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DEBORAH L PEYTON, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

Prepared by: William Werger, Leslie, Collins, Gritters & Werger, PLLC, P.O. Box 836, Waverly, IA 50677 319-352-1637

Return to: Midland Escrow Services, 100 1st Ave. NE, Ste. 116, Cedar Rapids, IA 52401

Address Tax Statements to: N/A

TYPE OF DOCUMENT: Lease - Business Property

Grantor(s): N/A

Grantee(s): N/A

Legal Description: See 1. on Lease - Business Property for legal description **ON PAGE #2**

LEASE - BUSINESS PROPERTY

THIS AGREEMENT, made and entered into July 18, 2012, by and between T & C Land, LLC, Frederick Ross Thomas, Jr., managing Member ("Landlord"), whose address, for the purpose of this lease is 26199 208th Ave., Delhi, Iowa 52223, and Cleary, LLC - Darlene A. Cleary, Managing Member ("Tenant"), whose address for the purpose of this lease is 26089 223rd Ave Delhi, Ia. 52223

The parties agree as follows:

1. **PREMISES AND TERM.** Landlord leases to Tenant the following real estate, situated in Delaware County, Iowa:

> A parcel of land (currently occupied by the Pizza Place Restaurant) located on part of Lot One Hundred Seventeen (117) and a portion of Hollywood Ave. of Clair-View Acres in Sections Twenty Three (23) and Twenty Six (26), Township Eighty Eight (88) North, Range Five (5), West of the Fifth P.M., Delaware County, Iowa, according to plat recorded in Book 2, Plats, Page 200; the intended parcel is described on the attached Exhibit A which is an unrecorded plat of survey describing Parcel L, part of Lot One Hundred Seventeen (117) and a portion of Hollywood Ave. of Clair-View Acres in Sections Twenty Three (23) and Twenty Six (26), Township Eighty Eight (88) North, Range Five (5), West of the Fifth P.M., Delaware County, Iowa;

for a term beginning on the 1st day of August, 2012, and ending on the 31st day of December, 2022, upon the condition that Tenant performs as provided in this lease.

2. **RENT.** Tenant agrees to pay Landlord as rent $500 per month, in advance, commencing on the 1st day of September, 2012 and on the 1st day of each month thereafter, until increased as provided hereafter. The monthly rent shall remain $500 until the first day of May after Lake Delhi has been refilled to its prior level when the monthly payment shall increase to $750 per month through December 31, 2017. Commencing January 1, 2018, rent shall be determined as the greater of $750 per month or 4% of annual gross sales. Tenant shall pay $750 per month throughout the year and shall pay any additional amount owed after calculating the gross sales for the previous year by February 1 of the following year. All sums shall be paid at the address of Landlord, or at such other place as Landlord may designate in writing. Delinquent payments shall draw interest at 10% per annum.

3. **POSSESSION.** Tenant shall be entitled to possession on the first day of the lease term, and shall yield possession to Landlord at the termination of this lease.

4. **USE.** Tenant shall use the premises only for a restaurant.

5. **CARE AND MAINTENANCE.** Tenant shall maintain the premises in a reasonable safe, serviceable, clean and presentable condition. Tenant shall make no additions or expansions of the building without the prior written consent of Landlord. Tenant agrees to remove all snow and ice and other obstructions from the area around the building.

6. **UTILITIES AND SERVICES.** Tenant shall pay for all utilities and services which may be used on the premises.

7. **SURRENDER.** Upon the termination of this lease, Tenant will surrender the premises to Landlord in good and clean condition. Continued possession, beyond the term of this Lease and the acceptance of rent by Landlord shall constitute a month-to-month extension of this lease.

8. **TRANSFER, ASSIGNMENT AND SUBLETTING.** Tenant shall be entitled to transfer, assign or sublease this agreement. No such transfer, assignment or sublease, either voluntary or by operation of law, shall be effective without the prior written consent of Landlord, which consent shall not unreasonably be withheld.

9. **INSURANCE.**

A. PROPERTY INSURANCE. Tenant agrees to insure their respective real and personal property for the full insurable value. Such insurance shall cover losses included in the special form causes of loss (formerly all risks coverage). To the extent permitted by their policies the Landlord and Tenant waive all rights of recovery against each other.

B. LIABILITY INSURANCE. Tenant shall obtain commercial general liability insurance in the amounts of $ 1,000,000. This policy shall be endorsed to include the Landlord as an additional insured.

10. **LIABILITY FOR DAMAGE.** Each party shall be liable to the other for all damage to the property of the other negligently, recklessly or intentionally caused by that party (or their agents, employees or invitees), except to the extent the loss is insured and subrogation is waived under the owner's policy.

11. **INDEMNITY** Except for any negligence of Landlord, Tenant will protect, defend, and indemnify Landlord from and against any and all loss, costs, damage and expenses occasioned by, or arising out of, any accident or other occurrence causing or inflicting injury or damage to any person or property, happening or done in, upon or about the premises, or due directly or indirectly to the tenancy, use or occupancy thereof, or any part thereof by Tenant or any person claiming through or under Tenant.

12. **DAMAGE.** In the event of damage to the premises, so that Tenant is unable to conduct business on the premises, this lease may be terminated at the option of either party. Such termination shall be effected by notice of one party to the other within 20 days after such notice; and both parties shall thereafter be released from all future obligations hereunder.

13. **MECHANICS' LIENS.** Neither Tenant, nor anyone claiming by, through, or under Tenant, shall have the right to file any mechanic's lien against the premises. Tenant shall give notice in advance to all contractors and subcontractors who may furnish, or agree to furnish, any material, service or labor for any improvement on the premises.

14. **DEFAULT, NOTICE OF DEFAULT AND REMEDIES.**

EVENTS OF DEFAULT

A. Each of the following shall constitute an event of default by Tenant: (1) Failure to pay rent when due; (2) failure to observe or perform any duties, obligations, agreements, or conditions imposed on Tenant pursuant to the terms of the lease; (3) abandonment of the premises. "Abandonment" means the Tenant has failed to engage in its usual and customary business activities on the premises for more than fifteen (15) consecutive business days; (4) institution of voluntary bankruptcy proceedings by Tenant; institution of involuntary bankruptcy proceedings in which the Tenant thereafter is adjudged a bankruptcy; assignment for the benefit of creditors of the interest of Tenant under this lease agreement; appointment of a receiver for the property or affairs of Tenant, where the receivership is not vacated within ten (10) days after the appointment of the receiver.

NOTICE OF DEFAULT

B. Landlord shall give Tenant a written notice specifying the default and giving the Tenant ten (10) days in which to correct the default. If there is a default (other than for nonpayment of a monetary obligation of Tenant, including rent) that cannot be remedied in ten (10) days by diligent efforts of the Tenant, Tenant shall propose an additional period of time in which to remedy the default. Consent to additional time shall not be unreasonably withheld by Landlord. Landlord shall not be required to give Tenant any more than three notices for the same default within any 365 day period.

REMEDIES

C. In the event Tenant has not remedied a default in a timely manner following a Notice of Default, Landlord may proceed with all available remedies at law or in equity, including but not limited to the following: (1) Termination. Landlord may declare this lease to be terminated and shall give Tenant a written notice of such termination. In the event of termination of this lease, Landlord shall be entitled to prove claim for and obtain judgment against Tenant for the balance of the rent agreed to be paid for the term herein provided, plus all expenses of Landlord in regaining possession of the premises and the re-letting thereof, including attorney's fees and court costs, crediting against such claim, however, any amount obtained by reason of such re-letting; (2) Forfeiture. If a default is not remedied in a timely manner, Landlord may then declare this lease to be forfeited and shall give Tenant a written notice of such forfeiture, and may, at the time, give Tenant the notice to quit provided for in Chapter 648 of the Code of Iowa.

15. **NOTICES AND DEMANDS.** All notices shall be given to the parties hereto at the addresses designated unless either party notifies the other, in writing, of a different address. Without prejudice to any other method of notifying a party in writing or making a demand or other communication, such notice shall be considered given under the terms of this lease when it is deposited in the U.S. Mail, registered or certified, properly addressed, return receipt requested, and postage prepaid.

16. **PROVISIONS BINDING.** Each and every covenant and agreement herein contained shall extend to and be binding upon the respective successors, heirs, administrators, executors and assigns of the parties hereto.

17. **CERTIFICATION.** Tenant certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Tenant hereby agrees to defend, indemnify and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

18. **ADDITIONAL PROVISIONS.**

A. The Tenant shall be entitled to lease the property for successive five year terms. The monthly lease amount shall not increase by more than 10% for any additional five year term over the previous term. As an example, during the first additional five year term, the lease amount cannot exceed $825 per month or 4% of annual gross sales. In order to exercise the option for any additional term, the Tenant must give notice to the Landlord of the intent to exercise the option for an additional five year term no sooner than the last year of the current lease term and at least 30 days prior to the end of the current lease term.

B. The permitted use is for a restaurant. Tenants are not permitted to allow nude or semi-nude activities on the premises, whether customers or employees, including, but not limited to dancing or wet t-shirt contests.

C. If Landlord desires to sell the leased parcel, Landlord shall first offer the property to Tenant. If the parties cannot reach an agreed upon price, the lot will be appraised by appraisers retained by the each of the parties. If the two appraisers do not agree upon a price, the two appraisers shall select a third appraiser to appraise the property. If an agreement is not reached by the three appraisers, the price shall be the average of the three appraisals. The cost of each first appraiser shall be borne by the party hiring said appraiser. The cost of the third appraisal shall be divided equally by the parties.

DATED: 7/18/2012

T & C Land, LLC, by Frederick Ross Thomas, Jr., managing Member, LANDLORD

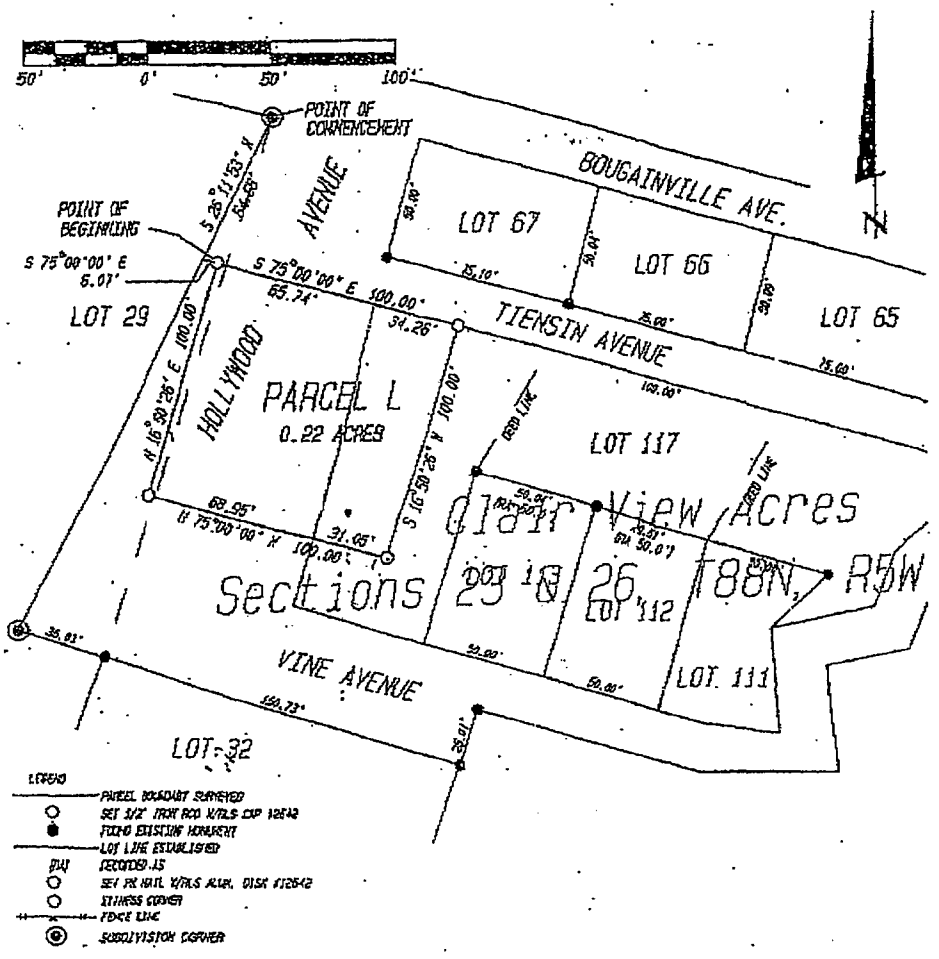
Darlene A. Cleary Managing Member

Cleary, LLC - Darlene A. Cleary, Managing Member, TENANT

EXHIBIT A

PREPARED BY MR. BURGER OF MR. BURGER LANDSURVEYORS 510 3RD STREET WEST COURT WASHINGTON IOWA 52078 PHONE 319 655 2020

PLAT OF SURVEY	PARCEL L PART OF LOT 117 AND PART OF HOLLYWOOD AVENUE OF CLAIR VIEW ACRES SECTIONS TWENTY-THREE (23) AND TWENTY-SIX (26), TOWNSHIP EIGHTY-EIGHT NORTH (T88N), RANGE FIVE WEST (R5W) OF THE FIFTH P.M. DELAWARE COUNTY, IOWA



PROPRIETORS: FRED R. "TROSS" THOMAS JR. & KRISTINE ANN THOMAS - CODEY - HOLLYWOOD AVE.

SCALE: 1" = 50'	DATE OF SURVEY: 5/20/97	SHEET 1 OF 3
	PROPRIETORS: FRED R. THOMAS - LOT 117	

STATE OF Wisconsin)
) SS:
COUNTY OF Rock)

Subscribed and sworn to before me this 18th day of July, 2012, by ~~Frederick~~ Ross Thomas, Jr. as Managing Member of T & C Land, LLC.

NOTARY PUBLIC AMY SNYDER STATE OF WISCONSIN

Notary Public, State of Wisconsin
My commission expires 8.26.2012

STATE OF Iowa)
) SS:
COUNTY OF Linn)

Subscribed and sworn to before me this 31st day of July, 2012, by Darlene A. Cleary as Managing Member of Cleary, LLC.

Doris E. Russell
Notary Public, State of Iowa

NOTARIAL SEAL IOWA
DORIS E. RUSSELL
Commission Number 119763
My Commission Expires
8/26/15