including Broker(s), shall have the right to make any representation or warranty on behalf of Landlord.

h. Entire Agreement. This Lease, including all Exhibits, Riders and Addenda, constitutes the entire agreement between the parties hereto and may not be modified except by an instrument in writing executed by the parties hereto.

i. Binding Effect. This Lease and the respective rights and obligations of the parties hereto shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto as well as the parties themselves; provided, however, that Landlord, its successors and assigns shall be obligated to perform Landlord's covenants under this Lease only during and in respect of their successive periods as Landlord during the Term of this Lease.

j. Severability. If any provision of this Lease shall be held to be invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

k. No Partnership. Landlord shall not, by virtue of the execution of this Lease or the leasing of the Premises to Tenant, become or be deemed a partner of Tenant in the conduct of Tenant's business on the Premises or otherwise.

l. Headings; Gender. As used in this Lease, the word "person" shall mean and include, where appropriate, an individual, corporation, partnership or other entity; the plural shall be substituted for the singular, and the singular for the plural, where appropriate; and words of any gender shall include any other gender. The topical headings of the several Sections of this Lease are inserted only as a matter of convenience and reference, and do not affect, define, limit or describe the scope or intent of this Lease.

m. Waiver of Jury Trial. To the extent permitted by law, Tenant hereby waives any right it may have to a jury trial in the event of litigation between Tenant and Landlord pertaining to this Lease.

n. Allocation of Rent. Landlord and Tenant agree that no portion of the Base Rent paid by Tenant during the portion of the Term of this Lease occurring after the expiration of any period during which such Rent was abated shall be allocated by Landlord or Tenant to such Rent abatement period, nor is such Rent intended by the parties to be allocable to any abatement period.

o. Right to Change Building Name and Address. Landlord reserves the right to change the name or street address of the Building.

p. Requirement of Identification. Landlord, or its contractor(s), may require all persons entering or leaving the Building during such hours as Landlord may reasonably determine, to identify themselves by registration or otherwise, and to establish their right to leave or enter, and to exclude or expel any peddler, solicitor or beggar at any time from the Premises, or Building.

q. Reserved Areas, Light and Air. This Lease does not give Tenant any right to use, and Landlord hereby excludes and reserves for its sole and exclusive use, the following areas in and about the Premises: janitor closets, stairways and stairwells, fan, mechanical, electrical, telephone and similar rooms (other than those installed for Tenant's exclusive use); elevator, pipe and other vertical shafts, flues and ducts; all areas above the acoustical ceiling and below the finished floorcovering installed in the Premises; all other structural or mechanical elements serving other areas of the Premises; and all subterranean, mineral, air, light and view rights.

r. Limitation of Landlord's Personal Liability; Limitation of Tenant's Recourse. Tenant is granted no contractual right of termination by this Lease. If Landlord shall fail to perform any term, condition, covenant or obligation required to be performed by it under this Lease and if Tenant shall, as a consequence thereof, recover a money judgment against Landlord, Tenant agrees that it shall look solely to Landlord's right, title and interest in and to the Building for the collection of such judgment and Tenant further agrees that no other assets of Landlord shall be subject to levy, execution or other process for the satisfaction of Tenant's judgment, and as such, it being agreed and understood that Landlord (and its officers, partners, members, shareholders, agents and employees) shall never be personally liable for any such judgment and Tenant further agrees that Landlord shall not be liable for any deficiency. Additionally, in no event shall Landlord be liable to Tenant for consequential or special damages by reason of a failure to perform (or a default) by Landlord hereunder or otherwise.

s. Time of Essence. Time is of the essence of this Lease and each of its provisions.

t. Examination of Lease. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for Lease, and it is not effective as a Lease or otherwise until execution by and delivery to both Landlord and Tenant.

u. Construction. The parties (i.e., Landlord and Tenant) hereto hereby acknowledge and agree that (i) each party hereto is of equal bargaining strength, (ii) each such party has actively participated in the drafting, preparation and negotiation of this Lease, (iii) each such party has consulted with such party's own, independent counsel, and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Lease, (iv) each such party and such party's counsel and advisors have reviewed this Lease, (v) each such party has agreed to enter into this Lease following such review and the rendering of such advice, and (vi) any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Lease, or any portions hereof, or any amendments hereto.

v. Tenant Requests. If during the Term, as the same may be extended from time to time, Tenant requests any modifications and/or amendments to the Lease in order to document the provision of materials or services which shall be provided exclusively to Tenant (which Landlord is willing to agree to as evidenced by a written agreement signed by both parties), Tenant, by execution of this Lease, agrees and consents that it shall be solely responsible for Landlord's reasonable attorneys' fees incurred in the review and/or production of any document necessary to accommodate Tenant's specific request.

w. Authority. Tenant hereby covenants, warrants and represents: (1) that each individual executing or attesting and delivering this Lease on behalf of Tenant is duly authorized to do so in accordance with the organizational documents of Tenant; (2) that this Lease is binding upon Tenant; (3) that Tenant is duly organized and legally existing in the State of Arizona; and (4) that the execution and delivery of this Lease by Tenant will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, loan, credit agreement, partnership agreement or other contract or instrument to which Tenant is a party or by which Tenant may be bound. Upon request, Tenant will deliver to Landlord true and correct copies of all organizational documents of Tenant, including, without limitation, copies of an appropriate resolution or consent of Tenant's board of directors or other appropriate governing body of Tenant authorizing or ratifying the execution and delivery of this Lease, which resolution or consent will be duly certified to Landlord's satisfaction by an appropriate individual with authority to certify such documents, such as the secretary or assistant secretary or the managing general partner of Tenant.

x. No Light, Air or View Easement. Any diminution or shutting off of light, air or view by any structure which may be erected on the Building or lands adjacent to the Building shall in no way affect this Lease or impose any liability on Landlord (even if Landlord is the adjacent land owner).

y. OFAC. Tenant is currently (a) in compliance with and shall at all times during the term of this Lease remain in compliance with the regulations of the Office of Foreign Assets Control ("OFAC") of the U.S. Department of Treasury and any statute, executive order (including Executive Order 13224, dated September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), or regulation relating thereto, and (b) not listed on, and shall not during the term of this Lease be listed on, the Specially Designated Nationals and Blocked Persons List maintained by OFAC and/or on any other similar list maintained by OFAC or other governmental authority pursuant to any authorizing statute, executive order, or regulation.

z. E-verify. Tenant shall follow federal regulations under the e-verify system. E-Verify is an Internet-based system that compares information from an employee's Form I-9, Employment Eligibility Verification, to data from U.S. Department of Homeland Security and Social Security Administration records to confirm employment eligibility

42. NO REPRESENTATIONS. Landlord and Landlord's Agents have made no warranties, representations or promises (express or implied) with respect to the Premises, the Building or any other part of the project (including, without limitation, the condition, use or suitability of the Premises, the Building or the project) except as herein expressly set forth and no rights, easements or licenses are acquired by tenant by implication or otherwise except as expressly set forth in the provisions of this lease.

Executed to be legally binding as of Date of Signing listed in Sections 1-6:

Landlord:

City of Tempe

BY: Andrew B. Ching
Andrew Ching
City Manager

8-7-2018
Date

Attest:

BY: _____
City Clerk

_____
Date

Tenant:

Fifth Street Market & Deli, LLC, Dba. Fifth Street Market & Deli

BY: Ismail Pellumbi
Ismail Pellumbi
Managing Member

Its: _____

08/07/18
Date

BY: Ilir Pasho
Ilir Pasho
Managing Member

Its: _____

8/7/18
Date

BY: Arian Pellumbi
Arian Pellumbi
Managing Member

Its: _____

8.7.18
Date

LEASE GUARANTY

THIS LEASE GUARANTY (the "Guaranty") is given as of this _____ day of _____,2018 by Ismail Pellumbi and Ilir Pasho (referred to herein as a "Guarantor"), with respect to that certain Lease Agreement for Commercial Properties of even date herewith (the "Lease"), executed by the City of Tempe, as Landlord, and Fifth Street Market & Deli, LLC, Dba. Fifth Street Market & Deli as Tenant.

RECITALS

A. As a condition to its execution of the Lease, Landlord requires that the Guarantor personally guarantees the full performance of the obligations of Tenant under the Lease and Landlord requires that the Guarantor provide a Corporate guarantee for the full performance of the obligations of Tenant under the lease for the first five (5) years; and

B. The Guarantor desires that Landlord enter into the Lease with Tenant.

GUARANTY

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby unconditionally guarantees to Landlord, and to its successors and assigns, the full, complete, and timely payment and performance of each and all of the terms, covenants, and conditions of the Lease contained herein and in any modification or amendment to the Lease to be kept and performed by Tenant during the initial term of the Lease and any renewal term, including the payment of all Rentals and other charges accruing pursuant to the Lease (the "Lease Obligations"). Guarantor further agrees as follows:

1. This Guaranty shall continue in favor of Landlord notwithstanding any extension, modification, or alteration of the Lease entered into by and between Landlord and Tenant, or their successors or assigns, and notwithstanding any assignment of the Lease, with or without the consent of the Landlord. No extension, modification, alteration, or assignment of the Lease shall in any manner release or discharge Guarantor, and Guarantor hereby consents to any such extension, modification, alteration, or assignment.

2. This Guaranty will continue unchanged by the occurrence of any of the events described in Section 29 of the Lease with respect to Tenant, the Guarantor, or any assignee or successor of Tenant or by any disaffirmance or abandonment of the Lease by a trustee of Tenant. Neither Guarantor's obligation to make payment or render performance in accordance with the terms of this Guaranty nor any remedy for the enforcement hereof shall be impaired, modified, changed, released, or limited in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of Tenant, Guarantor, or their estates in bankruptcy or of any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the U.S. Bankruptcy Act or other statute, or from the decision of any court or agency.

3. The liability of Guarantor under this Guaranty shall be primary and independent of the liability of Tenant. Guarantor hereby waives any right to require Landlord to proceed against any other person or to proceed against or exhaust any security held by it at any time or to pursue any other remedy before proceeding against Guarantor. If any right of action shall accrue to Landlord under the Lease, Landlord may proceed against Guarantor and Tenant, jointly or severally, or Landlord may, at its option, proceed against Guarantor, with having commenced any action or having obtained any judgment, against Tenant. Guarantor hereby waives the provisions of Sections 12-1641, et seq., Arizona Revised Statutes, or any similar or successor statutes, and the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness or the performance of any obligation hereby guaranteed.

4. Guarantor agrees to pay all reasonable attorneys' fees and all costs and other expenses incurred in any collection or attempted collection of this Guaranty or in any negotiations relative to the Lease Obligations or in enforcing this Guaranty against Guarantor.

5. Guarantor hereby waives notice of any demand by Landlord, any notice of default in the payment of Rent or any other amounts contained or reserved in the Lease, or any other notice of default under the Lease. Guarantor expressly agrees that the validity of this Guaranty and the obligations of Guarantor shall in no way be terminated, affected or impaired by reason of any waiver by Landlord or its successors or assigns, or failure to enforce any of the terms and conditions of the Lease or this Guaranty, or the granting of any indulgence or extension of time to Tenant, all of which may be given or done without notice to Guarantor.

6. This Guaranty shall extend in full force and effect to any assignee or successor to Landlord and shall be binding upon the Guarantor and Guarantor's successors and assigns.

7. Until all Lease Obligations have been paid or satisfied in full, Guarantor shall have no right of subrogation, and Guarantor hereby waives any right to enforce any remedy which Landlord has or may hereafter have against Tenant and any benefit of, and any right to participate in, any security now or hereafter held by Landlord.

8. All existing and future indebtedness of Tenant by Guarantor is hereby subordinated to all indebtedness and other obligations hereby guaranteed and, in the event of a default by Tenant of the indebtedness guaranteed hereby, Guarantor shall not be paid in whole or in part, now will Guarantor accept any payment of or on account of any such indebtedness, while this Guaranty is in effect and so long as such default remains uncured.

9. This Guaranty shall be construed in accordance with Arizona law.

10. All property of Guarantor, whether sole and separate or community, shall be available to satisfy the obligations created by this Guaranty.

11. This Guaranty may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument binding upon the signatories, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

Guarantor

Name: Ismail Pellumbi

Signature: Ismail Pellumbi

Date: 08/07/18

State of Arizona)
)
County of Maricopa)

NOTARY PUBLIC
STATE OF ARIZONA
Maricopa County
CASSIDY MILLER
My Commission Expires April 14, 2020

On this 7th day of August, 2018, before me personally appeared Ismail Pellumbi, whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledged that he or she signed the above/attached document.

(seal)

Notary Public

Guarantor

Name: Ilir Pasho

Signature: _____

Date: 8/7/18

NOTARY PUBLIC
STATE OF ARIZONA
Maricopa County
CASSIDY MILLER
My Commission Expires April 14, 2020

State of Arizona)
)
County of Maricopa)

On this 7TH day of August, 2018, before me personally appeared Ilir Pasho, whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledged that he or she signed the above/attached document.

(seal)

_____
Notary Public

Guarantor

Name: Arian Pellumbi

Signature: _____

Date: 8.7.18

State of Arizona)
)
County of Maricopa)

On this 7TH day of August, 2018, before me personally appeared Arian Pellumbi, whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledged that he or she signed the above/attached document.

NOTARY PUBLIC
STATE OF ARIZONA
Maricopa County
CASSIDY MILLER
My Commission Expires April 14, 2020

(seal)

_____
Notary Public

EXHIBIT "A"

RULES AND REGULATIONS

The following "Rules and Regulations" shall be and are hereby made a part of this Lease. All capitalized phrases are defined in the Lease. The phrase "Building" includes the entire Premises and the Common Areas, including all areas leased to Tenant or to others where required by the context. Tenant, its employees and agents, or any others permitted by Tenant to occupy or enter said Building (collectively, "Tenant's Visitors"), will at all times abide by these Rules and Regulations. A Default in the performance and observance of the Rules and Regulations shall operate the same as any Default under the Lease. Any changes or exceptions to the Rules and Regulations shall be submitted to Landlord in writing for review and consideration. Landlord shall respond to such request within sixty (60) days after receipt. The Landlord retains sole discretion to approve and consent or decline any changes to the Rules and Regulation submitted by Tenant.

1. Neither the sidewalks, entries, passages and corridors, of the Building nor any other part of the Common Areas as defined in the Lease shall be obstructed by Tenant, or its Visitors, or be used for any purpose other than ingress and egress to and from the Building.

2. Furniture, equipment or supplies shall be moved in or out of the Premises or Building only at the exit designated by Landlord, and then only during such hours and in such manner as may be reasonably prescribed by Landlord or its property manager.

3. Signs, notices, advertisements, or other inscriptions shall not be placed upon any part of the Premises except where designated by Landlord, and then only by a sign writer approved in writing by Landlord or its property manager.

4. Tenant shall not do or permit anything to be done in the Premises, or bring anything therein, which will in any way increase the rate of insurance on the Building or obstruct or interfere with the rights of other tenants, or in any way injure or annoy them, or conflict with the laws relating to fire and safety, or with any regulations of the fire department or with any insurance policy upon the Building, or conflict with any of the applicable law, rules, regulations or ordinances of any governmental entity.

5. Tenant acknowledges that the laws, ordinances, rules and regulations governing proper waste management may be amended from time to time by City, State, County or Federal Government Agencies. The waste management company may change its policies and practices governing the disposal of waste from time to time. Notwithstanding these or any other changes in the rules, regulations, manner of handling or other manner affecting waste management, the Tenant agrees to fully cooperate and abide by all of the foregoing as they may be amended or changed from time to time.

6. If an individual Tenant wishes to handle its wastes in a manner which differs from that used by other tenants in the Building, then the Tenant shall submit a written description of the proposed manner of handling waste to the Landlord for prior review and approval. The Tenant shall pay all costs incurred in connection with the review of that proposal, including, but not limited to, legal fees, review by waste management agencies, etc. Failure to abide by a written directive from the Landlord or its management company concerning the handling of waste material constitutes an immediate and dangerous Default of the terms of the Lease and shall be treated in the same fashion as a non-monetary breach under the terms of the Lease.

7. Water closets and other water fixtures shall not be used for any purpose other than that for which the same are intended. Any damage resulting to the same from misuse on the part of Tenant, or Tenant's Visitors shall be paid for by Tenant. No person shall waste water by tying back or wedging the faucets, or in any other manner interfering with the normal operation of any utility.

8. No animals shall be allowed in the offices, halls and corridors in the Building except for seeing eye-dogs as may be required by State or Federal law.

9. Bicycles, tricycles, skateboards, scooters or other vehicles shall not be permitted in the Premises nor in the Common Areas, nor shall any obstruction of sidewalks or entrances of the Project by such be permitted.

10. No person shall disturb the occupants of this or adjoining Buildings by the use of any radio or musical instrument or by making loud or improper noises.

11. Tenant shall not allow anything to be placed on the outside window ledges of the Building, nor shall anything be thrown by the Tenant, its agents or employees out of the windows or doors.

12. No additional lock or locks shall be placed by Tenant on any door in the Building without the prior written consent by Landlord. Landlord will furnish Tenant, free of charge, with two keys to the Premises. Landlord may make a reasonable charge for any additional keys. Tenant shall not make or have made additional keys, and Tenant shall not alter any lock or install a new additional lock or bolt on any door or window of the Leased Premises. Tenant, upon termination of the Term, shall deliver to Landlord the keys which have been furnished to Tenant, and in the event of loss of any keys shall pay Landlord for the cost to replace the keys. Additional keys, if requested, will be provided to Tenant, only by Landlord at Tenant's cost.

13. No awnings or other obstructions shall be placed over the windows or doorways except with the prior written consent of Landlord.

14. If any tenant desires telegraphic, telephonic, computer, data processing or other electrical connections, Landlord or its agents will direct electricians as to where and how the wires may be introduced. It shall be the sole responsibility of Tenant to obtain and pay for such architectural, electrical, or other structural advice as may be necessary to persuade Landlord or its agents as to the wisdom of allowing boring, cutting or other interference in the structural members and/or walls of the Building. It is Tenant's responsibility to obtain Landlord's prior consent to any boring, cutting or other intrusion into the structure. Tenant shall be responsible for all damages arising from installation or removal of any such items.

15. Without such directions, no boring or cutting for wires is permitted. Any such installation and connection will be made at Tenant's expense. No wires for electric or other purposes may be introduced nor will boring nor cutting of present wires be allowed without the prior written consent of Landlord and then only under its direction. Tenant shall remove all such installations at its expense and repair all damage in connection with the removal and repair of these items. Failure to promptly undertake these repairs may result in a loss of the Security Deposit and will also be considered as a Default under the terms of the Lease giving rise to the right of Landlord to sue for and recover damages for failure to make these repairs.

16. Except as permitted by Landlord, Tenant shall not mark upon, paint signs upon, cut, drill into, drive nails or screws into or in any way deface the walls, ceilings, partitions or floors of the Premises or Building. Any defacement, damage or injury to the Premises caused by Tenant, its agents or employees, shall be paid for by Tenant. Tenant may hang reasonable wall decorations from walls of its Premises, but shall be responsible for the cost of repair of this damage upon expiration of the Lease Term.

17. Landlord shall at all times have the right to issue additional Rules and Regulations as in its judgment may from time to time be needed and desirable for the safety, care and cleanliness of the Premises and for the preservation of good order thereon or for any other purpose deemed necessary by Landlord in its sole discretion.

18. Amended Rules and Regulations are effective upon receipt by Tenant.

19. Landlord will not be responsible to Tenant for any loss of property from the leased Premises however occurring, provided, however, that if a loss of property is covered by the Landlord's insurance and is not covered by the Tenant's insurance, then the Landlord will bear the loss but only to the extent of Landlord's available insurance proceeds.

20. Landlord shall have the right to determine what shall constitute normal working hours as relates to opening and closing of the Building and for providing heating, cooling and lighting to Common Areas.

21. Landlord may, in its discretion, provide a security system for the protection of its own property. However, this system is neither intended nor designed to safeguard or secure any Tenant Premises or any Tenant's property. Tenants may not rely on this system for security for their leased Premises. The use of this system shall be at the option and direction of Landlord or its agents. Tenant, at Tenant's sole expense, may install its own security system for its own Leased Premises. Written plans and specifications for the system must be submitted to the Landlord in care of the property manager and written approval of Landlord must be obtained prior to installation. If the Security System disturbs the peace and quiet of other tenants or neighbors of the Building, then Landlord, in its sole discretion, may, but is not obligated to, require Tenant to disconnect, modify or remove the system with the cost of the disconnection, modification or removal to be borne solely by the Tenant which installed the system.

22. To assure that convenient parking is available for the Building visitors, Tenant acknowledges that Landlord's ability to control and restrict areas for various parking uses is critically important to the ordinary operation of the Building. Failure to obey any rules and regulations regarding parking shall be deemed a Default and breach of this Lease. Vehicles in violation of the above rules and regulations regarding parking may be impounded or towed at the owner's expense.

23. Landlord may designate areas for deliveries and pick-ups for such items as UPS, Federal Express, etc. Landlord may, but is not obligated to, make these designations in its sole and absolute discretion.

24. If you notice violations of these Rules and Regulations please contact Landlord or its Management Company. These Rules and Regulations have been developed based on input from the Tenants in the Building and have been adopted under the terms of the Tenant Lease. Violations of these Rules and regulations are considered a Default under the Lease.

25. To promote a healthy environment smoking is not permitted anywhere within the Building. Tenant shall not smoke and shall prohibit its employees, contractors and invitees from smoking in the Leased Premises and Building.

26. Communication Device Installation Rule. Tenants may install one satellite or other communication dish ("Communication" or "Device") only to the extent Landlord is required by law to allow such Device and then only in compliance with these rules and regulations:

Any provision of these rules and regulations which is contrary to law shall be deleted so that the remaining rules and regulations may be preserved and enforced.

TENANT:

Fifth Street Market & Deli, LLC, Dba. Fifth Street Market & Deli

By: Brian Pellegrini

Its: _____

Date: 8.7.18

EXHIBIT "B"

TENANT'S WORK

INTERIOR IMPROVEMENTS

1. Tenant agrees to construct for itself certain improvements to the Leased Premises (the "Tenant Improvements"), after receipt of Landlord's written approval in accordance with the procedure identified below. Landlord agrees to provide Tenant with a tenant improvement allowance not to exceed fifty thousand dollars ($50,000) for front business signage, demolition of existing freestanding bar & demolition/relocation of west side ADA ramp to east side of premises. Tenant will submit to Landlord request for tenant improvement allowance/reimbursement upon completion of work stated herein. Tenant shall submit invoice for actual costs not to exceed $50,000 based on paid tenant improvement contractor invoices (submitted with Tenant Allowance invoice).

2. The Tenant Improvement Allowance amount is a maximum figure that Landlord will expend in construction costs toward the cost of a finished suite, to include permanent affixed improvements and fixtures, suitable for Tenant's needs and consistent with other Tenant spaces in the Premises, not to include design, engineering or consultant costs. This Tenant Improvement Allowance shall not be applied to trade fixtures, signs, personal property, telephones (or phone installation), office equipment, restaurant (kitchen) equipment, other equipment or furniture. Landlord is not required to expend the entire Tenant Improvement Allowance if a lesser amount will result, in Landlord's judgment, in adequate and suitable finished quarters. Any amounts required over and above the Tenant Improvement Allowance amount will be the sole responsibility of Tenant. All amounts expended by Landlord in excess of the Tenant Improvement Allowance shall be reimbursed by Tenant to Landlord within 30 days of receipt of a billing statement from Landlord.

3. All Tenant Improvement work shall be done according to plans, specifications and cost estimates which have been approved by Landlord prior to the start of any Tenant Improvement work. All Tenant Improvement work shall be done by an architect and contractor(s) approved by Landlord.

4. Tenant shall at its sole cost and expense cause to be prepared in a timely fashion "Preliminary Construction Drawings" (which will be attached as Exhibit "1") and which are incorporated into this Lease with this reference. When Tenant's architect has completed the Preliminary Construction Drawings, Landlord and Tenant shall approve them by initials on Exhibit "1" within fifteen (15) days.

5. At the time Tenant provides Landlord with a written estimate of the costs of completing construction of the Tenant Improvements, Tenant agrees to formally acknowledge Tenant's obligation to pay all costs in excess of the Tenant Improvement Allowance by signing an Agreement to pay for Tenant Improvement Costs in the form shown below. Tenant will not commence construction until Tenant has signed this Agreement and returned it to Landlord.

6. Landlord shall pay the Tenant Improvement Allowance as reimbursement to Tenant upon presentation of a draw request conforming to the requirements of the construction contract accompanied by all requisite lien waivers, receipts and such other information as Landlord may require; however, Landlord shall not be obligated to pay any portion of the Tenant Improvement Allowance unless and until Tenant has paid (or deposited with Landlord sufficient funds to enable Landlord to pay), all costs in excess of the amount of the Tenant Improvement Allowance, including without limitation the costs associated with any change orders signed by Tenant. The parties intend that the Tenant Improvement Allowance will be the last funds applied to the costs of the Tenant Improvement work.

7. After obtaining Landlord's written consent, Tenant, or its agents may undertake further improvements in the Leased Premises at Tenant's sole cost. Prior to commencing any additional work, and if the cost of the tenant improvements exceeds the tenant improvement allowance, Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord that Tenant has adequate funds available to pay the cost thereof. Tenant shall guarantee to Landlord in writing that all improvements will be completed in a workmanlike manner, using materials which conform to the standards of the original suite.

8. Tenant shall indemnify, defend and hold Landlord harmless from all liens, and other encumbrances upon the improvements or upon the Leased Premises as a result of the improvements.

9. Tenant shall cause construction of the work for the tenant space to be done in accordance with all applicable laws, ordinances and regulations of all duly constituted authorities, including, without limitation, Title III of the Americans With Disabilities Act of 1990, all related regulations including the Accessibility Guidelines for Premises and Facilities which are in effect on this date and as may be modified, amended or supplemented in the future ("Applicable Laws"). Tenant shall make every effort to minimize disruption to current Tenants occupying the Premises, site visitors, Transit users and bus/rail operations.

10. Notwithstanding Landlord's review of any drawings and specifications or any request for modifications to the suite, and whether or not Landlord approves or disapproves such drawings and specifications or modifications, Tenant and not Landlord shall be responsible for compliance of such drawings and specifications and of the Finish Work with all Applicable Laws.

LANDLORD:

City of Tempe

By: Andrew B. Ching
City Manager

Date: 8-7-2018

TENANT:

Fifth Street Market & Deli, LLC, Dba. Fifth Street Market & Deli

BY: Arian Pellumbi

Its: _____

Date: 8.7.18

Agreement to Pay for Tenant Improvement Costs

Tenant understands and agrees that Landlord will only be responsible for the payment of fifty thousand dollars $50,000 (Landlord's Tenant Improvement Allowance) of that Total Cost, and that Tenant agrees to be responsible for the remaining amount of the Total Cost.

Tenant also agrees to pay for the costs associated with any requested changes by Tenant, or any changes required to meet federal, state, or local regulations or laws not included.

Tenant agrees to pay any amount by which actual costs exceed the Landlord's Tenant Improvement Allowance.

TENANT:

Fifth Street Market & Deli, LLC, Dba. Fifth Street Market & Deli

BY: Arian Pellumbi

Its: _____

Date: 8.7.18

RIDER ONE

HVAC Rider

HVAC Maintenance/Service Contract Requirements. Notwithstanding anything in that certain lease (the "Lease") between City of Tempe, ("Landlord") and Fifth Street Market & Deli, LLC, Dba. Fifth Street Market & Deli ("Tenant") for space at 200 East Fifth Street, Space 120, Suite 1 & 2, (South end & Middle) Tempe, Arizona (the "Premises"), Tenant shall employ a licensed heating and air-conditioning (HVAC) contractor to maintain and service the HVAC equipment on the Premises on a quarterly basis at Tenant's sole cost and expense. The service contract must become effective within thirty (30) days following the Delivery Date. The quarterly service contract shall include, but not be limited to the following items:

1. Adjust belt tension;
2. Lubricate all moving parts, as necessary;
3. Inspect and adjust all temperature and safety controls;
4. Check refrigeration system for leaks and operation;
5. Check refrigeration system for moisture;
6. Inspect compressor oil level and crank heaters;
7. Inspect air filters and replace when necessary;
8. Check space conditions;
9. Check condensation drains and drain pans and clean, if necessary;
10. Inspect and adjust all valves;
11. Check and adjust dampers;
12. Run machine through complete cycle.

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