

SPONSORED BY: MAYOR NOVAK & COUNCIL MEMBER GARNER

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-24
Series of 2007

Series of 2007

A RESOLUTION APPROVING THE LEASE AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND HEIDI'S ICE CREAM SHOP, LLC

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Lease Agreement attached hereto as **Exhibit A**, between the City of Northglenn and Heidi's Ice Cream Shop, LLC, is hereby approved and the Mayor is authorized to execute same on behalf of the City.

DATED at Northglenn, Colorado, this ____ day of _____, 2007.

KATHLEEN M. NOVAK
Mayor

ATTEST:

DIANA L. LENTZ, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

RETAIL SPACE LEASE

This Lease Agreement (the "Lease"), is made and entered into this ___ day of _____, 2007, by and between Heidi's Ice Cream Shop, LLC ("Tenant") and the City of Northglenn, a Colorado home rule municipality ("Landlord") (collectively the "Parties").

WHEREAS, a lease agreement dated January 14, 1999 (the "**Original Lease**"), was entered into by and between Tenant and William S. Donaldson and Joan W. Donaldson (the "**Donaldsons**"), pursuant to which Tenant leased a portion of real property described in **Exhibit A** attached hereto (the "**Property**"), which portion is depicted in **Exhibit B** attached hereto (the "**Leased Premises**"), located in a building commonly known as the "Days Inn Hotel" located at 36 East 120th Avenue, Northglenn, Colorado (the "**Building**");

WHEREAS, the Landlord purchased the Property, along with the Leased Premises and the Building from the Donaldsons on January 2, 2004, under threat of condemnation;

WHEREAS, the first term of the Original Lease commenced in January 1999, and terminated on December 31, 2001;

WHEREAS, the Original Lease provided three options to renew the Original Lease for successive three-year periods, which provide Tenant with the right to renew the Original Lease through December 31, 2010;

WHEREAS, the Original Lease has terminated for two reasons:

- (1) Pursuant to Section 2.1 of the Original Lease, the Original Lease terminated on December 31, 2001, when Tenant failed to exercise its first option to renew, and
- (2) Pursuant to Section 16.2 of the Original Lease, the Original Lease terminated on January 2, 2004, because the Leased Premises was acquired via condemnation;

WHEREAS, Tenant has been occupying the Leased Premises on a month-to-month basis and has continued to pay the rent amounts set forth in the rent schedule in Article III of the Original Lease;

WHEREAS, Landlord, in its capacity as a home rule municipality has been carrying out improvements to the public right-of-way adjacent to the Leased Premises, which impact the operation of the Leased Premises; and

WHEREAS, the Parties desire to reduce the rent payable by Tenant for a period of time, and to more fully set forth the terms under which Landlord shall lease the Leased Premises to Tenant.

NOW THEREFORE, the Parties hereto, for themselves, their successors and assigns in and for the consideration of the performance of the mutual covenants and promises set forth herein, the receipt and adequacy of which are hereby acknowledged, do hereby covenant and agree as follows:

ARTICLE I

LEASED PREMISES

1.1 General Description of Leased Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord for the "Lease Term" (as that term is defined in Article II) and upon the terms and conditions set forth in this Lease, the Leased Premises.

1.2 Other Areas of Use. The use and occupation by Tenant of the Leased Premises shall include the use in common with others entitled thereto of any of the following that may exist (if any): the Common Areas, service areas, loading facilities, sidewalks, and other facilities as may be designated from time to time by Landlord. Such use will be subject, however, to the terms and conditions of this Lease and to reasonable rules and regulations for the use thereof reasonably prescribed from time to time by Landlord. However, any areas, any parking areas and any facilities described herein shall not be deemed to be a portion of the Leased Premises in any manner whatsoever and no rights in and to such areas and facilities shall in any way vest in Tenant. Landlord reserves the right to change, alter, expand, contract or discontinue all or any portion of the Common Area at any time and for any reason whatsoever; provided, that any such change shall not materially interfere with the viability of, or access to, the Leased Premises. Landlord also reserves the right to subdivide the Property and/or cause portions of the Property or the Building to be sold or leased to another party.

1.3 Certain Defined Terms. The following words or phrases shall have the meanings set forth after such words or phrases or shall be as defined in the Sections referenced:

(a) "Store Hours" shall mean seven days of each week from 7:00 A.M. Mountain Time to 8:00 P.M. Mountain Time.

(b) "Additional Rent" shall mean those sums due and items of costs and expenses for which Tenant is to pay in accordance with this Lease.

(c) "Tenant's Pro-Rata Share" shall mean 6% of the particular expense (i.e. insurance).

ARTICLE II

TERM

2.1 Lease Term. The term of this Lease (the "**Lease Term**") shall be for a period of five (5) months beginning at twelve o'clock noon on the "Lease Commencement Date" (as defined below) and extending until twelve o'clock noon on August 31, 2007.

2.2 Lease Commencement Date. The "Lease Commencement Date" shall be April 1, 2007.

2.3 Extension of Lease Term. The Parties may extend the Lease Term by mutual written agreement executed by both Parties.

ARTICLE III

MINIMUM RENT

Tenant agrees to pay a reserved minimum rent (“**Minimum Rent**”) for the Leased Premises as follows:

3.1 One Thousand Five Hundred Dollars (\$1500.00) per month for the Lease Term, due and payable on the first of each month. The rent paid by Tenant shall not include any utilities or custodial services, all of which shall be provided by Tenant.

3.2 The rental payments described in this Lease shall be payable in equal monthly installments, without setoff or deduction, and without notice or demand, in advance, on or before the first day of each month during the Lease Term to the City of Northglenn at 11701 Community Center Drive Northglenn, Colorado 80233-8061.

ARTICLE IV

REAL ESTATE TAXES AND ASSESSMENTS

4.1 Payment of Taxes and Assessments. Landlord shall pay all real estate taxes and assessments assessed against the real property (not including trade fixtures and other fixtures installed by Tenant) that makes up the Leased Premises. Tenant shall pay all personal property taxes and assessments assessed against the personal property (including, without limitation trade fixtures and other fixtures installed by Tenant) that is included within the Leased Premises, irrespective of who owns such personal property.

ARTICLE V

CONSTRUCTION AND ACCEPTANCE OF PREMISES

5.1 Ready for Tenant’s Work Defined. Tenant agrees to accept possession of the Leased Premises in its as-is condition.

5.2 Tenant’s Commencement of Work. Any improvements to the Leased Premises shall be made by Tenant at Tenant’s sole expense (“**Tenant’s Work**”). All such improvements made by or on behalf of Tenant must be made in strict compliance with all laws, and must be made only after Tenant has obtained Landlord’s prior written consent, which consent shall not be unreasonably withheld or delayed.

5.3 Tenant’s Occupancy for Performance of Tenant’s Work. Landlord shall not be responsible nor have any liability whatsoever at any time for loss or damage to Tenant’s Work or to fixtures, equipment or other property of Tenant installed or placed by Tenant on the Leased

Premises.

ARTICLE VI

COMMON AREAS

6.1 Common Areas Defined. As the term is used herein, “**Common Areas**” shall mean all those areas of the Property on which buildings have not been built, and shall also include all areas within the Building commonly shared by Tenant with other tenants of the Building or the public, such as, without limitation, vestibules, corridors, restrooms, elevators, and loading areas. Common Areas shall not include, however, any drive-through lanes or outside sales areas, if any, which are, as of the date hereof, segregated from the rest of the Property or used exclusively by any one tenant. Tenant shall not at any time interfere with the rights of Landlord and others entitled to similar use of Common Areas.

6.2 Use Governed by Rules and Regulations. All Common Areas furnished by Landlord shall be subject to the control and management of Landlord who shall have the right, but not the obligation, from time to time, to establish, modify and enforce reasonable rules and regulations with respect thereto. Tenant agrees to abide by all such rules and regulations. Landlord further reserves the right to change the area, to rearrange the area, reduce the size or eliminate all or any part of the area, and to restrict or eliminate the use of, any Common Areas, and do such other acts in and to Common Areas to change the location of building areas on the Property as Landlord shall determine. All such actions, including such action or inaction as to rules and regulations for the Common Areas, shall not be deemed an eviction of Tenant or a disturbance of Tenant’s use of the Leased Premises.

ARTICLE VII

MAINTENANCE OF THE BUILDING AND REPAIRS

7.1 Additional Rent for Building Repairs and Maintenance. Tenant shall maintain, or cause others to maintain, repair and, if necessary, replace the interior of the Leased Premises, all windows, doors, ceilings, hardware, plumbing, electrical and mechanical equipment within the Leased Premises, walls, floors and other improvements in the Leased Premises. Tenant shall also be fully responsible for all other maintenance, repairs and replacements necessitated by any act or omission of Tenant, its employees, agents, customers, representatives and assigns. Tenant shall also keep the Leased Premises in a clean, sanitary and safe condition in accordance with all directions, rules and regulations of any health officers, building inspectors or other proper officers of the governmental agencies having jurisdiction, and shall, at its own expense, dispose of all trash, grease and waste materials in outside trash containers. All grease traps must be cleaned by Tenant, at its own expense, no less frequently than once every three months. Tenant shall flatten all boxes for dumping as trash prior to discarding into trash receptacles. Tenant shall keep all sidewalks in front of the Leased Premises free from debris, snow and ice. Tenant shall comply with all requirements of law, ordinances and other rules and regulations that affect the Leased Premises. Tenant shall permit no injury to the Building or Leased Premises. In addition, Tenant shall, at its own cost and expense, replace any light bulbs inside the Leased Premises,

fixtures, ballasts, and accessory parts thereof on the Leased Premises that may be broken or damaged during the Lease Term. At the expiration of the Lease Term, Tenant shall surrender the Leased Premises broom clean in as good order as the same is on the day Tenant first opened for business to the public, reasonable wear and tear excepted. If Tenant should fail or refuse to honor its obligations imposed in this paragraph, Landlord shall have the right, but not the obligation, to perform Tenant's obligations, and to bill the Tenant for all costs and expenses for the same. All such costs and expenses shall be Additional Rent owing under this Lease. Landlord shall be responsible for repairs and general maintenance to the roof, exterior walls of the Leased Premises, exterior lighting and parking areas (including reasonably necessary snow plowing, striping and asphalt repairs). Notwithstanding the foregoing, Landlord shall not be responsible for repairs which are necessitated or desired as a result of any act or omission of Tenant or any act of omission of its employees, agents, contractors, customers or invitees; instead, Tenant shall be responsible for the repair and replacement of any property of Landlord which is damaged as a result of the same. Landlord shall maintain the heating—ventilating—air conditioning system in the Leased Premises (“HVAC”). Landlord and Tenant shall share equally in any and all expenses and costs associated with such repair, replacement and/or maintenance of the HVAC system.

ARTICLE VIII

UTILITIES

8.1 Payment for Utilities by Tenant. From the Commencement Date and at all times during the Lease Term, Tenant, in addition to the rents required hereunder, shall pay, prior to delinquency, the costs of all utilities, including, but not limited to gas, propane, electricity, water and sewer used and consumed by Tenant, its employees, agents, servants, customers and other invitees in the Leased Premises, and to the extent possible, shall contract for the same in its own name and on separate meters. The cost of any conversion of utilities to other energy sources shall be borne by Tenant. Throughout the duration of Tenant's occupancy of the Leased Premises, Tenant shall keep such meters and installation equipment in good working order and repair at Tenant's sole cost and expense. Failure to do so may allow Landlord to cause such meters and equipment to be replaced or repaired, and collect the cost thereof from Tenant as Additional Rent if such utility charges cannot be separately metered or separately determined, Tenant agrees to pay Tenant's reasonable share thereof and Landlord's overhead costs connected therewith, as Additional Rent. Landlord certifies that the City of Northglenn water, gas and electrical service for the Leased Premises are currently separately metered.

8.2 Interruption of Service. Landlord does not warrant or guarantee the continued availability of any or all of the utility services necessary or desirable for the use of the Leased Premises by Tenant. In no event shall the interruption, diminution or cessation of such availability be construed as an actual or constructive eviction of Tenant, nor shall Tenant be entitled to any abatement or its rent obligations under this Lease on account thereof, unless the same is caused solely as a result of Landlord's gross negligence. In the event that a deposit is required by a public or quasi-public organization in order to furnish or agree to finish any service to the Leased Premises, Tenant agrees and covenants to pay such charge or deposit Any money

so paid shall not entitle Tenant to an offset or reduction of its rent liability under this Lease, nor shall Landlord be obligated to return, repay or credit Tenant for any money so paid

8.3 Consent to Necessary Interruptions. Landlord reserves the right to stop the service of any or all of the utilities hereinabove described when, in Landlord's reasonable discretion, such stoppage is necessitated by reason of accident, repairs, inspections, alterations or improvements, until any of the same have been completed In such event, Landlord shall not be deemed guilty of a breach of this Lease, nor shall Tenant be entitled to any abatement of its rent obligations under this Lease on account thereof Landlord covenants to provide, in the exercise of Landlord's reasonable efforts, reasonable advance notice of Landlord's intent to interrupt such service, to the extent that advance notice is reasonably possible In the event such stoppage is solely a result of Landlord's gross negligence, the Tenant's rent payable hereunder shall abate during such stoppage period.

ARTICLE IX

CARE OF LEASED PREMISES AND RADIUS RESTRICTION

9.1 Care of Leased Premises. Tenant agrees: to abide by all reasonable rules and regulations adopted by Landlord with regard to its occupancy of the Leased Premises and its use of the Common Areas; not to commit any waste upon the Leased Premises or overload the floors thereof; to keep the Leased Premises well-lighted, and in a neat and clean condition; not to conduct any auction, flue, bankruptcy, liquidation or going—out—of-business sales thereon without the prior written consent of Landlord, which consent may not be unreasonably withheld or delayed.

9.2 Radius Restriction Against Tenant Operating a Competitive Store. Tenant acknowledges that Tenant's general contribution to the promotion of customer traffic and commerce within the Property will be substantially reduced if during the Lease Term Tenant has an interest in any similar establishment within commercial proximity of the Property. Accordingly, Tenant agrees not to open or operate, directly or indirectly, any other stores substantially like the store being operated on the Leased Premises within a distance of three (3) miles from the boundaries of the Property Such restriction shall apply to any person, firm, corporation, association or other entity form controlled by or under the common control with Tenant and any shareholder or equity owner of more than ten percent (10%) of Tenant

ARTICLE X

SIGNS AND ADVERTISING

10.1 Signage. All signs must be first class quality and must conform to all governmental rules, restrictions and regulations applicable thereto and shall be in conformance with the Landlord's rules and restrictions. Tenant shall pay all costs of causing its signs to be erected and maintained. If the sign(s) utilize any utility, such as electricity, Tenant shall pay all costs attributable to the provision of such utility service.

ARTICLE XI

USE OF LEASED PREMISES

11.1 Limitation on Permitted Use of Premises. The Leased Premises shall be used and occupied by Tenant (and any subtenants and assignees of Tenant) only for the sale of foods and beverages (including the incidental sale of alcoholic beverages) typically sold in a first class delicatessen restaurant emphasizing breakfast, lunch and dinner foods, and selling pizza, ice cream, baked goods, and delicatessen foods (the “**Permitted Purpose**”), and for no other purpose. Tenant’s Permitted Use shall not include any use which is unlawful or a public or private nuisance. Tenant agrees not to sell alcoholic beverages after 11:00 PM. Tenant agrees that its use must always include the sale of breakfast foods during morning hours on a daily basis.

ARTICLE XII

ALTERATIONS AND ADDITIONS

12.1 Landlord’s Consent for Alterations. Tenant shall not, under any circumstances, make alterations or additions to the exterior of the Building. Tenant shall make no alterations or additions to the interior of the Leased Premises, including, without limitation, equipment or appliances installed in connection with the transmission or delivery of the utilities, without first procuring Landlord’s written consent, which consent shall not be unreasonably withheld or delayed), after delivering to Landlord the plans and specifications therefor. Landlord may approve or reject such plans and specifications, and/or refuse or condition consent for contemplated improvements, using its reasonable discretion. Tenant shall promptly pay for the costs of all Tenant Work regardless of the cost, and shall indemnify Landlord against liens, costs, damages and expenses incurred by Landlord in connection therewith, including any attorneys’ fees incurred by Landlord, if Landlord shall be joined in any action or proceeding involving such work. After ten (10) days’ written notice to Tenant, Landlord may, at its option, pay sums due in order to release such liens, in which event any such sums paid by Landlord shall be due to Landlord by Tenant, as Additional Rent, upon demand. Under no circumstances shall Tenant commence any such work until: (1) Landlord has been provided with certificates evidencing that all the contractors and subcontractors performing such work have in full force and effect adequate workmen’s compensation insurance as required by the laws of the State of Colorado, public liability and builder’s risk insurance in such amounts and according to terms satisfactory to Landlord; and (2) Tenant has obtained (and provided copies to Landlord) all applicable permits and approvals, at Tenant’s sole cost and expense.

12.2 Posting of Notice of Non-Liability. Within five days after notifying Landlord of any planned erection, construction, alteration, removal, addition, repair or other improvement (“**Tenant’s Improvement**”), Tenant shall post and keep posted until completion of Tenant’s Improvement, in a conspicuous place upon the doors providing entrance to the Leased Premises,

and shall personally serve upon such contractors or subcontractors performing Tenant's Work, a notice stating that Landlord's interests in the Building and Property shall not be subject to any lien for Tenant's improvement. Tenant shall, at the time of posting and at the completion of the Tenant's Improvement, take photographs of the posted notice to provide a future evidentiary basis of its continuous posting during the pendency of Tenant's Improvement.

12.3 Ownership of Fixtures Upon Lease Termination. All alterations, additions, improvements and fixtures, including, but not by way of limitation, lighting fixtures, ducts, controls, diffusers, filters or other equipment for distribution of heating and cooling, and other personal property which may be made or installed by, for and on behalf of Tenant, upon the Leased Premises and which in any manner are attached to the floors, walls or ceilings shall become the property of Landlord at the time of installation and shall remain upon and be surrendered with the Leased Premises at the time of termination of this Lease as a part of the Leased Premises, without disturbance, molestation or injury. Any tile, linoleum or floor covering of similar character which may be cemented or otherwise adhesively affixed to the floor of the Leased Premises, and all personal property which in any manner becomes attached, glued, screwed, nailed or otherwise affixed to the Leased Premises, shall be and become the property of Landlord absolutely upon installation. During the Lease Term, Tenant shall not remove or damage the above-described Tenant's Work and fixtures without the written consent of Landlord.

ARTICLE XIII

INSURANCE

13.1 Tenant's Required Insurance. Tenant shall, in addition, at its sole cost and expense, maintain the following insurance or pay the following premiums with respect to the Leased Premises: (a) fire and extended coverage insurance insuring all alterations and additions made by Tenant to the Leased Premises and all of its fixtures, inventory, furniture and equipment for the full replacement value thereof with the broadest possible coverage ("all risk") on a 90% co-insurance form insuring against all risks of direct physical loss and excluding only such unusual perils as nuclear attack, earth movement, flood and war, (b) public liability, personal injury, bodily injury and property damage comprehensive insurance coverage insuring against claims of any and all personal injury, death or damage occurring in or about the Leased Premises or the sidewalks adjacent thereto, with a coverage limit of not less than \$1,000,000, and \$2,000,000 general aggregate (subject to increase to account for inflation).

13.2 Policy Requirements. Each such insurance policy shall be issued by an insurance company of recognized standing, authorized to do business in the State of Colorado and satisfactory to Landlord. The policies required in the above paragraph shall name Landlord and Tenant as named insureds. If required by Landlord, such policies shall also contain a loss payable endorsement in favor of the holder of any first mortgage on the Property or portion thereof. All such policies shall provide that no cancellation or termination thereof or any material modification thereof shall be effective except on 60 days' prior written notice to Landlord, and, if applicable, said mortgagee. Certificates evidencing such insurance shall be

delivered to Landlord upon the Lease Commencement Date and each anniversary thereof

13.3 Covenant Not to Increase Premiums. Without Landlord's prior written consent, Tenant shall not carry any stock of goods or do anything in or about the Leased Premises which would in any way tend to increase insurance rates or invalidate any policy on the Leased Premises or the Building in which the same are located or carried on Landlord's operation of the Building. If Landlord shall consent to such use, Tenant agrees to pay as additional rent any increase in premiums for insurance against loss by standard fire and extended coverage resulting from the business carried on in the Leased Premises by Tenant. If Tenant installs any electrical equipment that overloads the power lines to the Building, Tenant shall, at its own expense, make whatever changes are necessary to comply with the requirements of insurance underwriters, insurance rating bureaus, Landlord's electrical engineers, and governmental authorities having jurisdiction.

13.4 Inurement to Mortgagee. The obligations of Tenant, as contained in this Article, shall inure directly to Landlord's first mortgagee (if there is a first mortgagee) and shall not be invalidated by any act, neglect or default of Landlord, nor by any foreclosure or other similar proceeding, nor by any change in title or ownership of the Leased Premises.

13.5 Failure to Procure Insurance. If Tenant shall at any time fail, neglect or refuse to provide and maintain such insurance, then Landlord shall have the option (but shall not be required to) upon three (3) days' prior written notice to pay for such insurance and any amounts paid therefore by Landlord shall be deemed additional rent and shall be paid by Tenant to Landlord at the next rental payment date after any such payment, with interest thereon at twelve percent (12%) per annum from the due date until paid.

13.6 Dram Shop Coverage. Prior to Tenant serving alcoholic beverages, Tenant shall carry and continuously maintain for the balance of the Lease Term comprehensive liquor liability ("dram shop") insurance with respect to claims for bodily injury, death and damage to property caused by persons who are sold or served alcoholic beverages at the Premises. The amount and extent of such coverage shall be equal to the average extent and amount carried by prudent first class restaurants and bars in the Denver metropolitan area, and in no case shall be less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. Landlord shall be named as an additional insured on such policy.

ARTICLE XIV

WAIVER OF SUBROGATION

Landlord and Tenant agree that, if the interests on which they are required to obtain insurance in connection with the transaction contemplated hereby shall be damaged or destroyed during the Lease Term by a peril insurable under a standard fire and extended coverage policy and whether or not such damage or destruction was caused by the neglect of the other party, neither party shall have any liability to the other or to any insurer of the other (provided the terms of this Article are approved by said insurers) for, or in respect of; such damage or destruction to

the extent covered by such insurance and each party shall attempt to require all policies of material damage insurance carried by such party during the Lease Term to be endorsed with a provision in and by which the insurer designated therein shall waive its right of subrogation against the other. The waiver of subrogation hereby required shall extend only to the risks insured by the policies required hereby.

ARTICLE XV

DESTRUCTION OF OR DAMAGE TO LEASED PREMISES

15.1 **Damage to Building.** In case the Leased Premises or the Building in which the Leased Premises is situated shall be partially or totally destroyed by fire or other peril Landlord shall not be required to rebuild and Landlord may terminate this Lease upon the date of the damage or destruction.

15.2 **Termination or Repair Election.** In case the Leased Premises or the Building in which the Leased Premises are situated shall be destroyed or so damaged by fire or other peril insurable under standard fire and extended coverage insurance as to render more than 33% of the Leased Premises or 33% of the said Building untenable, Landlord may, at its election to be exercised by notice given to Tenant not more than 60 days after the occurrence of the damage, terminate this Lease, but if Landlord shall not so elect, Landlord shall, as promptly as may be reasonable, repair, rebuild or restore any such damage suffered in the Leased Premises as in this Article provided, however, Landlord's obligation shall be limited to restore the Leased Premises to their original condition as of the Commencement Date, but only to the extent allowed by available insurance proceeds. Provided neither Tenant nor its employees, agents, assigns, contractors, invitees and/or customers are responsible for the foregoing casualty, the Minimum Rent payable hereunder shall abate from the date of such casualty through the date Landlord completes its responsibilities to restore the Leased Premises. In the event such casualty is caused in whole or in part by the act or omission of Tenant or its employees, agents, assigns, contractors, invitees and/or customers, Minimum Rent shall not abate but shall continue to accrue.

15.3 **Uninsured Casualty.** In case of casualty to the Leased Premises resulting in damage or destruction which casualty is not insured against, Landlord shall be under no obligation to restore, replace or rebuild the Leased Premises, and (unless the damage or destruction was caused by Tenant) this Lease shall be deemed terminated on the 60th day after such casualty and of no further force and effect as of the date of such casualty, unless Landlord elects to restore, repair, replace and rebuild the Leased Premises and so notifies Tenant in writing within 60 days after such casualty, in that event, this Lease shall continue in full force and effect during the period of such restoration, repairing, replacing or rebuilding; provided that rent payable hereunder shall abate from the date the next rental payment is due after the casualty until the completion of the repairs to the Leased Premises to be performed by the Landlord. Furthermore, if Landlord so elects to restore, repair, replace or rebuild the Leased Premises, Landlord shall proceed with reasonable diligence to do so and place the Leased Premises in substantially the same condition as of the date they are declared ready for Occupancy. In the

event that such repairs are not commenced by Landlord and diligently pursued within a reasonable time after the casualty occurs, then Tenant may elect to terminate this Lease after one hundred and eighty (180) days after giving Landlord written notice of such failure and affording the Landlord the one hundred and eighty day period to cure the same. Notwithstanding anything to the contrary set forth elsewhere in this Lease, if the damage or destruction is not insured against and was proximately caused by Tenant, Landlord shall be under no obligation to restore, replace or rebuild the Leased Premises, and thus Lease shall remain in force and effect without reduction or abatement of any rent (inclusive of Minimum Rent, Additional Rent or Percentage Rent).

15.4 Repair of Tenant's Property. If such damage or destruction as described in this Article occurs, and this Lease is not so terminated by Landlord or Tenant as applicable, this Lease shall remain in full force and effect, and the parties waive the provisions of any law to the contrary. Tenant shall in the event of any such damage or destruction, unless the Lease shall be terminated as provided in this Article, forthwith replace or fully repair all exterior signs, trade fixtures, equipment, display cases and other installations and improvements originally installed by Tenant. Landlord shall have an interest in the proceeds of any insurance carried by Tenant, and Tenant shall have no interest in the proceeds of any insurance carried by Landlord. Provided that the damage or destruction was not caused by Tenant, Tenant's Minimum Rent (but not Additional Rent) shall abate in that same proportion as the number of square feet rendered untenantable bears to the total number of square feet in the Leased Premises. Landlord shall be entitled to any rent loss insurance proceeds payable as a result of such damage or destruction and Tenant shall have no interest in such proceeds. Tenant agrees during any period of reconstruction, restoration or repair of the Leased Premises and/or of the Building to continue the operation of its business in the Leased Premises to the extent reasonably practicable.

ARTICLE XVI

EMINENT DOMAIN

16.1 Condemnation of Entire Leased Premises. If the whole of the Leased Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then the Lease Term shall cease and terminate as of the date of title vesting in such proceeding, all rent shall be paid up to that date, and Tenant shall have no claim against Landlord for the value of any unexpired Lease Term.

16.2 Condemnation of Substantial Portion of Leased Premises. If a part of the Leased Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, and in the event that such partial taking shall be so extensive that Tenant is unable to operate, in the remainder, substantially the business being conducted on the Leased Premises immediately prior to such taking, then from the day of such taking and for a period of 10 days thereafter, Tenant shall have the right either to terminate the Lease and declare the same null and void by giving written notice thereof within said period to Landlord or, alternatively, to continue in the possession of the remainder of the Leased Premises under the terms herein provided, except that the Minimum Rent shall be reduced in such just proportion as the nature, value and

extent of the part so taken bears to the whole of the Leased Premises

16.3 Termination of Lease. In the event that Tenant shall terminate this Lease as provided hereinabove, such termination shall be as of the date of Tenant's written notice (but rent shall be due until Tenant's surrender of the Leased Premises), and Tenant and Landlord shall have no claim against each other for the value of the unexpired Lease Term, or for damages of any kind.

16.4 Restoration. In the event of a partial taking which is not extensive enough to render the Leased Premises unsuitable for the business of Tenant, then Landlord shall promptly restore the Leased Premises to a condition comparable to its condition at the time of such taking, less the portion lost in the taking, and this Lease shall continue in full force and effect, except that the Minimum Rent shall be reduced in the manner provided hereinabove, and Minimum Rent shall also abate during the restoration that is the responsibility of Landlord, if any.

16.5 No Landlord Obligation of Contribution to Cost. As regards to any obligations of Landlord described in thus Article, in no event shall Landlord be required to spend an amount in excess of the amount available to Landlord from the award for any part of the Leased Premises or parking area taken.

16.6 Application of Condemnation Award. In the event of any condemnation or taking as aforesaid, whether in whole in or part, Tenant shall not be entitled to any part of the award paid for such condemnation, and Landlord shall receive the full amount of such award, Tenant hereby expressly waiving any right or claim to any part thereof; including, but not limited to, all damages as compensation for diminution in value of the leasehold, reversion and fee. Although all damages in the event of any condemnation or taking are to belong to Landlord, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reason of the condemnation and for or on account of any cost or loss which Tenant might incur in removing Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment. Provided Tenant is not in default under the Lease, Tenant shall also have the right to remove any fixtures that are not subject to condemnation, provided such fixtures were purchased by Tenant.

ARTICLE XVII

INDEMNIFICATION

17.1 Indemnity. Tenant agrees to indemnify and save Landlord and Landlord's officials and/or employees harmless against any and all claims, damages, costs and expenses, including reasonable attorneys' fees for the defense thereof, and accountant's fees arising from the conduct or management of the business conducted by Tenant in the Leased Premises or from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or for any act or negligence of Tenant, its agents, contractors, servants, employees, sublessees, concessionaires,

invitees, or licensees, in or about the Leased Premises and the Property. In the event of any action or proceeding brought against the Landlord or Landlord's officials and/or employees by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel reasonably satisfactory to Landlord or Landlord's officials and/or employees. Neither Landlord nor Landlord's officials or employees shall be liable and Tenant waives all claims for damage to person or property sustained by Tenant or Tenant's employees, agents, servants, invitees and customers resulting from any injury to person or property in or about the Leased Premises, the Building, and the Property other than that resulting from the willful misconduct or gross negligence of Landlord. Said indemnity and release shall also apply to the flooding of the Leased Premises, and to any damage caused by refrigerators, sprinkling devices, air conditioning apparatus, water, snow, frost, steam, excessive heat or cold, falling plaster, broken glass, sewage, gas, odors, noise or the bursting or leaking of pipes or plumbing fixtures. All property belonging to Tenant or any occupant of the Leased Premises, the Building or the Property shall be kept on the Leased Premises at the risk of Tenant or such person only, and neither Landlord, or Landlord's officials and/or employees shall be liable for damage thereto or theft or misappropriation thereof.

ARTICLE XVIII

ASSIGNMENT AND SUBLETTING

18.1 No Assignment Without Landlord's Consent. Tenant shall not assign, sublease, sell, pledge, mortgage, encumber or in any manner transfer this Lease or any interest therein, nor sublet the Leased Premises or any part or parts thereof; or permit occupancy by anyone with, through or under it, nor allow the sale or transfer of any of its capital stock (in the case of a corporation) or partnership interests (in the case of a partnership) to the extent that Tenant loses voting control of the entity existing upon execution of this Lease, nor transfer all or substantially all of Tenant's assets without the prior written consent of Landlord, which consent Landlord may not unreasonably withhold so long as: (i) the assignee's or sublessee's use is in compliance with the use clause (Article 11.1); (ii) the assignee's or sublessee's credit worthiness is at least equal to Tenant's (and the guarantor's) credit worthiness as of the date of this Lease; (iii) the assignee or sublessee has sufficient experience and qualifications necessary in Landlord's reasonable estimation to operate the business in a first class manner; and (iv) a suitable individual with good credit and financial strength signs a personal guaranty for the obligations owing under this Lease. Landlord and Tenant hereby acknowledge that this provision regarding assignment and subletting, and Landlord's discretion there over, has been fully and freely negotiated. Tenant shall pay to Landlord all of Landlord's reasonable attorneys' fees incurred for the time and expense of reviewing any request of Tenant in which to determine whether or not Landlord's consent shall be granted. Landlord shall have no liability of any kind for not consenting to an assignment or subletting.

18.2 Subtenant Bound by Lease: Attornment to Landlord. Any sublease of the Leased Premises executed by Tenant shall incorporate this Lease (the "**Underlying Lease**") in its entirety and be subject to its terms. The sublease shall also require the sublessee to attorn to Landlord at Landlord's option in the Event of Default by Tenant under the terms of the

Underlying Lease, and Tenant does hereby grant Landlord the irrevocable power of attorney to effect the same. Consent by Landlord to one or more assignments of this Lease or to one or more sublettings of the Leased Premises shall not operate as a waiver of Landlord's rights under this Article as to any subsequent assignment or subletting, nor release Tenant or any guarantor of Tenant of any of its obligations under this Lease, nor be construed or taken as a waiver of any of Landlord's rights or remedies under this Lease.

18.3 No Extension Options Upon Assignment. In the event Landlord allows assignment or subletting hereunder, neither Tenant, the assignee of Tenant, nor the sublessee of Tenant shall have any option to extend the Lease Term, notwithstanding anything contained in the Lease to the contrary.

18.4 No Succession of Lease Rights. No interest in this Lease shall pass to any trustee or receiver in bankruptcy, to any estate of Tenant, to any assignee of Tenant for the benefit of creditors, or to any other party by operation of law or otherwise without Landlord's consent, which Landlord may withhold in Landlord's sole and absolute discretion.

18.5 No Consent if Lease in Default. No consent to assignment or subletting shall be granted if Tenant is in default under this Lease.

18.6 Monetary Increases Belong to Landlord. Landlord shall receive (a) all increases in Minimum Rents, and (ii) all increases in Percentage Rents resulting from increases of the percentage ratio paid by an assignee or sublessee. Tenant shall not share to any extent in such rents.

ARTICLE XIX

LANDLORD'S SALE

In the event of any sale of the Leased Premises, or real property of which the Leased Premises are a part, by Landlord, including sales by foreclosure or a deed in lieu thereof, and provided that such new owner assumes Landlord's obligations under this Lease, Landlord shall be, and is, entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act or omission occurring after the consummation of sale or lease; and the purchaser or lessee shall, during the period of its ownership or lease term, be deemed without any further agreement between the parties to have assumed and agreed to carry out any and all of the covenants and obligations of Landlord under this Lease. All subsequent purchasers or lessors shall similarly be freed and relieved of all liability hereunder subsequent to the date of such sale or lease by them. In the event of any such sale or lease, Tenant agrees to attorn to and become Tenant of Landlord's successor-in-interest.

ARTICLE XX

DEFAULT

20.1 Events of Default. This Lease is made on the condition also that, if any one or more of the following events (herein referred to as an “**Event of Default**”) shall happen:

- (a) Tenant shall fail to pay Rent, Additional Rent or any other amounts payable hereunder within ten (10) days of its due date; or
- (b) Tenant shall neglect or fail to perform or observe any of the other covenants herein contained on Tenant’s part to be performed or observed, and Tenant shall fail to remedy the same within 30 days after Landlord shall have given to Tenant notice specifying such neglect or failure (or within such period, if any, as may be reasonably required to cure such default, if it is of such nature that it cannot be cured within said 30-day period, provided that Tenant shall have commenced to effect such cure and shall proceed with due diligence to complete such cure); or
- (c) Tenant shall (i) be adjudicated a bankrupt or insolvent, or (ii) file or threaten to file a petition in bankruptcy or for reorganization or for the adoption of an arrangement under the Bankruptcy Act (as now or in the future amended), or (iii) make an assignment of its property for the benefit of its creditors;
- (d) Tenant shall cease to operate, vacate or abandon the Leased Premises; or
- (e) Tenant shall fail to open its business for 30 or more cumulative days during any Lease year (legal holidays shall not be included when calculating such 30 day period) (From and after the date this Lease is assigned or the Leased Premises subleased, the 30 day cumulative period shall be reduced to 5 cumulative days); and
- (f) Tenant shall fail to remain open during the Store Hours, after receiving reasonable written notice from Landlord identifying such default (Landlord shall be only obligated to give one such written notice to Tenant during any one Lease year; thereafter, should Tenant fail to open for business during the Store Hours, Tenant shall be in default under this Lease without the requirement that Landlord give advance written notice,

then in any one or more of such events, all being hereby agreed by the parties as material breaches of this Lease, Landlord shall have the right, at its election, provided Landlord has given prior written notice to Tenant, then or at any time thereafter and while such Event of Default shall continue, either:

- (i) to give Tenant written notice of Landlord's intention to terminate this Lease on the date of such given notice or any later date specified therein, and on such specified date Tenant's right to possession of the Leased Premises shall cease and this Lease shall thereupon be terminated; and/or
- (ii) without further notice, to enter and take possession of the Leased Premises, or any part thereof, and repossess the same as of Landlord's former estate, and expel Tenant and those claiming through or under Tenant, and remove the effects of either or both (forcibly, if necessary) without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenants. Should Landlord elect to re-enter as provided in this section, or should Landlord take possession pursuant to legal proceedings or any notice provided for by law, Landlord may, from time to time, without terminating this Lease, relet the Leased Premises, or any part thereof, on behalf of Tenant for such term or terms, and at such rent or rents, and upon such other terms and conditions as Landlord may deem advisable (which may include concessions and free rent) with the right to make alterations and repairs to the Leased Premises. No such re-entry or taking of possession of the Leased Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease, unless a written notice of termination, specifically stating Landlord's intention to terminate, be given to Tenant; and/or
- (iii) pursue any other remedy available at law or in equity, including, without limitation, seeking judgment for possession of the Leased Premises and/or recovery of all damages suffered by Landlord as a result of Tenant's default, and/or seeking declaratory relief, and/or seeking specific performance, and/or seeking injunctive relief and/or pursue any other remedy.

If Landlord shall be required to commence any action or proceeding to collect the foregoing amounts, or to enforce any other obligation of Tenant under this Lease, Landlord shall be entitled to a reimbursement of all costs and expenses incurred in said matter, including reasonable attorneys' fees.

20.2 Right to Receiver. After repossession of the Leased Premises, Landlord may procure the appointment of a receiver, *ex parte* and without notice (notice being hereby expressly waived by Tenant), to take possession and collect rents and profits of the business of Tenant. The receiver may carry on the business of Tenant, and take possession of the personal property used in the business of Tenant, including inventory, trade fixtures and furnishings, and use them in the business without compensating Tenant. Proceedings for appointment of a receiver by Landlord, or the appointment of a receiver and the conduct of the business of Tenant by the receiver, shall not terminate and forfeit this Lease, unless Landlord has given written notice of termination to Tenant, as provided herein.

20.3 Remedy of Rent Reserved Over Term if Terminated. If, however, this Lease is terminated by Landlord by reason of any default by Tenant, or terminated by a court of lawful jurisdiction, Landlord shall be entitled to recover as damages from Tenant the excess, if any, of

the Minimum Rent reserved in this Lease for the balance of the Lease Term over the then-reasonable rental value of the Leased Premises, the expense for reletting, the cost of any tenant improvements paid for by Landlord in connection with reletting the Leased Premises, and the amount of any brokerage commission paid or clue to any agent of Landlord, which amounts shall be immediately due and payable by Tenant to Landlord. In addition, Landlord shall also recover from Tenant any rent exemption, free rent or excused rent which Landlord may have granted to Tenant as an inducement to Tenant's execution hereof, it being understood that Landlord's granting of such a rent holiday is in consideration of Tenant's compliance with the terms and provisions hereof. It is agreed that the then "reasonable rental value" shall be the amount of rent which Landlord may then reasonably obtain as rent for the remaining balance of the Lease Term (including concessions and free rent, if necessary). In addition, all costs incurred in connection with collecting such sum, including reasonable attorneys' fees and costs, shall be recoverable by Landlord from Tenant. Any such damages payable to Landlord pursuant to this Paragraph shall be payable, at Landlord's option, in a lump sum as aforesaid, in equal monthly installments throughout the remainder of the Lease Term, or at the end of the Lease Term (in which event the "reasonable rental value" shall mean the actual rental received by Landlord during the Lease Term).

20.4 Actions for F.E.D. In the event that Landlord commences summary proceedings in the nature of a forcible entry and detainer or unlawful detention for non-payment of Minimum Rent, Additional Rent, or other amounts or for Tenant's failure to perform its other obligations hereunder, Tenant agrees not to file a counterclaim against Landlord in the summary proceedings or to consolidate claims against Landlord in said proceedings; however, Tenant does not waive its right hereunder to bring any later action against Landlord for damages. The commencement of such proceedings (including, but not limited to, the delivery of notice and process thereof) regardless of whether such proceedings are actually commenced, shall not be deemed to terminate this Lease. **Tenant hereby waives its right to trial by jury in the event of any proceedings.**

ARTICLE XXI

LATE RENT PAYMENT

Any payment of Minimum Rent, Additional Rent or any obligation hereof which may be satisfied by the payment of money, shall bear interest at the rate of 12% per annum from the date due until paid. Tenant acknowledges that late payments by Tenant to Landlord of such rent and other charges will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs may include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any encumbrance and notes secured by any encumbrance covering the

Leased Premises. Therefore, if any installment of rent due from Tenant is not received by Landlord when due, Tenant shall pay to Landlord an additional sum of \$50 as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of the late payment by Tenant. Any acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, or prevent Landlord from exercising any of the other rights and remedies available to Landlord. Additionally, Tenant shall pay a \$50 charge for any checks written to Landlord which are returned due to insufficient funds or dishonored by Tenant's bank for any other reason.

ARTICLE XXII

LIEN ON PERSONALTY AND FORFEITURE OF PERSONALTY

22.1 Landlord's Lien. Subject to only a purchase money security interest of a commercial lender or equipment supplier on such items, Landlord is hereby granted by Tenant a lien upon any and all furniture, fixtures and equipment belonging to Tenant and used at, in or upon the Leased Premises, whether acquired by Tenant before or after execution of this Lease to secure the due payment of rent and other liabilities of Tenant hereunder. Upon failure of Tenant to pay any part of such rent or other liability, Landlord, without further notice or demand, may possess, detain and sell such property at public or private sale (and Landlord may be a purchaser at such sale) and otherwise avail itself of all rights and remedies then available under the Uniform Commercial Code as enacted in the State of Colorado. To accomplish the foregoing, Tenant agrees, at the request of Landlord, to execute a satisfactory security agreement and financing statement. Tenant does hereby grant to Landlord its irrevocable power of attorney for the purpose of executing such instruments, if Tenant fails to execute the same immediately upon request, including, without limitation, the power to execute a financing statement to reflect the interest created herein. This Agreement may serve as a financing statement if desired by Landlord.

22.2 Removal of Personal Property. Additionally or, in the alternative, as the case may be, if instructed to do so by Landlord (in Landlord's sole discretion) Tenant agrees that within 15 days of termination of this Lease or possession of the Leased Premises by Landlord without termination, whichever first occurs, by way of default or otherwise, it shall remove all personal property for which it has the right to ownership. Any and all such property of Tenant not removed within said 15-day period shall irrevocably become the sole property of Landlord. Tenant waives all rights to notice and all common law and statutory claims and causes of action which it may have against Landlord subsequent to said 15-day period as regards to the storage, destruction, damage, loss of use and ownership of the personal property affected by the terms of this paragraph. Tenant acknowledges Landlord's need to relet the Leased Premises upon termination of this Lease or repossession of the Leased Premises, and understands that the forfeitures and waivers provided herein are necessary to aid said reletting.

ARTICLE XXIII

ATTORNMENT AND SUBORDINATION

This Lease shall be subject and subordinate to: (a) any reciprocal easement agreements or any other easements and (b) the lien of any first mortgage or other mortgage in favor of the beneficiary of said first mortgage, which Landlord may now or hereafter place upon the Leased Premises and/or the Property, and to all terms, conditions and provision thereof, to all advances made, and to any renewals, extensions, modifications or replacements thereof (provided such lender agrees not to disturb this Lease in the event of a foreclosure). Provided such lender agrees not to disturb this Lease in the event of a foreclosure, Tenant agrees to attorn to the mortgagee or such person who may acquire title as its new landlord, and the lease shall continue in full force and effect as a direct lease between Tenant and mortgagee or such other person, upon all the terms, covenants and agreements set forth in this Lease. Tenant shall, without further negotiation, execute or obtain execution of such instruments as may be necessary to effectuate said subordination, sale, foreclosure and attornment. Should Tenant fail to execute same, Tenant hereby appoints Landlord as its attorney-in-fact to execute such documents in Tenant's place. Such instruments may require Tenant to notify the mortgagee of defaults by Landlord hereunder; to make rental payments to the mortgagee upon proper notice, and to allow the mortgagee a reasonable time to cure defaults hereunder, if Landlord has not done so.

ARTICLE XXIV

NOTICES

All notices to be given hereunder by either of the parties shall be in writing. Any notice may be served by Landlord upon Tenant personally by delivering same to an employee of Tenant, or to Tenant directly. Any notice shall also be deemed duly served by either party if mailed by registered or certified mail, return receipt requested, with proper postage prepaid, addressed to each party at the following addresses. Either party may change the address to which notices may be sent by delivering a copy thereof to the other party in the manner aforesaid. If service shall be made by registered or certified mail, such service shall be complete as of the next day following the mailing of such notice in the manner aforesaid. If to Landlord, when addressed as follows:

If to Landlord: City Manager
 City of Northglenn
 11701 Community Center Drive
 Northglenn, Colorado 80233-8061

If to the Tenant: Heidi's Ice Cream Shop, LLC
 3130 Lowell Blvd.
 Denver, Colorado 80211

Notwithstanding the foregoing, notices by the Landlord to the Tenant may also be delivered to the Leased Premises, making reasonable efforts to deliver the same to the person in charge at the time delivery is made, except in the case of a demand for compliance or possession, which may be delivered in accordance with law.

ARTICLE XXV

DEPOSIT

Tenant has deposited with Landlord, and shall keep on deposit with Landlord at all times during the Lease Term, the sum of Three Thousand Four Hundred Seven and 60/100 Dollars (\$3,407.60), as security for the payment by Tenant of the rents herein agreed to be paid and for the faithful performance of all the terms, conditions and covenants hereof. If at any time during the Lease Term, Tenant shall be in default in the performance of any provision of this Lease, Landlord shall have the right, upon 5 days' prior written notice to Tenant, to use said deposit, or so much thereof as necessary, in payment of any rent in default as aforesaid, in reimbursement of any expense incurred by Landlord by reason of Tenant's default, or at the option of Landlord, the same may be retained by Landlord. In such event, Tenant shall, on written demand of Landlord, forthwith remit to Landlord a sufficient amount of cash to restore said deposit to its original amount. In the event said deposit has not been utilized as aforesaid, said deposit or as much thereof as has not been utilized for said purposes, shall be refunded to Tenant, without interest, upon full performance of this lease by Tenant. Landlord shall have the right to commingle said deposit with other funds of Landlord. Landlord shall deliver the funds deposited herein by Tenant to the Purchaser of Landlord's interest in the Leased Premises in the event such interest be sold and, thereupon, Landlord shall be discharged from further liability with respect to such deposit. Said deposit shall not be considered as liquidated damages, and if claims of Landlord exceed said deposit, Tenant shall remain liable for the balance of such claims.

ARTICLE XXVI

MISCELLANEOUS

26.1 Independent Covenant To Pay Rent. The obligation of Tenant to pay rent hereunder is independent of each and every other Covenant, duty or obligation of Landlord herein, and is not subject to deduction or offset.

26.2 Liens. Tenant shall not permit mechanics', materialmen's or other liens against the Property in connection with any labor, materials, equipment or services furnished or claimed to have been furnished. If any such lien shall be filed against the Property, Tenant shall cause it to be discharged at its sole cost and expense within twenty (20) days of notice of its filing; provided, however, that if Tenant desires to contest any such lien, it may do so, so long as time enforcement thereof is stayed. In the event such a stay is obtained, Tenant shall either obtain title insurance in the amount of the lien or liens (including interest and costs) for the benefit of

Landlord should Landlord desire the same for any period during which a lien or liens exist on the Property. In such event, Tenant shall, if necessary, pay required title insurance premiums, post bond sufficient to satisfy the title insurer's requirements, pay escrow costs and fees, pay the attorneys' fees of Landlord, and sign indemnity agreements in favor of the title insurer; or, at Landlord's election, Tenant shall post bond in the manner provided by law sufficient to discharge the lien from the Property and from the Leased Premises.

26.3 Parking Restrictions. Tenant may allow its customers to park vehicles in any lawful and reasonably designated area of the Property. Tenant agrees to cause its employees to park their vehicles in designated areas. Tenant also agrees to control and restrict the location and time of delivery vehicles so as to cause the least possible impact to the Property and the Landlord's use thereof.

26.4 Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or a partnership or a joint venture between the parties hereto, it being agreed that neither the method of computation of rents nor any other provisions set forth herein nor any acts of the parties herein shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant.

26.5 Representations. Tenant acknowledges and agrees that it has not relied upon any statements, representations, agreements or warranties, except such as are expressed in this Lease.

26.6 Amendments or Modifications. No amendment or modification of this Lease or any approvals or omissions of Landlord required under this Lease shall be valid or binding unless reduced to writing and executed by the parties hereto in the same manner as the execution of this Lease.

26.7 Grammatical Changes. Wherever the words "Landlord" and "Tenant" are used in this Lease, they shall include "Landlords" and "Tenants" and shall apply to persons, both men and women, companies, partnerships and corporations. Whenever the words "mortgage" and "mortgages" are used herein, the same shall be deemed to include a deed of trust or trust deed, and the word "lender" shall include a mortgagee of a mortgage or a beneficiary of a deed of trust or trust deed. All references to the Lease Term shall include any extension of the Lease Term, except as otherwise provided. All references to Tenant shall include Tenant's guarantors, assignees or sublessees. All references to the singular shall include the plural, and vice versa.

26.8 Section Headings. The section headings are inserted herein only for convenience of reference and shall in no way define, limit or describe the scope or intent of any provisions of this Lease.

26.9 Binding Effect. Subject to the provisions hereof, the benefits of this Lease and the burdens hereunder shall respectively inure to and be binding upon the liens, successors, personal representatives and assigns of the parties.

26.10 Force Majeure. Whenever a period of time is herein provided for either party to

do or perform any act or thing, except for the payment of monies by Tenant, there shall be excluded from the computation of such period of time any delays due to strikes, riots, acts of God, shortages of labor or any cause or causes, whether or not similar to those enumerated, beyond the parties' reasonable control or the reasonable control of their agents, servants, employees and any contractor engaged by them to perform work in connection with this Lease.

26.11 Personal Property Taxes. Tenant shall pay before delinquency any personal property taxes attributable to the furniture, fixtures, merchandise, equipment or other personal property situated on the Leased Premises and any and all sales and use taxes. If any such personal property taxes are levied against Landlord or Landlord's property, or if such taxes result or may result in a lien upon property of the Tenant to which Landlord will or may succeed as the owner upon termination of the Lease, and if Landlord pays the same (which Landlord shall have the right to do) or if the assessed value of Landlord's premises is increased by the inclusion therein of a value placed on such property, and if Landlord pays the taxes based on such increased assessment (which Landlord shall have the right to do), Tenant, upon demand, shall repay to Landlord the taxes resulting from such increase in the assessment.

26.12 Non-Waiver. No waiver of condition or covenant of this Lease by either party hereto shall be deemed to imply or constitute a further waiver by such party of the same or any other condition or covenant. No act or thing done by Landlord or Landlord's agents during the Lease Term shall be deemed an acceptance of a surrender of the Leased Premises, and no agreement to accept such surrender shall be valid unless signed in writing by Landlord. The delivery of Tenant's keys to any employee or agent of Landlord shall not constitute a termination of this Lease unless a written agreement has been entered into with Landlord to this effect. No payment by Tenant, nor receipt from Landlord, of a lesser amount than the Minimum Rent herein stipulated shall be deemed an accord and satisfaction, and Landlord shall accept such check for payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy available to Landlord, irrespective of any language to the contrary set forth on such check or any writing accompanying such check. If this Lease be assigned, or if the Leased Premises or any part thereof be sublet or occupied by anyone other than Tenant, Landlord may collect rent from the assignee, subtenant or occupant and apply the net amount collected to the rent herein reserved, but no such collection shall be deemed a waiver of the covenant herein against assignment and subletting, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the complete performance by Tenant of the covenants herein contained on the part of Tenant to be performed.

26.13 Reimbursement of Attorneys' Fees and Costs. In the event either party takes legal action against the other in order to enforce the terms of this Lease, the party in whose favor final judgment is entered shall be entitled to recover from the other party its reasonable attorneys' fees and costs.

26.14 Restriction Against Recordation of Lease and Notice to Mortgagee. Landlord and Tenant agree not to place this Lease of record. Any recordation of this Lease by Tenant shall constitute an Event of Default by Tenant. Tenant agrees to an assignment by Landlord of rents and of Landlord's interest in this Lease to a mortgagee, if the same be made by Landlord. Tenant

further agrees that Tenant will give to said mortgagee a copy of any request for performance by Landlord or notice of default by Landlord; and in the event Landlord fails to cure such default, Tenant will give said mortgagee a reasonable period in which to cure the same. Said period shall begin with the last day on which Landlord could cure such default, before Tenant exercises any remedy by reason of such default.

26.15 Exclusive Rights of Tenant. Provided Tenant is never in default under the terms of this Lease, Landlord will not allow another tenant in the Building to offer food for sale as their primary business.

26.16 Status Statement of Lease. Tenant agrees, within five days of request by Landlord from time to time, to execute, acknowledge and deliver to Landlord a status statement of Lease in the form requested by Landlord, confirming that the Lease is not in default, and substantiating all material terms of the Lease.

26.17 Enlarging the Property. As provided aforesaid, Tenant acknowledges that Landlord hereby reserves the right from time to time to enlarge the Property by constructing other buildings on portions of the Property with or without any new Common Areas, and by including within the existing Property other properties now or hereafter owned by Landlord adjacent to the Property, and constructing on such additional property, buildings and Common Areas. In this event, such new buildings, properties and Common Areas shall be treated as though they were originally a part of the Property and at the election of Landlord, all real property taxes, and other pro rata payments herein required of Tenant shall be applicable to such enlarged area and all improvements now or hereafter thereon; provided that in such event, Tenant's Pro-Rata Share shall be appropriately adjusted to include an additional square footage contained in such new buildings or comprising additional properties added to the Property. Until Landlord makes such election, Tenant's Pro-Rata Share shall continue as though such enlargement had not occurred. Landlord shall have the right to build or relocate buildings on the Common Areas at the Property as Landlord deems necessary in its sole discretion.

26.18 Easements. Landlord shall have the right to grant any easements on, over, under and above the Leased Premises for such purposes as Landlord determines, provided that such easements will not materially interfere with Tenant's business.

26.19 Holding Over. In the event that Tenant remains in possession after the expiration of this Lease, without execution of a new Lease, Tenant shall be deemed to occupy the Leased Premises as a tenant from month to month, subject to all conditions, provisions and obligations set forth herein insofar as the same are applicable to a month-to-month tenancy, except that Minimum Rent shall increase to 200% of Minimum Rent for the last year of the Lease Term or any extension thereof. In addition, Tenant shall pay any damages and hold Landlord harmless from any liability incurred in connection with any claims made by any succeeding occupant based on delay of possession.

26.20 Time of time Essence. Time is of the essence with respect to Tenant's obligations hereunder.

26.21 Unenforceability. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Lease Term, then and in that event it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

26.22 Provisions Negotiated and Independent Attorney Disclaimer. Each and every provision of this Lease has been independently, separately and freely negotiated by the parties as if this Lease were drafted by both Landlord and Tenant. The parties, therefore, waive any statutory or common law presumption which would serve to have this document construed in favor of or against, either party.

26.23 Rights and Remedies. The remedies of Landlord shall be cumulative, and no one of them shall be construed as exclusive of the other, or any remedy provided by law or equity. The rights and remedies provided hereunder shall survive the termination of this Lease.

26.24 Corporate Authority. Tenant represents and warrants that it has full corporate power and authority to enter into this Lease Agreement and has taken all corporate action necessary to carry out the transaction contemplated hereby, so that when executed, this Lease Agreement constitutes a valid and binding obligation enforceable in accordance with its terms. Tenant shall provide Landlord its corporate resolution authorizing execution of the Lease at the time of said execution.

26.25 Financial Statements. Tenant and any guarantors of Tenant's obligations hereunder shall provide their most recent financial statement(s), including statements of income and expense and statements of net worth within 15 days following the request of Landlord. Landlord may request said statements once during any year. Said statements shall be verified as being true and correct.

26.26 Limitation on Landlord Liability--Nonrecourse. In no event shall Landlord be liable to Tenant for any failure of any other tenant in the Property to operate its business. Notwithstanding anything to the contrary provided in this lease, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Lease by Landlord, that there shall be absolutely no personal liability on the part of Landlord, its officials and/or employees with respect to any of the terms, covenants and conditions of this Lease, and that Tenant shall look solely to the equity of Landlord in the Property of which the Leased Premises are a part for the satisfaction of each and every remedy of Tenant in the event of any breach by Landlord of any of the terms, covenants and conditions of this Lease to be performed by Landlord, such exculpation of inability to be absolute and without any exception whatsoever.

26.27 Interpretation, Venue and Waiver of Right to Jury. The terms of this Lease shall

be interpreted according to the laws of the State of Colorado. Tenant consents to the enforcement by Landlord of Tenant's obligations hereunder in the District Court in the County of Adams, Colorado, and agrees that such District Court shall be the exclusive forum for any and all actions between Landlord and Tenant arising, directly or indirectly, out of this Lease. In any action or actions, suit or proceedings of any nature, Tenant does hereby expressly waive any and all rights to a trial by jury.

26.28 Broker's Commission Indemnity. Tenant represents and warrants to the landlord that Tenant has dealt with no real estate broker, and that no person or entity can properly claim a right to a real estate commission, finder's fee, leasehold acquisition finder's fee or other real estate broker-age-type compensation based upon the acts of Tenant. Tenant agrees to indemnify and defend Landlord of and from any and all loss, cost, Inability or expense (including, without limitation, attorney's fees) resulting from any claim for compensation by any person or entity whose claim is based upon acts of Tenant.

Exhibits and Addenda. The following Exhibits and Addenda attached to this Lease are incorporated herein and made part hereof by this reference:

Exhibits

- A. Legal Description of Property
- B. Depiction of Leased Premises

In the event that any Exhibits or Addenda mentioned in this Lease are not attached hereto at the time of execution of this Lease Agreement, the intention to omit them shall be conclusively presumed and their absence shall not vitiate this Lease.

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

CITY OF NORTHGLENN

Kathleen M. Novak
Mayor

ATTEST:

APPROVED AS TO FORM:

Diana L. Lentz, CMC
City Clerk

Corey Y. Hoffmann
City Attorney

**HEIDI'S ICE CREAM SHOP, LLC, a Colorado
limited liability company**

By: _____

Its: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ____
day of _____, 2007, by _____.

My commission expires:

(S E A L)

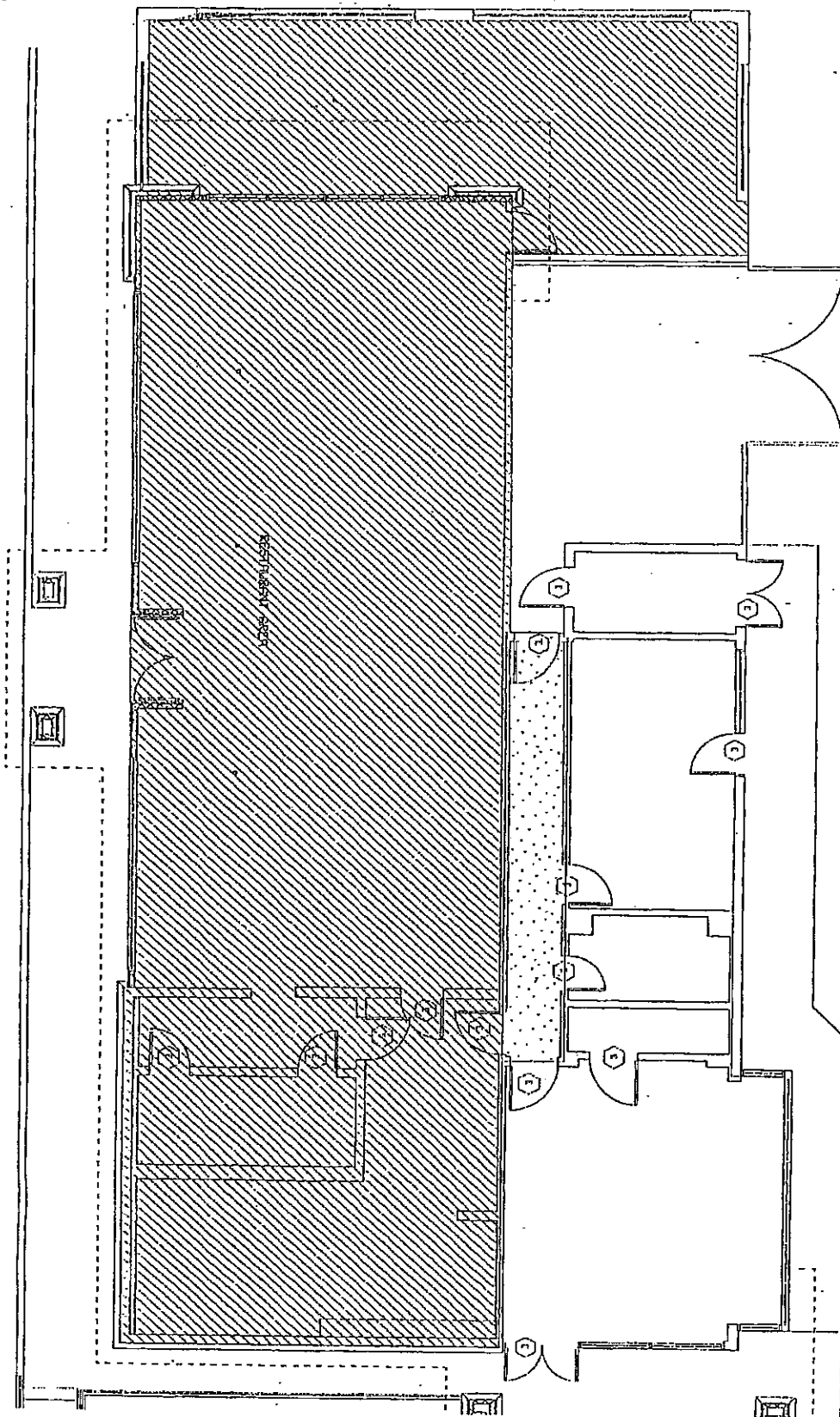
Notary Public



EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Lot 2, Block 1, Holiday Park, County of Adams, State of Colorado

EXHIBIT B
DEPICTION OF LEASED PREMISES

EXHIBIT D



-  - Tenant Area
-  - Shared Common Area

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LEASE AGREEMENT

This Lease Agreement (the "Lease"), is made and entered into this ___ day of _____, 2007, by and between Heidi's Ice Cream Shop, LLC ("Tenant") and the City of Northglenn, a Colorado home rule municipality ("Landlord") (collectively the "Parties").

WHEREAS, a lease agreement dated January 14, 1999 (the "Original Lease"), was entered into by and between Tenant and William S. Donaldson and Joan W. Donaldson (the "Donaldsons"), pursuant to which Tenant leased a portion of real property described in **Exhibit A** attached hereto (the "Property"), which portion is depicted in **Exhibit B** attached hereto (the "Premises"), located in a building commonly known as the "Days Inn Hotel" located at 36 East 120th Avenue, Northglenn, Colorado (the "Building");

WHEREAS, the Landlord purchased the Property, along with Premises and the Building from the Donaldsons on January 2, 2004, under threat of condemnation;

WHEREAS, the first term of the Original Lease commenced in January 1999, and terminated on December 31, 2001;

WHEREAS, the Original Lease provided three options to renew the Original Lease for successive three-year periods, which provide Tenant with the right to renew the Original Lease through December 31, 2010;

WHEREAS, the Original Lease has terminated for two reasons:

- (1) Pursuant to Section 2.1 of the Original Lease, the Original Lease terminated on December 31, 2001, when Tenant failed to exercise its first option to renew, and
- (2) Pursuant to Section 16.2 of the Original Lease, the Original Lease terminated on January 2, 2004, because the Premises was acquired via condemnation;

WHEREAS, Tenant has been occupying the Premises on a month-to-month basis and has continued to pay the rent amounts set forth in the rent schedule in Article III of the Original Lease;

WHEREAS, Landlord, in its capacity as a home rule municipality has been carrying out improvements to the public right-of-way adjacent to the Premises, which impact the operation of the Premises; and

WHEREAS, the Parties desire to reduce the rent payable by Tenant for a period of time, and to more fully set forth the terms under which Landlord shall Lease the Premises to Tenant.

NOW THEREFORE, the Parties hereto, for themselves, their successors and assigns in and for the consideration of the performance of the mutual covenants and promises set forth herein, the receipt and adequacy of which are hereby acknowledged, do hereby covenant and agree as follows:

1. LEASED PREMISES

In consideration of the rents, covenants, and agreements herein reserved and contained, Landlord demises and leases to Tenant, and Tenant rents from Landlord, the Premises.

2. TERM AND RENT

0.1 Term of the Lease. The term of this Lease shall commence on _____, 2007 (the "Commencement Date"), and shall expire on _____, 2007 (the "Expiration Date").

0.2 Rent.

0.2.1 Tenant shall pay rent to Landlord for the term of this Lease as follows:

0.2.1.1 One Thousand Five Hundred Dollars (\$1500.00) per month from the Commencement Date through October 31, 2007, due and payable on the first of each month. The rent paid by Tenant shall not include any utilities or custodial services, all of which shall be provided by Tenant.

0.2.1.2 _____ Dollars (\$_____.00) per month from the Commencement Date through the Expiration Date, due and payable on the first of each month. The rent paid by Tenant shall not include any utilities or custodial services, all of which shall be provided by Tenant.

0.2.2 The rental payments described in this Lease shall be to the City of Northglenn at 11701 Community Center Drive Northglenn, Colorado 80233-8061.

3. WAIVER OF CLAIMS

Tenant acknowledges that it has no lease rights or other interest in the Premises, Property or Building other than those set forth in this Lease.

4. UTILITIES

Tenant shall pay charges for all utilities used in or on the Premises.

5. ALTERATIONS

5.1 Construction and Site Improvements on the Premises.

5.1.1 No site improvements, alterations, replacements, changes, additions, or improvements may be made to the Premises under this Lease without advance written permission from Landlord.

6. USE OF PREMISES

6.1 The Premises shall only be used and occupied by Tenant for the sale of foods and beverages typically sold in a first class delicatessen restaurant emphasizing breakfast, lunch, and dinner foods, and selling pizza, ice cream, baked goods and delicatessen foods, and for no other purpose. The Premises shall not be used for any other purpose. The Premises shall not be used for any illegal purposes or in any manner to create a nuisance. Tenant expressly agrees to comply with all state and local government agencies having jurisdiction over activities on the Premises.

6.2 Suitability. As of the date of its execution of this Lease, Tenant has inspected the physical condition of the Premises and has received the same in "as is" condition. LANDLORD MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE CONDITION OR STATE OF THE PREMISES OR ITS FITNESS OR AVAILABILITY FOR ANY PARTICULAR USE, AND LANDLORD SHALL NOT BE LIABLE TO TENANT FOR ANY LATENT OR PATENT DEFECT THEREON. Tenant may use said Premises for the uses specified in this Lease, so long as such uses conform with zoning and use restrictions of all authorities affecting the Premises, and Tenant will not do, or permit to be done, any action or thing which is contrary to any legal or insurable requirement or which constitutes a public or private nuisance or waste.

7. RIGHT OF ENTRY

Landlord and agents of Landlord shall at all times have the right to enter upon the Premises to inspect their condition and for the purposes of planning Landlord's redevelopment of the Premises. Such right shall include the right of Landlord to conduct any tests Landlord deems necessary, including asbestos testing.

8. INDEMNIFICATION

Tenant agrees that Landlord shall not be liable for any damage, either to person or persons or property sustained by Tenant or Landlord or by any other person or persons due to the use of the Premises, due to the happening of any accident, or due to any act or neglect of Tenant, or any occupant of the Premises, or the use or misuse of any instrumentality or agency in or connected with the Premises, or occasioned by any nuisance made or suffered thereon. Tenant agrees to save Landlord harmless thereon and therefrom, and to indemnify Landlord on account thereof.

9. MAINTENANCE AND REPAIR

9.1 Tenant shall keep the sidewalks bordering the Premises free from all litter, dirt, debris, water, and obstructions.

9.2 It is intended that Tenant shall throughout the term of this Lease, at its own cost and expense, put, keep and maintain the Premises and common areas in good, substantial and sufficient condition, repair and order. In addition, in the event there is any blockage or damage

to utility lines caused by the actions of Tenant, its employees, and invitees, then Tenant shall be responsible for the repair of the same.

10. DAMAGE OR DESTRUCTION

If the Premises or a sufficient portion of the Premises necessary for Tenant's occupancy is damaged by fire or other casualty, this Lease shall terminate and Tenant shall have no rights to any proceeds received by Landlord from Landlord's insurance policy or any other source.

11. INSURANCE

11.1 Tenant (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) hereby waives any rights it may have against Landlord, Landlord's servants, agents and employees, on account of any loss or damage occasioned to Tenant, as the case may be, its respective property, the Premises or its contents, the common areas, parking lots and sidewalks located adjacent to the Premises or to the other improvements of the Premises arising from any risk and to the extent covered by fire and extended coverage insurance, provided that such waiver does not invalidate such policies or prohibit recovery thereunder.

11.2 Tenant further covenants and agrees that from the date hereof Tenant will procure and maintain throughout the term, at its sole cost and expense, the following types of insurance in the amounts specified and in the form hereinafter provided:

11.2.1 Comprehensive broad form general public liability insurance in common use for commercial structures with extended coverage endorsement protecting Landlord and Tenant against any liability whatsoever and covering the Premises, common areas, and parking lots and sidewalks located adjacent to the Premises and Tenant's use thereof against claims for personal injury, death and property damage occurring upon, in or about the Premises, such insurance to afford protection to the limit of not less than combined single limits of six hundred thousand dollars (\$600,000) each occurrence and one million dollars (\$1,000,000) general aggregate. The policy shall name Landlord as an additional insured and shall provide that in the event of cancellation, ten (10) days prior written notice shall be given by the insurer to the Northglenn Urban Renewal Authority, 11701 Community Center Drive, Northglenn, Colorado 80233-8061. Tenant shall deliver a copy of the policy to Landlord at the above address within 15 days from the date of execution of this Lease. The insurance coverage required under this Section 11.2.1 shall, in addition, extend to any liability of Tenant arising out of the indemnities provided for in Section 8.

11.2.2 Workers' compensation insurance covering all persons employed for such work.

11.3 The placement of any insurance by Tenant shall not be construed as any waiver or modification of Tenant's rights under the Colorado Governmental Immunity Act.

12. REMEDIES UPON DEFAULT

12.1 Events of Default Defined. The following shall be "events of default" by Tenant under this Lease and the term "event of default" shall mean, whenever it is used in this Lease, any one or more of the following events:

12.2.1 Failure by Tenant to pay any sums to Landlord when due hereunder, and continuation thereof for a period of ten (10) business days.

12.2.2 Failure by Tenant to observe and perform any covenant, condition, or agreement on its part to be observed or performed hereunder.

12.3 Remedies on Default. Whenever any event of default shall have happened, Landlord may take any one or more of the following remedial steps:

12.3.1 Landlord may re-enter and take possession of the Premises.

12.3.2 Landlord may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of Tenant under this Lease.

12.3.3 If Landlord takes any of the remedial steps specified above and establishes default through appropriate court proceedings, then Landlord shall be entitled to recover all reasonable costs, including attorney fees.

13. SPECIAL COVENANTS OF LANDLORD

13.1 Taxes. Landlord shall pay all real estate taxes and assessments assessed against the real property (not including trade fixtures installed by Tenant, or real estate taxes payable due to Tenant's leasehold interest in the Premises) that makes up the Premises. Tenant shall pay all personal property taxes, real estate taxes payable due to Tenant's leasehold interest in the Premises, and assessments assessed against the personal property.

13.2 Successors. This Lease shall inure to the benefit of and be binding upon Landlord, Tenant and their respective heirs, successors, representatives, administrators, executors, and devisees. Tenant shall not assign this Lease or sublet the Premises or any part thereof. Any attempted assignment or subletting shall be deemed void and of no effect.

14. SPECIAL COVENANTS OF TENANT

14.1 Mechanic's Liens. Tenant agrees not to permit or allow any mechanic's or materialman's lien to be placed on Landlord's or Tenant's interest in the Premises during the term of this Lease. However, if any such lien is placed on Landlord's or Tenant's interest, Tenant shall take all steps necessary to see that it is removed within thirty (30) days of its being filed. Tenant may contest the lien if Tenant first posts a surety bond in favor of and insuring Landlord in an amount sufficient to have the lien released from the property.

14.2 Rules and Regulations. Tenant agrees that at all times during the term of this Lease, it shall at its own cost and expense:

14.2.1 Keep the Premises, common areas, parking lots and sidewalks located adjacent to the Premises in good, neat, and clean condition.

14.2.2 Not park trucks or delivery vehicles outside the Premises so as to unreasonably interfere with the use of any driveways, walks, roadways, highways, streets, malls, or parking areas.

14.2.3 Keep the Premises clean and free from refuse, rubbish, and dirt at all times; and store all trash, rubbish, and garbage within the Premises in the areas set aside therefor.

14.2.4 Obtain and maintain in effect all permits and licenses necessary for the operation of Tenant's business as herein provided.

14.2.5 Keep the outside area immediately adjoining the Premises reasonably clean and free from dirt, and rubbish, and keep that area free from any obstruction or merchandise.

14.2.6 All contractors of Tenant shall fully comply with the Occupational Safety and Health Act of 1970 (Chapter XVII, Title XIX of the United States Code) (OSHA) of applicable state statute adopted pursuant to OSHA. It shall be Tenant's obligation to insure that its contractors fully comply with the provisions and standards as contained in such Act.

15. SURRENDER OF PREMISES

Upon the expiration or termination of the Lease term, Tenant shall peaceably and quietly leave and surrender the Premises in as good condition as they are now, ordinary wear and tear excepted. Tenant shall surrender and deliver the Premises and common areas broom-clean and free of Tenant's property. Provided Tenant is not in default under this Lease, Tenant shall have the right to remove all of its trade fixtures, equipment, and machinery, provided that upon removal the Premises are delivered in the same condition as existed at the time of commencement of this Lease. Further, in the event Tenant does not remove any of its own trade fixtures, equipment, or personal property or any additions or alterations made to the Premises during the term of this Lease, Landlord may, at its option, require Tenant to remove any such improvements, alterations, trade fixtures, and equipment and restore the Premises to the condition as existed at the commencement of this Lease, or retain the same.

16. MISCELLANEOUS PROVISIONS

16.1 Captions; Attachments.

16.1.1 The captions of the sections of this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease.

16.1.2 Exhibits attached hereto, and addenda and schedules initialed by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein.

16.2 Entire Agreement. This instrument, along with any exhibits and attachments hereto, constitute the entire agreement between Landlord and Tenant relative to the Premises and the provisions of this Lease and the exhibits and attachments may be altered, amended, waived or revoked only by an instrument in writing signed by both Landlord and Tenant. Landlord and Tenant agree hereby that any and all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this Lease.

16.3 Severability. If any term or provision (except those having to do with rent) of this Lease shall to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law. In case the exception applies, the Lease shall be null and void after such determination.

16.4 Governing Law. This Lease shall be construed under the laws of the State of Colorado. In the event of any dispute between the parties which results in litigation, the exclusive venue for such litigation shall be the District Court in and for the County of Adams, State of Colorado. Each party hereto shall be possessed of all remedies, whether legal or equitable, which are provided for and which are available under Colorado law.

16.5 Notices. All notices, demands, and requests required to be given by either party to the other shall be in writing. All notices, demands, and requests shall either be hand-delivered or shall be sent by certified or registered mail, return receipt requested, postage prepaid, addressed to the parties at the addresses set forth below, or at such other addresses as the parties may designate in writing delivered pursuant to the provisions hereof. Any notice when given as provided herein shall be deemed to have been delivered on the date personally served or two (2) days subsequent to the date that said notice was deposited with the United States Postal Service.

To Landlord: City Manager
City of Northglenn
11701 Community Center Drive
Northglenn, Colorado 80233-8061

To Tenant: _____

IN WITNESS WHEREOF, the parties to this Lease have set their hands and seals the day and year first written above.

CITY OF NORTHGLENN

Kathleen M. Novak
Mayor

ATTEST:

Diana L. Lentz, CMC
City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann
City Attorney

HEIDI'S ICE CREAM SHOP, LLC

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF)

Acknowledged before me this: _____ day of _____, 2007, by
_____ as _____ for Heidi's Ice Cream Shop,
LLC.

WITNESS my hand and official seal.

My commission expires: _____

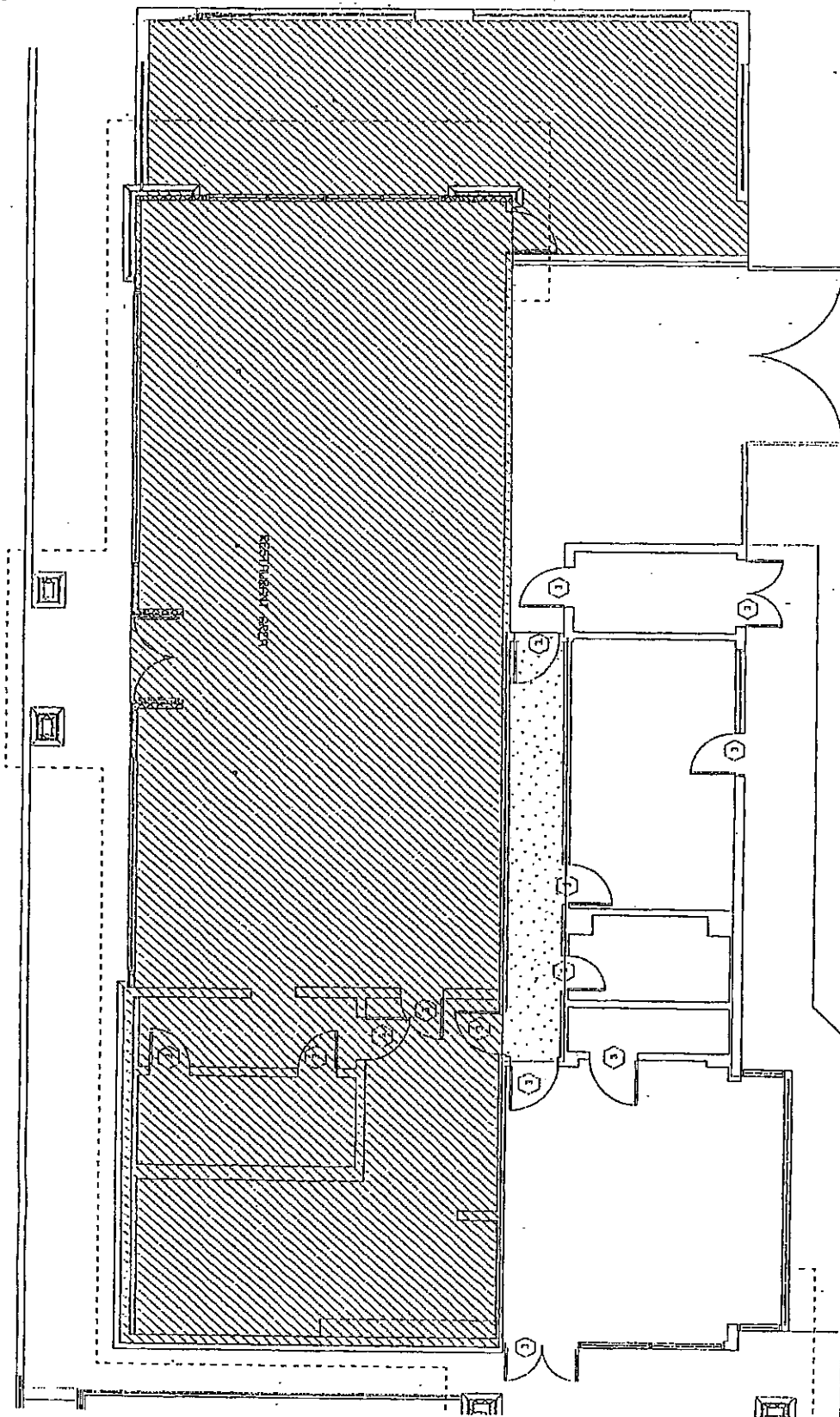
Notary Public



EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Lot 2, Block 1, Holiday Park, County of Adams, State of Colorado.

EXHIBIT B
DEPICTION OF PREMISES

EXHIBIT D



-  - Tenant Area
-  - Shared Common Area

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