

# LEASE AGREEMENT

January 15, 2009

## [LANDLORD]

a corporation incorporated pursuant to the laws of [province]  
(hereinafter referred to as the "Landlord");

- and -

## [TENANT]

a corporation incorporated pursuant to the laws of [province]  
(hereinafter referred to as the "Tenant");

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THIS AGREEMENT dated effective the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**BETWEEN:**

[LANDLORD], a body corporate incorporated pursuant to the laws of [province] and authorized to carry on business in [province] (the "Landlord")

**OF THE FIRST PART**

- and -

[TENANT], a body corporate incorporated pursuant to the laws of [province] and authorized to carry on business in [province] (the "Tenant")

**OF THE SECOND PART**

**THIS AGREEMENT WITNESSES THAT** in consideration of the Leased Premises and the mutual covenants, agreements and conditions contained herein, the parties hereby covenant, agree and declare as follows:

## **ARTICLE I - INTERPRETATION**

### **1.01 Headings, etc.**

Headings and captions of articles and sections are inserted for convenience of reference only and are not to be considered when interpreting this Lease. All references in this Lease to articles, sections and other sub-sections refer to the corresponding articles, sections and other sub-sections of this Lease and the words "this Lease", "herein", "hereof", "hereby", "hereunder", "hereinafter" and words of similar import refer to this Lease as a whole and not to a particular article, section or sub-section of this Lease.

## **ARTICLE II - DEMISE, TERM, RENT**

### **2.01 Leased Premises**

The Landlord does hereby demise and lease to the Tenant, the Leased Premises (the "Leased Premises") being the building municipally described as [street address] and legally described as:

[LEGAL DESCRIPTION]

and more particularly described and shown outlined in red in Schedule "A" attached to and forming part of this Lease.

### **2.02 Term**

To have and to hold the Leased Premises for a term of [term] years commencing on the [commencement date] and expiring at midnight on the [expiry date] (the "Term"), subject to the provisions with respect to earlier termination hereinafter contained.

### **2.03 Rent and Additional Rent**

Yielding and paying therefor, for each of the following years during the Term without any deduction, set-off or abatement whatsoever the following rents:

- (a) During each year of the Term, the sum of [YEARLY LEASE AMOUNT] DOLLARS (\$\_\_\_\_\_) per year payable in advance in equal monthly installments of [MONTHLY RENT] DOLLARS (\$\_\_\_\_\_) commencing on the [commencement date]. At the beginning of each rental year the Tenant shall deliver to the Landlord a series of twelve post dated cheques for the total amount of the annual rent.
- (b) As additional rent all other amounts which the Tenant is required to pay or discharge under this Lease together with all penalties, interests and costs and if the Tenant fails to pay or discharge any such other amounts, the Landlord shall have the rights, powers and remedies provided herein.
- (c) The sum of [DEPOSIT] DOLLARS (\$\_\_\_\_\_) shall be paid by the Tenant to the Landlord coincidentally with the execution and delivery of this Lease (the receipt of which is hereby acknowledged) and the sum of [MONTHLY RENT] DOLLARS (\$\_\_\_\_\_) shall be applied against the first month's rent due to the Landlord. A further sum of [MONTHLY RENT] DOLLARS (\$\_\_\_\_\_) shall be applied against the last month's rent due to the Landlord.

### **2.04 Interest on Amounts in Default**

When rent or any other amount payable hereunder by the Tenant to the Landlord is in arrears, such amount shall bear interest from the date due until paid at the rate of interest per annum equal to [interest] (\_\_\_%) percentage points in excess of the prime commercial rate of interest at which loans in Canadian dollars are available at the main office in the City of [city] of the [bank] to its commercial customers

payable monthly or, if such rate of interest shall become unlawful, at the maximum rate permitted by law. The Landlord shall have all remedies for the collection of such interest if unpaid after demand as in the case of rent in arrears, but this stipulation for interest shall not prejudice or affect any other remedies of the Landlord under this Lease.

#### 2.05 Other Charges

Any sums, costs, expenses or other amounts from time to time due and payable by the Tenant to the Landlord under the provisions of this Lease, including sums payable by way of indemnity and whether expressed to be rent or not, may at the option of the Landlord be treated as and deemed to be rent, in which event the Landlord shall have all remedies for the collection of such sums when in arrears as are available to the Landlord for the collection of rent in arrears.

#### 2.06 Place of Payment of Rent

All rent, additional rent and charges payable hereunder shall be paid by the Tenant to the Landlord at its offices at [landlord's address] or at such other place as the Landlord may designate in writing from time to time, without any prior demand therefor, and shall be payable in lawful money of Canada at par.

#### 2.07 Intent of Triple Net Lease

- (a) It is the purpose and intent and agreement of the Landlord and the Tenant that annual rent payable to the Landlord pursuant to Section 2.03 hereof shall be completely and absolutely payable under this Lease triple net to the Landlord, and for this purpose the Tenant covenants with the Landlord that this Lease shall yield net to the Landlord the annual rent specified in Section 2.03 of this Lease during the Term, free and clear of all business taxes, realty taxes, goods and services taxes, sales taxes, value added taxes, charges, rates, assessments, expenses, costs, payments or outgoings of every nature whatsoever arising from or related to the Leased Premises without abatement, deduction or set-off and under no circumstance or condition whether now existing or hereafter arising or beyond the present contemplation of the parties shall the Landlord be expected or obligated to make any payment of any kind whatsoever or be under any obligation or liability hereunder or in respect of the Leased Premises except as herein otherwise expressly set out and all such taxes, charges, rates, assessments, expenses, costs, payments and outgoings of every kind and nature whatsoever relating to the Leased Premises which may arise or become due during or in respect of the Term of this Lease shall be payable and be paid by the Tenant, and the Tenant covenants to indemnify and save harmless the Landlord from and in respect of any and all such taxes, charges, rates, assessments, expenses, costs, payments and outgoings.
- (b) Without limiting the generality of the preceding paragraph, the Tenant shall pay promptly when due:
- (i) all of the property taxes payable on the Leased Premises;
  - (ii) all business, sales, machinery, equipment and all other taxes, assessments, charges and rates, as well as any permit or license fees, attributable to the Leased Premises or the property, business, sales or income of the Tenant in respect of the Leased Premises;
  - (iii) all of the Tenant's operating costs relating to the Leased Premises;
  - (iv) all rates, charges, costs and expenses as may be assessed or levied (and at the rates so assessed or levied) by all suppliers of electricity, natural gas, water, sewer, telephone service and other utilities supplied directly to the Leased Premises for the exclusive use of the Leased Premises; and
  - (v) such other amounts, charges, costs, sums or increases therein as are specifically required to be paid by the Tenant pursuant to the terms of this Lease in addition to Basic Rent.

#### 2.08 Obligation to Pay Rent Not to be Diminished

The Tenant's obligations to pay rent and all other sums payable by the Tenant under the provisions of this Lease shall not be affected nor shall such rent or other payments abate or be diminished in the event of damage to or destruction of the Leased Premises, regardless of the cause or extent thereof and the Tenant hereby waives the provisions of any statute or rule of law to the contrary now or hereafter in effect, it being the intent of this Lease that the Leased Premises shall be at the sole risk of the Tenant.

### ARTICLE III - USE AND OCCUPANCY OF PREMISES

#### 3.01 Use of Premises and Trade Name

- (a) The Leased Premises shall be used and occupied by the Tenant for the purpose of, and only for the purpose of a **dine-in, [take-out and delivery fast food] restaurant serving as the primary use** (*list main menu items to be served, e.g. pizza, subs, etc*). The Tenant shall have the exclusive right during the Term and any renewal thereof to the sale of [specific food items] in the building(s) and any expansion of the building(s) or lands.
- (b) The Tenant will use only the advertised name "[trade name]" for its business in the Leased Premises and will not change or permit the change of that advertised name without the prior written consent of the Landlord.

## ARTICLE IV - INDEMNITY

### 4.01 Tenant's Indemnity to Landlord

The Tenant shall indemnify and save harmless the Landlord from and against any and all claims, demands, awards, judgments, actions and proceedings by whomsoever made, brought or prosecuted in respect of loss, damage or destruction of property or personal injuries, including death, and from and against any and all loss of, damage to or destruction of property and expenses and costs suffered or incurred by the Landlord by reason of the act, omission, use and occupation of the Leased Premises, negligence or misconduct of the Tenant and its assignees, and its and their servants, agents, employees, invitees and licensees, or anyone permitted to be upon the Leased Premises, or any of them, while in the course of exercising any right, license or privilege or doing anything which is required or permitted by reason of this Lease, except where caused by the negligence of the Landlord, or those for whom the Landlord is responsible in law.

### 4.02 Landlord not to be Liable

The Landlord shall not be liable for death or injury or damage to property of the Tenant or of others located on the Leased Premises, nor for the loss of or damage to any property of the Tenant or of others by theft or otherwise from any cause whatsoever, save and except any injury or damage caused by the gross negligence of the Landlord or its servants or agents.

## ARTICLE V - INSURANCE PROVISIONS

### 5.01 Tenant's Insurance

The Tenant shall acquire and maintain at all times during the currency of the Term the following insurance, all in a form and issued by an insurance company or companies registered and licensed to operate in [province], satisfactory to the Landlord in its sole and unfettered discretion:

- (a) comprehensive general liability insurance against liability of the Landlord and the Tenant to third parties and against the Tenant's contractual liability to indemnify the Landlord under the terms of this Lease, which shall include coverage for personal injury, contractual liability, non-owned automobile liability insurance and owned automobile liability insurance covering bodily injury, death and property damage, all with inclusive limit of not less than TWO MILLION (\$2,000,000.00) DOLLARS for each occurrence involving bodily injury (including death) and property damage, insuring the Landlord and the Tenant, their respective employees, servants, agents, invitees or licensees and any of them. Such insurance shall contain endorsements stating that:
  - (i) the Landlord is included as a named insured as its interests may appear under the policy;
  - (ii) the policy contains a "cross-liability" clause and a "severability of interest" clause;
  - (iii) the policy extends, to cover the contractual obligations of the Tenant under the terms of this Lease;
  - (iv) the insurers have received a copy of this Lease and are fully aware of the contractual obligations of the Tenant; and
  - (v) such policy shall not be terminated, cancelled or materially altered unless written notice of such termination, cancellation or material alteration is given by the insurers to the Landlord at least thirty (30) clear days before the effective date thereof;
- (b) All risk insurance including earthquake, flood and sewer back-up perils covering all property owned by the Tenant, or for which the Tenant is legally liable, located within the Leased Premises, including but not limited to Leasehold Improvements, trade fixtures, furniture and equipment, merchandize and stock in trade and insurance upon glass and glass plate forming part of the Leased Premises, against breakage and damage from any cause and burglary insurance with respect to the Leased Premises, for not less than the full replacement cost thereof, and which insurance shall include a by-law endorsement and shall provide that any proceeds recoverable with respect to Leasehold Improvements shall be payable to the Landlord (but the Landlord agrees to make available the proceeds toward repair or replacement of the insured property if this Lease is not terminated pursuant to any other provisions hereof).
- (c) Where applicable, broad form boiler and machinery insurance with limits for each accident in an amount not less than the full replacement cost of all Leasehold Improvements and of all boilers, heating, ventilating, and air conditioning equipment and miscellaneous electric apparatus owned or operated by the Tenant or by others (other than the Landlord) on behalf of the Tenant in the Leased Premises, or relating to or serving the Leased Premises.
- (d) Business interruption insurance for a minimum period of twelve (12) months in the amount which will reimburse the Tenant for direct or indirect loss of earning and extra expenses attributable to all perils insured against in paragraph 5.01(b) or attributable to prevention of access to the Leased Premises as a result of any such perils.