

## LEASE AGREEMENT

This Lease Agreement is made and executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between JED'S LP, a limited liability company organized and existing under the laws of the state of South Dakota, with its principal office in Rapid City, County of Pennington, (hereafter "Lessor"), and \_\_\_\_\_, of \_\_\_\_\_, City of Rapid City, Pennington County, state of South Dakota, (hereafter "Lessee").

The parties agree as follows:

### 1. Premises

1.1 Lessor agrees to lease to Lessee approximately \_\_\_\_\_ sq. ft. of JED'S LP Mall (hereinafter "Mall") as designated on the general site plan attached hereto as Exhibit "A", and incorporated herein by this reference. Exhibit "A" is provided for informational purposes only, and shall not be deemed to be a warranty or representation by Lessor that the mall and/or stores will be exactly as indicated on said Exhibit.

1.2 Lessor shall, at its cost and expense, construct improvements on the leased premises, in accordance with the specifications prepared by Lessor or Lessor's architect, incorporating in said construction all items specifically enumerated in Exhibit "B". Any items not included (uncovered improvements) in such specifications to be provided by Lessor, shall be at Lessee's expense, unless otherwise agreed in writing. In the event Lessor provides any uncovered improvements, Lessee shall pay for the uncovered improvements within ten (10) days of being billed by Lessor. Failure to pay within said ten (10) day period shall constitute a default hereunder.

1.3 The "Common Area" shall mean all areas of the mall which are now or hereafter made available by Lessor, from time to time, for the common and joint use and benefit of Lessor and Lessee within the mall, and their respective customers and invitees. The Common Area shall include, but shall not be limited to, public telephones, package pick-up stations, stairways, pedestrian sidewalks, parking areas, hallways, curbs, driveways and roads, concourses, service corridors, loading platforms, seating and other comfort facilities, and any other improvements in such Common Area not expressly included in the space leased by Lessee.

1.4 The Common Area shall at all times be subject to the exclusive control and management of Lessor. So long as Lessee's lease remains in effect and Lessee is not in default hereunder, Lessee and its business employees, customers and invitees, shall have the non-exclusive right in common with Lessor and all others to whom Lessor has granted or may hereinafter grant rights, to use the Common Area, subject to such reasonable regulations as Lessor may from time to time impose and the rights of Lessor set forth herein. To the extent reasonably possible, Lessee agrees to cause its employees, customers and invitees to abide by the rules and regulations for use of said Common Area, including parking area facilities provided by Lessor. Lessor shall not be liable to Lessee or any of Lessee's employees, customers or invitees for any injury, property damage, theft or vandalism.

1.5 Lessor will not lease any part of Lookout Plaza to any other party that will be in the business of during the term of this lease and during any extension of this lease agreement.

LESSOR:

LESSEE:

**2. Term**

The term of this Lease and Lessee’s obligation to pay rent hereunder shall commence upon \_\_\_\_\_ and ending \_\_\_\_\_. Lessee acknowledges and understands that business must be conducted by Lessee year-around and not seasonally, and at all times during the term of this Lease, Lessee shall conduct business in the ordinary course, including maintaining customary and reasonable inventory necessary for conducting business full-time and in accordance with mall hours, which shall be determined by Lessor from time to time or as otherwise agreed in writing by Lessor and Lessee.

2.1 **Option;** Lessee has the right and option to renew this lease for a total of \_\_\_\_\_ successive terms of \_\_\_\_ year(s) each on the same terms and conditions herein provided. Lessee shall exercise its option to renew the term of this lease or their intention to vacate by written notice to the Lessor at least 90 days prior to the expiration of the initial term of this lease or any renewal term. Failure to notify Lessor prior to vacating will result in penalties equal to the failed notification term pro-rated based on monthly payment amounts. Each such lease renewal shall be subject to the provisions of original lease terms, (including section 4.5, below, with respect to annual increases in the base rent.)

**3. Possession**

Lessee shall have possession of the leased premises when Lessor tenders possession of the premises to Lessee but in no event, later than the date of commencement of this Lease Agreement. Lessee acknowledges that it has fully inspected the premises and shall accept possession of same on the commencement date set forth in provision 2 hereof in “as is, where is,” condition, unless otherwise agreed in writing.

**4. Rent**

4.1 Lessee shall pay to Lessor as base monthly rent, (pro rated for a partial month), without deduction, set-off, prior notice, or demand, the sum as provided below (subject to adjustments as provided later in this Lease Agreement) by the first (1<sup>st</sup>) day of each calendar month during the term of this Lease Agreement and same shall be past due if not paid by close of business day on the fourth (4<sup>th</sup>) day of each month, except that the first and last months’ rent shall be paid upon the execution of this Lease Agreement, as provided hereafter in Section 5.

4.2 Lessor reserves the right to increase said rent (CAM Fees) upon 30 days written notice to Lessee for Lessee’s pro rata share of any increase in real property taxes assessed against the mall and real property on which it is located utility & maintenance increases and for any increases in insurance premiums for fire, extended coverage, or other insurance policy covering the building in which the leased premises is located arising out of Lessee’s activities on the premises. Additional rent provided for in this section shall be paid in equal monthly installments, in advance (as the same may be subsequently increased or decreased).

4.3 All rent shall be paid to Lessor at the address of Lessor as set forth in Section 19 of this agreement or as otherwise instructed by Lessor by written notice to Lessee.

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LESSEE:

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4.4 In the event Lessee fails to make any lease payment by close of business day on the 5<sup>th</sup> day of the month in which payment is due, Lessee shall pay Lessor a late charge equal to 10% of such delinquent rental payment. Failure to remit said late charge with any payment that is delinquent shall constitute further default of this lease.

4.5 Rent will increase yearly at a rate of 3% per year and will take affect at the beginning of every new calendar year, January 1<sup>st</sup>.

4.6

- A. Base Rent \$14.50 sq./ft.
- B. CAM Fees \$4.10 sq./ft.

CAM Fees include building taxes, building insurance, garbage service, snow removal, lawn care, general maintenance, common area lighting, furnace filter replacement as needed, HVAC repairs and all associated property management fees.

## 5. Prepaid Rent and Security Deposit

5.1 Upon execution of this Lease Agreement, Lessee shall pay Lessor the sum of \_\_\_\_\_ Dollars, same of which shall allocated as follows:

- a. \_\_\_\_\_ Dollars of the payment shall constitute payment of the base monthly rent due for the first and last months of the term of this lease;
- b. \_\_\_\_\_ Dollars of the payment shall constitute a security deposit to insure Lessees' faithful performance of Lessee's obligations hereunder. If Lessee shall fully and faithfully perform all of its obligations under this Lease and delivers the premises in a state of good repair upon expiration of the term of the this agreement, normal wear and tear accepted, then, in that event Lessor shall refund such security deposit, less any deductions for repairs or other costs as provided in this lease agreement. Lessee shall not be entitled to payment of interest on said security deposit.

## 6. Use

6.1 Lessee covenants and agrees that during the term of this Lease or any extensions or renewals hereof, the premises shall be used solely for the purpose of \_\_\_\_\_ and related services.

Lessee shall not do or permit anything to be done in or about the premises nor bring nor keep anything therein which will in any way increase the existing rate of or affect any fire or other insurance upon the building or any of its contents, or cause a cancellation of any insurance covering said building, or any part thereof, or any of its contents. Lessee shall not use or permit the premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Lessee cause, maintain, or permit any nuisance in, on or about the premises. Lessee shall not commit nor suffer to be committed any waste in or upon the premises.

LESSOR:

LESSEE:

Lessee, at its sole cost and expense, shall promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, relating to or affecting the conditions, use or occupancy of the premises, excluding structural changes not related to or affected by Lessee's improvements or acts.

## **7. Maintenance, Repairs and Alterations**

7.1 Any alterations, additions or improvements to the leased premises shall require the prior written approval of Lessor, which approval shall not be unreasonably withheld. Any such alterations to the leased premises shall be subject to the following conditions: (i) any such alterations shall be fully disclosed and require the prior approval of Lessor; (ii) such alterations shall not adversely affect or alter the mechanical, electrical, plumbing or utility systems in the premises without prior approval of Lessor; and (iii) any such alterations shall comply with all applicable governmental regulations and laws, as well as the design criteria or other requirements (if any) provided by Lessor. All alterations, additions and improvements provided for herein shall become, upon completion, the property of Lessor subject to the terms of this Lease; however, if Lessor so elects, upon expiration or earlier termination of this Lease, Lessee upon demand by Lessor shall promptly remove all alterations, additions and improvements and any other property placed in the premises by Lessee and Lessee shall be responsible for repair and/or payment of any damages caused by such removal.

7.2 Subject to the other terms of this lease, Lessee shall keep, maintain, and preserve the leased premises in a state of good repair, including, but not limited to, replacement of any broken windows or other property damage to the leased premises, as well as trade fixtures and equipment used in the ordinary course of business. Lessor shall maintain all heating and cooling systems in a state of good repair, at Lessor's expense, unless any breakdown, malfunction or problem with any system is caused by the negligence or misuse of Lessee or its employees, licensees or invitees.

7.3 Lessee shall not create, permit to be created, or to remain uncontested, and will discharge any lien, including, but not limited to, any mechanic's or materialmen's liens on the premises. If Lessee contests any such lien(s), Lessee covenants that it will promptly take and diligently prosecute appropriate action to have the same discharged by payment, bonding or otherwise, and will indemnify and safe and hold Lessor harmless from any and all liability whatsoever to any contractor, sub-contractor, materialmen, laborer or any other person relating to or arising because of any improvement or alteration on or to the leased premises and will also defend on behalf of the Lessor, at Lessee's sole cost and expense, any action, suit, or proceeding which may be brought for the enforcement of any such lien.

## **8. Utilities**

Lessee shall make application for, obtain, pay for and be solely responsible for all utilities required, used or consumed in the premises, including, but not limited to, gas, water, telephone, electricity, sewer service, garbage collection and any similar service to the leased premises. In the event that any charge for any utility supplied to the premises is not paid by Lessee when due, then Lessor may, but shall not be required to, pay such charge for and on behalf of Lessee, with any such amount paid by Lessor being repaid by Lessee to Lessor as Additional Rent promptly upon demand. Additionally, if Lessor shall elect to supply any utilities to the premises, then Lessee shall pay to Lessor the cost of its utility consumption and the cost of supplying separate metering devices. Lessee expressly understands and agrees that failure to pay any utility prior to same becoming delinquent shall constitute default of this Agreement.

LESSOR:

LESSEE:

Lessor and Lessee hereby agree that Lessor shall not be liable for any interruptions or curtailment in utility services due to causes beyond Lessor's control or due to Lessor's alterations, repair or improvement of the leased premises or other areas of the mall.

## **9. Lessee's Insurance**

9.1 Lessee shall, during the term of this Lease Agreement and any other period of occupancy, at Lessee's sole cost and expense, maintain a reasonable amount of insurance to cover the following:

- a. Standard form property insurance insuring Lessee's property against the perils of fire, extended coverage, vandalism, malicious mischief, and special extended coverage ("all risk"). This insurance policy shall be upon all property owned by Lessee, for which Lessee is legally liable, or that was installed at Lessee's expense and which is located on or in the leased premises, including, but not limited to, furniture, fittings, fixtures, and any other personal property in the amount of the full replacement value of such property. This insurance policy shall also be upon direct or indirect loss to Lessee's earnings attributable to the leased premises or to the building in which the leased premises are located in an amount that will properly reimburse Lessee. Lessor and any named mortgagee shall be furnished with a copy of the certificate of insurance. The insurance policy shall contain endorsements requiring thirty (30) days written notice to Lessor and any named mortgagee prior to any cancellation or reduction in the amount of coverage.
- b. Comprehensive general liability insurance insuring Lessee against any liability arising out of this Lease Agreement, or the use, occupancy, or maintenance of the leased premises all are appurtenant to the leased premises. Such insurance shall be in the amount of not less than One Million Dollars (\$1,000,000) combined single limit for injury to and/or death of one or more persons in an occurrence and for damage to tangible property (including loss of use) in an occurrence. The insurance policy shall insure against hazards arising from the leased premises and operations conducted in and on the leased premises, claims or actions by or against or involving independent contractors, and contractual liability under this Lease Agreement (including the duty to indemnify Lessor), and shall name Lessor and any mortgagee of Lessor as insured parties, as their respective interests may appear. Lessor and any named mortgagee shall be furnished with a copy of the certificate of insurance. Such insurance shall be primary and non-contributing with any insurance carried by Lessor. The liability insurance policy shall contain endorsements requiring thirty (30) days written notice to Lessor and any named mortgagee prior to any cancellation or reduction in the amount of coverage.
- c. Workers' compensation and employer's liability insurance as required by the State of South Dakota.

9.2 All insurance policies shall be written in a form reasonably satisfactory to Lessor and to any named mortgagee. If Lessor or the named mortgagee obtains any insurance that is the responsibility of Lessee under this Lease Agreement, Lessor or such mortgagee shall deliver to Lessee a written statement setting forth the cost of any such insurance and showing in reasonable detail the manner in

LESSOR:

LESSEE:

which it has been computed. Payment of such insurance on Lessee's behalf shall be charged to Lessee as Additional Rent, payable on the same day as Lessee's next base monthly rent payment is due. Lessee shall be responsible to Lessor or the procuring party for the full cost of such insurance.

**10. Waiver of Subrogation**

10.1 Lessee waives its entire right of recovery against the Lessor for loss or damage arising out of or incident to the perils covered by fire and extended coverage, and liability insurance endorsements approved for use in the State of South Dakota that occur in, on, or about the leased premises, whether caused by the negligence of either party, their agents, employees, or otherwise.

10.2 Lessee shall obtain from its insurer or insurers provisions permitting waiver of any claim against the other party for loss or damage within the scope of the above-specified insurance.

**11. Indemnification**

11.1 Lessee shall indemnify, defend, and hold Lessor harmless from any and all claims and damages (including reasonable attorney fees and costs) arising from Lessee's use of the leased premises or the conduct of its business or from any activity, work, or thing done, permitted, or suffered by Lessee, in or about the leased premises and/or the building in which the leased premises are located, unless caused by the negligence of Lessor or Lessor's agents or employees.

11.2 Lessee shall further indemnify, defend, and hold Lessor harmless from any and all claims and damages (including reasonable attorney fees and costs) arising from any breach or default in the terms of this Lease Agreement, or arising from any act, negligence, fault, or omission of Lessee or Lessee's agents, employees, or invitees, and from and against any and all costs, reasonable attorney fees, expenses, and liabilities incurred in or about such claim or any action or proceeding brought on such claim.

11.3 In case any action or proceeding shall be brought against Lessor by reason of any such claim, Lessee, upon notice from Lessor, shall defend it at Lessee's expense by counsel approved in writing by Lessor.

**12. Damage to Lessee's Property**

12.1 Notwithstanding any other provision of this contract, Lessor and Lessor's agents shall not be liable to Lessee for any damage to any property entrusted to employees of the building in which the leased premises are located, loss of or damage to any property by theft or otherwise, any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, or rain that may leak from any part of the leased premises of the building in which the leased premises are located or from any part thereof, street, or subsurface or from any other place or resulting from dampness, or any other cause whatsoever.

12.2 Lessor or Lessor's agents shall not be liable to Lessee for interference with light or other incorporeal hereditaments, or potential nuisances such as odors, smoke or dust, nor shall Lessor be liable to Lessee for any latent defects in the leased premises or in the building in which the leased premises are located except those caused by the negligence of Lessor or Lessor's agents or employees.

**13. Access by Lessor**

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LESSEE:

13.1 Except in the case of an emergency, Lessee shall allow Lessor access to the leased premises upon eight (8) hours prior notice for the purpose of inspecting, renovating, altering, repairing the leased premises, or showing the premises to prospective tenants or renters.

13.2 Provided Lessor gives notice required by this provision, or in case of emergency, Lessee waives any claim for damages against Lessor for any inconvenience to or interference with Lessee's business, including any loss of revenue arising out of any interruption of Lessee's business.

#### **14. Damage or Destruction**

14.1 In the event the leased premises are substantially damaged by fire or other Act of God rendering the same not usable for Lessee's business, in Lessor's sole discretion, Lessor may, at Lessor's sole cost and expense and as soon as reasonably possible thereafter, commence repair, restoration, and reconstruction of the leased premises and prosecute the same diligently until completion. In the event the damage to the leased premises or the building in which the leased premises are located is of a nature that cannot be repaired, restored, or reconstructed within one hundred eighty (180) days of the date of damage, or such longer period as may be mutually agreed by the parties, and subject in any event to force majeure, either party may cancel and terminate this Lease Agreement by giving the other party notice in writing of its intention to cancel this Lease Agreement no later than thirty (30) days after the determination that the repair will require more than one hundred eighty (180) days to complete, whereupon the term of this Lease Agreement shall terminate upon the 10<sup>th</sup> day after such notice is given.

14.2 In the event of repair, reconstruction, and restoration by Lessor as provided in this section, the rental payable under this Lease Agreement shall be abated proportionately with the degree to which Lessee's use of the leased premises is impaired during the period of such repair, reconstruction, or restoration, unless the damage or destruction was caused by the negligent act or emission of Lessee or Lessee's agents, employees, or invitees, in which event the provisions of this sentence shall not apply. Lessee shall not be entitled to any compensation or damages for loss of use of the whole or any part of the leased premises or any injury or interference with Lessee's business and/or any inconvenience or annoyance occasioned by such damage, repair, reconstruction, or restoration to the leased premises, or the building in which the leased premises are located, unless the damage or destruction was caused by Lessor's negligence.

14.3 Lessee shall not be released from any of its obligations under this Lease Agreement except to the extent and under the conditions expressly stated in this section. In spite of anything to the contrary contained in this section, if Lessor is delayed or prevented from repairing or restoring the leased premises for six (6) months after the occurrence of the damage or destruction by reason of an act of God, war, governmental restrictions, inability to procure the necessary labor or materials, or other cause beyond the control of Lessor, Lessor shall be relieved of its obligation to make such repairs or restoration and Lessee shall be released from its obligations under this Lease Agreement at the end of such six (6) month period, and this Lease Agreement shall be deemed to be terminated.

14.4 If Lessor elects to repair or restore as provided in this Lease Agreement, Lessor shall be obligated to make repair or restoration only of those portions of the leased premises that were originally provided at Lessor's expense, and the repair and restoration of items not provided at Lessor's expense shall be the obligation of Lessee. If Lessor receives proceeds in excess of the current cost to replace those original Lessee improvements, then the excess proceeds will be applied to the replacement of additional improvements provided by Lessee in excess of Lessor's original improvements.

LESSOR:

LESSEE:

14.5 In spite of anything to the contrary contained in this section, Lessor shall not have any obligation whatsoever to repair, reconstruct, or restore the leased premises when the damage resulting from any casualty covered under this section occurs during the last six (6) months of the current term of this Lease Agreement or if any mortgagee fails to make insurance proceeds or any portion of insurance proceeds available to Lessor for such repair, reconstruction, or restoration. However, if Lessor does not restore, repair, or reconstruct the leased premises for either of the above-stated reasons, Lessee may elect to terminate this Lease Agreement, unless Lessee elects to exercise any options or extensions of this Lease Agreement within the last six (6) months of the term of this Lease Agreement.

14.6 Upon any termination of this Lease Agreement under any of the provisions of this section, the parties shall be released without further obligation to the other as of the termination date, provided Lessee shall remain liable to Lessor for items that have accrued as of the termination date and are then unpaid.

## **15. Signage**

Subject to applicable legal restrictions and prior approval of Lessor, Lessee shall have the right to affix to or display on the exterior of the premises its signs or symbols, provided that Lessee shall, upon termination of this Lease, remove such signs and symbols and restore the property to its original condition. In addition, Lessee will have use of 1 sign panel on the north side of highway sign and 1 sign panel on the south side of highway sign.

## **16. Condemnation**

16.1 In case all of the leased premises, the building in which the leased premises are located, or the Common Area or such part thereof as shall substantially interfere with Lessee's use and occupancy thereof, shall be taken for any public or quasi-public purpose by any lawful power or authority by exercise of the right of appropriation, condemnation, or eminent domain, or sold to prevent such taking, either party shall have the right to terminate this Lease Agreement effective as of the date possession is required to be surrendered to the taking authority.

16.2 Lessee shall not assert any claim against Lessor or the taking authority for any compensation because of such taking, and Lessor shall be entitled to receive the entire amount of any award.

16.3 Nothing contained in this section shall be deemed to give Lessor any interest in any award made to Lessee for the taking of personal property and fixtures belonging to Lessee.

## **17. Default.**

17.1 Each of the following events shall be a default by Lessee and a breach of this Lease:

(a) Abandonment or surrender of the premises or of the leasehold estate, or failure or refusal to pay when due any installment of rent, additional rent or any other sum required by this Lease to be paid by Lessee, or to perform as required any other covenant or condition of this Lease;

LESSOR:

LESSEE:



(b) The subjection of any right or interest of Lessee to attachment, execution or other levy, or seizure under legal process;

(c) The appointment of a receiver to take possession of the premises or improvements or of Lessee's interest in the leasehold estate or of Lessee's operation on the premises for any reason;

(d) An assignment by Lessee for the benefit of creditors;

(e) The filing by or against Lessee at any time during the term or any extension hereof of a petition in bankruptcy or insolvency or for arrangement or for reorganization or for appointment of a receiver or trustee of all or a portion of Lessee's property, and within thirty (30) days Lessee fails to secure a discharge thereof.

17.2 Upon the occurrence of those defaults described in Subsections 17.1(c), (d) or (e) above, this Lease shall forthwith and without notice terminate and all rights of Lessee hereunder shall cease.

17.3 If Lessors shall determine that Lessee is in breach or violation hereof in any manner except noncurable defaults described in the preceding section, before invoking any remedy hereunder, Lessor shall give written notice thereof to Lessee and Lessee shall have ten (10) days after receipt of such notice within which to correct or cure such breach or default if the same pertains to the payment of rent, taxes or other payment of money, and thirty (30) days after receipt of notice within which to correct or cure such breach or default if it pertains to acts or omissions other than the payment of money.

17.4. If Lessee shall be in default hereunder, Lessors shall have the right with or without prior notice to Lessee to make any payment or perform any act required of Lessee under any provision of this Lease, and in exercising such right, to incur necessary or incidental costs and expenses, including reasonable attorney's fees. All payments made and all costs and expenses incurred by Lessors in connection with any exercise of such right, together with interest thereon at the rate of fifteen percent (15%) per annum from the respective dates of making such payments or the incurring of such costs and expenses, shall be reimbursed by Lessee immediately upon demand. Notwithstanding the foregoing, nothing herein shall imply any obligation on the part of Lessors to make any payment or perform any act required of Lessee.

17.5 Lessors shall be entitled to all rights and remedies provided by the laws of the state of South Dakota, including injunctive relief, should Lessors determine other remedies available by law are not adequate to protect Lessors' rights hereunder. Lessors shall be entitled to collect all reasonable costs and expenses incurred in pursuing any such remedies against Lessee, including but limited to reasonable attorney fees. It is expressly understood and agreed, that Lessors may proceed first against Lessee before exhausting any other remedies allowed by law, including, should Lessee exercise his option hereunder, seeking recourse in accordance with the terms and conditions of the Mortgage ancillary hereto. Without limiting or restricting Lessors' rights of recourse, Lessors may retain all payments made by Lessee as liquidated damages.

17.6 No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by either party shall give the other any contractual right by implication, custom, estoppel or otherwise. The subsequent acceptance of rent pursuant to this Lease shall not constitute a waiver of

LESSOR:

LESSEE:

any preceding default by Lessee, regardless of Lessors' knowledge of the preceding breach at the time of accepting such lease payment or part thereof.

17.7 Any forbearance by Lessors in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lessors shall not be a waiver of Lessors' right to enforce the terms and conditions hereunder or full recourse as afforded by law.

**18. Right of Entry.**

Lessors or their designated representative may at any reasonable time enter upon the premises to examine and inspect the condition of same.

**19. Notices.**

All notices or demands given or required to be given hereunder shall be in writing and sent by United States Certified Mail, postage prepaid, addressed as follows:

To Lessor:                   JED'S LP  
                                      5955 S. Hwy 16, Suite H  
                                      Rapid City, SD 57701

To Lessee:

provided that either party by written notice may designate a change of address or other instructions by Lessors pertinent to payment of lease payments.

**20. Administration and Construction.**

This Agreement shall be administered and construed in accordance with the following provisions:

**20.1 Captions.** The captions on the paragraphs and subparagraphs of this Agreement are inserted only for the purpose of convenient reference. The captions shall not be used to construe or interpret the Agreement nor to prescribe the scope or intent of the Agreement.

**20.2 Non-waiver of Breach.** The waiver by any party of a breach of any provision in this Agreement shall not operate or be construed as a waiver of any subsequent breach.

**20.3 Severability.** If any term, covenant, condition or provision of this lease, or any instrument or agreement ancillary hereto, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this lease or application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant and condition of this lease shall be valid and be enforced to the fullest extent permitted by law.

LESSOR:

LESSEE:

**20.4 Entire Agreement.** This Agreement constitutes the complete and entire understanding of the parties concerning the leased property. Neither party shall be bound by or be liable for any statements, warranties, guarantees, or representations not set forth in this Agreement which may have been made by any broker, agent, employee or other person representing or purporting to represent a party to this Agreement.

**20.5 Modification.** No changes or modification of this Agreement shall be valid unless the same be in writing and signed by all of the parties to this Agreement.

**20.6 Counterparts.** This agreement may be executed in any one or more counter-parts, each of which shall be deemed to be an original instrument, but all of which together shall constitute but one instrument.

**20.7 Persons Bound by this Agreement.** This lease and all provisions, covenants and conditions thereof shall be binding upon and inure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto, except that no person, firm, corporation or court officer holding under or through Lessee in violation of any of the terms, provisions or conditions of this lease, shall have any right, interest or equity in or to this lease, the terms of this lease, or the premises covered by this lease.

**20.8 Relationship of the Parties.** It is understood and agreed that the relationship of the parties to this agreement is strictly that of Lessors and Lessee. Lessee is not and shall not be deemed to be an agent or a representative of Lessors.

**20.9 Remedies Cumulative.** All remedies provided in this Lease are distinct and cumulative to any other right or remedy under this Lease or afforded by law or equity, and may be exercised concurrently, independently or successively.

**20.10 Governing Law.** The provisions of this agreement shall be governed by the laws of the State of South Dakota.

## **21. Subordination**

21.1 This Lease Agreement, at Lessor's option, shall be subordinate to any mortgage, deed of trust, or other hypothecation for security now or hereafter placed upon the real property of which the leased premises are a part, and to any and all advances made on the security thereof, and to all renewals, modifications, consolidations, replacements, and extensions thereof. In spite of such subordination, Lessee's right to quiet possession of the leased premises shall not be disturbed if Lessee is not in default and so long as Lessee shall pay the rent and observe and perform all of the provisions of this Lease Agreement, unless this Lease Agreement is otherwise terminated pursuant to its terms. If any holder of such mortgage, deed of trust, or other hypothecation for security shall elect to have this Lease Agreement prior to its lien and shall give written notice to that effect to Lessee, this Lease Agreement shall be deemed prior to such mortgage, deed of trust, or other hypothecation for security, whether this Lease Agreement is dated prior to or subsequent to such mortgage, deed of trust, or other hypothecation for security, or the date of recording such instrument. Lessor shall be obligated to obtain a non-disturbance agreement from any present or future mortgagee in favor of Lessee.

LESSOR:

LESSEE:

21.2 Lessee also agrees to execute any documents required to effectuate such subordination or to make this Lease Agreement prior to the lien of any mortgage, deed of trust, or other hypothecation for security, as the case may be. Failing to do so within ten (10) days after written demand shall make, constitute, and irrevocably appoint Lessor as Lessee's attorney-in-fact and in Lessee's name, place, and stead to so act.

21.3 Upon a foreclosure of any deed of trust or mortgage or execution of any deed in lieu of foreclosure, or declaration of Lessor's default under any hypothecation for security and demand by Lessor's successor, Lessee shall attorn to and recognize such successor as Lessor under this Lease Agreement.

**IN WITNESS WHEREOF**, each party to this Lease Agreement has caused it to be executed at Rapid City, South Dakota on the date indicated below.

Dated this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**LESSOR:  
JED'S LP**

**LESSEE:**

\_\_\_\_\_  
By: James E. DeForrest, III  
Its: Vice-President

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

**STATE OF SOUTH DAKOTA     )**  
**)SS.**  
**COUNTY OF PENNINGTON     )**

On this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned Notary Public, personally appeared James E. DeForrest, III who acknowledged himself to be the Vice-President of JED'S LP, a limited liability company, and that he, as such Vice-President, being authorized so to do, executed the foregoing instrument for the purposes herein contained, by signing the name of the corporation by himself as Vice-President.

In Witness Whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_  
(S E A L)

**STATE OF SOUTH DAKOTA     )**  
**)SS.**  
**COUNTY OF PENNINGTON     )**

On this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_ who acknowledged

\_\_\_\_\_ self to be the \_\_\_\_\_ of \_\_\_\_\_ a corporation, and that \_\_he, as such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes herein contained, by signing the name of the corporation by \_\_\_\_\_ self as \_\_\_\_\_.

In Witness Whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_  
(S E A L)