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Utah Court of Appeals

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Eric C. Olson; Kirton and McConkie; Attorney for Appellee.
Dean H. Becker; Attorney for Appellant.

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UTAH COURT OF APPEALS
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IN THE UTAH COURT OF APPEALS

THE DINNER AND BINGO CLUB, Inc. a Utah corporation, Plaintiff/Appellant, vs. MEADOWBROOK ASSOCIATES, INC. a Utah corporation, Defendant/Appellee.	:	Case No. 970547-CA

BRIEF OF APPELLEE

Appeal From the Third District Court of Salt Lake County
(Civil No. 950905316)
Honorable Timothy R. Hanson, Presiding

Oral Argument Priority Classification No. 15

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FILED
Utah Court of Appeals
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Julia D'Alesandro
Clerk of the Court

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THE DINNER AND BINGO CLUB, Inc. a Utah corporation, Plaintiff/Appellant, vs. MEADOWBROOK ASSOCIATES, INC. a Utah corporation, Defendant/Appellee.	:	Case No. 970547-CA

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Attorneys for Defendant/Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES

The defendant/appellee Meadowbrook Associates, Inc. (hereinafter "Meadowbrook"), through counsel, submits this brief in response to the brief filed by the plaintiff/appellant The Dinner and Bingo Club (hereinafter "D&B").

STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal pursuant to Utah Code Ann. §§ 78-2-2(3)(j) and 78-2a-3(2)(j).

STATEMENT OF ISSUES

D&B's Statement of Issues fails to comply with Utah R. App. P. 24(5) in that it does not provide a "citation to the record showing that the issue was preserved in the trial court" or otherwise state grounds for reviewing the issues presented if not preserved in the trial court.

Meadowbrook understands the issues on appeal to be as follows:

1. Whether the trial court committed clear error in finding that Meadowbrook had complied with its lease warranty to maintain the HVAC system in "working condition" for sixty days and holding D&B liable for all maintenance expenses after the expiration of the warranty.

2. Whether the trial court committed clear error in finding that D&B was indebted to Meadowbrook as of the date of Judgment for a total amount of $4,661.95 in unpaid common area maintenance and management fees together with tax and insurance assessments of $12,107.51.

STATEMENT OF CASE

1. Nature of the Case

D&B brought this action seeking a judicial declaration that it was not liable for amounts paid to repair the HVAC units at premises leased to D&B by Meadowbrook or for certain expenses billed to D&B under the parties' lease. Meadowbrook counterclaimed for a declaration

that D&B had contractual responsibility for the repairs and for recovery of unpaid rents and assessments under the parties' lease. Meadowbrook also sought eviction of D&B and restoration of the premises in the event that the amounts due under the lease were not paid.

2. Course of Proceedings

a. The Complaint, Counterclaim and Motion to Strike

D&B brought this action on July 28, 1995 by filing a Complaint for Declaratory Relief with respect to its liability for certain amounts under a lease dated December 28, 1993 between D&B and Meadowbrook (hereinafter "the Lease"; a copy of the Lease is included in the Addendum ["Add."] pp. 1-20). R. 1-29. On October 19, 1995, Meadowbrook filed its Answer and Counterclaim denying any liability to D&B under the Lease, alleging affirmatively D&B's liability for certain repairs and seeking recovery of rents and assessments due under the Lease. R. 30-49.

Meadowbrook also asked the district court to strike from the Complaint pursuant to Utah R. Evid. 408 all references to the particulars of settlement negotiations between the parties. R. 50-66. The court granted this motion by Minute Entry and Order dated February 5, 1996. R. 85-87, 95-96. Thereafter, D&B filed a First Amended Complaint deleting the references that the district court had ordered stricken from the Complaint. R. 88-94.

b. The ESCO Action and Consolidation

One liability at issue in the original pleadings was a bill for repairs to the HVAC units at the leased premises performed by Environmental Systems and Controls Corporation dba ESCO Services (hereinafter "ESCO"). On March 13, 1996, ESCO brought a separate action against

D&B as the party that ordered the services to recover the amount of the bill. ESCO also named Meadowbrook asa defendant on a theory of mechanic's lien liability. R. 100-12. Neither defendant seriously denied that ESCO had done the work; rather, D&B said the bill was Meadowbrook's responsibility under the Lease and Meadowbrook said that it was D&B's. R. 121-28. The ESCO action was consolidated with this action by Minute Entry dated August 5, 1996. R. 193-95.

c. The Trial

The case proceeded to trial on December 19, 1996 with closing argument on February 25, 1997 after submission of briefs relating to the rent and assessment issues before the court. R. 244-45, 255-76, 291-312. Before closing argument, Meadowbrook resolved the ESCO claim to avoid foreclosure leaving for the trial court's decision only the respective liabilities of D&B and Meadowbrook. R. 247-54.

3. Disposition of the Case in the Court Below.

The trial court entered its Memorandum Decision dated May 19, 1997 finding that D&B was liable under the Lease for all amounts sought by Meadowbrook. R. 314-21 and Add., pp. 21-28. After D&B objected to Meadowbrook's proposed findings and conclusions, the trial court issued a clarifying Minute Entry and Order dated July 8, 1997. R. 345-50 and Add., pp. 29-34.

On July 8, 1997, the trial court entered its Findings of Fact and Conclusions of Law and the Judgment herein. R. 343-44, 351-56 and Add., pp. 35-42. The Judgment awarded Meadowbrook the sum of $58,255.42 and granted D&B fifteen days in which to pay that

amount. In the event that the amount was not paid within the fifteen days, the Judgment provided that an order of restitution would issue evicting D&B from possession and permitting Meadowbrook to regain the leased premises. Add. 41-42.

On July 23, 1997, fifteen days after the entry of judgment, D&B took two steps: 1) it filed a notice of appeal and 2) it sought protection under Chapter 11 of the bankruptcy code. R. 361-62, 386. On November 14, 1997, the bankruptcy court granted Meadowbrook relief from the automatic stay to enforce its rights under the Lease and the Judgment. R. 387, 390-92. Thereafter, on November 20, 1997, the trial court entered an Order of Restitution as provided in the Judgment. D&B sought to quash service of the Order of Restitution and to stay its enforcement during the pendency of the appeal. R. 407-417. The trial court denied these motions by order dated December 16, 1997. R. 426-27.

4. Statement of Facts

D&B has failed to place before this Court the text of the Findings of Fact entered by the trial court, much less challenge any particular finding and marshal the evidence to demonstrate that the finding is clear error. As noted above, those findings are attached as Addendum, pp. 21-28. For ease of reference, this brief will cite the Findings by number, *i.e.*, "F. 1" or "F. 3."

a. The Lease

Meadowbrook owns the Meadowbrook Plaza Shopping Center (the "Center"), 4100 South Redwood Road, Salt Lake City, Utah. (F. 1) D&B entered into a lease with Meadowbrook to rent 17,600 square feet (or 17.48%) of the total square foot space of the Center. (F. 2) Among other things, the Lease provided that D&B would pay common area maintenance

fees (commonly referred to as "CAM fees") and other assessments for taxes and insurance in proportion to the percentage of square footage it leased. (F. 3) Under the Lease, D&B was to pay into escrow on a monthly basis its proportionate share of the estimated CAM fees and assessments. (F. 4)

Article 16 of the Lease provided that the Landlord would not be in breach of its obligations under the Lease "unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord . . . specifying wherein Landlord has failed to perform such obligation. . . ." Add. at 13.

At the time D&B executed the Lease, it knew that the HVAC system servicing the leased premises was old and might require repair. F. 5; R. 432 at 157[1]. As a consequence, the parties agreed to the following language in paragraph 23 of the Lease: "Landlord to provide Premises in `As Is' condition, except the HVAC must be in working condition. Landlord to Warranty HVAC for sixty (60) days." (F. 5; Add. at 16)

b. The HVAC System During the Warranty Period

Meadowbrook retained the services of A-Advanced to service the HVAC equipment. In April and May, 1994, A-Advanced performed work on the heating units. Plaintiff's Ex. 4 and R. 432 at 74-76. At the conclusion of that work, according to Michael Mayor of A-Advanced, the heating was in "working condition." R. 432 at 76. In July, 1994, A-Advanced worked on the air

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[1] R. 432 is the transcript of the trial proceedings. References are to page numbers in that transcript.

conditioning units with some follow up work in October, 1994. F. 10; R. 432 at 77-78. At the conclusion of that work, Mr. Mayor has testified, the air conditioning was also in "working condition." F. 11; R. 432 at 78, 83-84.

Meadowbrook paid A-Advanced over $7,000 for the work performed on the HVAC system between April and October, 1994. Plaintiff's Ex. 4. Thereafter, Meadowbrook did not pay for any further work in the HVAC system. R. 432 at 165.

c. D&B's Failure to Give Notice

After the completion of the work on the HVAC system for Meadowbrook, D&B engaged A-Advanced to do additional maintenance work on the HVAC units. R. 432 at 79-80, 122-23. The evidence at trial was in dispute whether, after October, 1994 and prior to May, 1995, D&B complained verbally to Meadowbrook of the condition of the HVAC system or took the position that the HVAC system was not in "working condition." Compare R. 432 at 165-66 with R. 432 at 159.

The first written notice that D&B gave of any allegation of failure to fulfill a lease obligation was a letter to Meadowbrook from D&B's counsel dated June 8, 1995. (F. 12) *See also* Plaintiff's Ex. 5; R. 432 at 98-102, 123-24, 158-59. The day before counsel sent that notice, D&B engaged ESCO to install new compressors in the HVAC units. (F. 13) *See also* Plaintiff's Ex. 1. When D&B failed to pay the ESCO bill, ESCO filed a mechanic's lien on the Center. (F. 14) *See also* Plaintiff's Ex. 2. (To avoid foreclosure of this lien, Meadowbrook paid the compromise sum of $12,500 to ESCO in the two month period after the close of evidence at trial and before closing arguments. (F. 15))

d. The Unpaid Lease Assessments

D&B decided unilaterally to withhold the payment of the CAM assessments commencing in April, 1996. It did so in response to Meadowbrook's refusal to accede to the demand to pay for expenses associated with operation of the HVAC system after the running of the sixty day warranty period. R. 432 at 132.

SUMMARY OF ARGUMENT

Meadowbrook agreed under the Lease to maintain the HVAC units in working condition for sixty days. It did so. D&B has failed to marshal the evidence to demonstrate clear error in the trial court's findings in favor of Meadowbrook. The language of the Lease, rather than case authorities, defines the scope of Meadowbrook's duty. D&B's conduct at the time of the alleged equipment failures corroborates the testimony of the expert who earlier repaired the units that they were in working condition.

D&B failed to pay the assessments to which it agreed in the Lease. The accounting provided by Meadowbrook establishes the amount of those unpaid assessments now due. D&B has failed to show that the trial court's findings were not supported by sufficient credible evidence.

ARGUMENT

I. MEADOWBROOK FULFILLED ITS WARRANTY OBLIGATION UNDER THE LEASE TO MAINTAIN THE HVAC SYSTEM IN "WORKING CONDITION" FOR A PERIOD OF SIXTY DAYS.

A. D&B Has Failed To Marshal The Evidence.

D&B challenges the trial court's finding that "[t]he HVAC system was in working condition as of the last date that Meadowbrook made repairs to the system and thereafter for sixty days." (F. 11) The standard for appellate review of the trial court's findings of fact is clear error. Utah R. Civ. P. 52(a). "To successfully attack findings of fact, a party must first marshal all the evidence in support of the trial court's findings and then demonstrate that even when viewed in the light most favorable to the findings, the evidence is insufficient to support the findings." *Warner v. Sirstins*, 838 P.2d 666, 669 (Utah App. 1992). This is a "heavy burden" that requires the appellant's counsel to "play the devil's advocate" by "`present[ing], in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which *supports* the very finding the appellant resists.'" *Oneida/SLIC v. Oneida Cold Storage*, 872 P.2d 1051, 1052-53 (Utah App. 1994) quoting *West Valley City v. Majestic Investment Co.*, 818 P.2d 1311, 1315 (Utah App. 1991) (emphasis in original).

Once the appellant has marshaled the facts supporting the findings, the appellant must "show why [they] fail to support the trial court's findings." *Id.* at 1053. The appellant must demonstrate that the findings are against "the clear weight of the evidence." *Id.* If the appellant fails to fulfill the duty to marshal, this Court will "refuse to consider the merits of the challenges

to the findings and accept the findings as valid." *Mountain States Broadcasting Co. v. Neale*, 783 P.2d 551, 553 (Utah App. 1989).

D&B has not marshaled the evidence. Rather, D&B merely argues for its version of the facts based on the evidence most supportive of its position. The Brief of Appellant sets forth primarily the favorable testimony of D&B's president, Rob Kropf, regarding the condition of the HVAC units (Appellant's Brief at 5-6, ¶¶ 7-9) and the testimony his co-owner, Jim Anderson, regarding complaints to Meadowbrook (Appellant's Brief at 6-7, ¶¶ 14-15). D&B makes no attempt to set forth all evidence in support of the trial court's finding that the HVAC units were in "working condition" for sixty days after October, 1994. One is left to speculate as to what might constitute clear error in the trial court's finding. This Court "do[es] not sit to retry cases submitted on disputed facts." *In re Estate of Bartell*, 776 P.2d 885, 886 (Utah 1989).

B. The Trial Court's Finding Regarding "Working Condition" Was Not Clear Error.

D&B fails to acknowledge the plain language of the Lease that defines the duties of the parties with respect to the HVAC system. Rather, D&B attempts to define the parties' respective duties to maintain the HVAC equipment by citing case law from Michigan, Montana and the Eighth Circuit. (Also, without citation to the record and in defiance of the trial court's February 5, 1995 ruling on the motion to strike, D&B references Meadowbrook's concessions in settlement discussions regarding possible replacement of the HVAC system. (Appellant's Brief at 7.)) The Lease governs the rights and duties of the parties.

Article 23 of the Lease, specially negotiated by the parties, defines their respective obligations to repair and maintain the HVAC units: "Landlord to provide Premises in `As Is' condition, except the HVAC must be in working condition. Landlord to Warranty HVAC for sixty (60) days." (F. 5) As D&B conceded and the trial court found, this language reflected the parties' awareness of the age and uncertain condition of the HVAC units. While D&B accepted the rest of the leased premises "as is," it negotiated a sixty day warranty on the HVAC units with the further promise that they be in "working condition." (F. 5) Significantly, the negotiations produced a warranty time period limited to sixty days. Further, the parties' chosen language set simple "working condition" as the standard of performance, rather than "good working condition" or "optimal working condition."

The fact issue for the trial court was whether Meadowbrook had failed to maintain the HVAC units in "working condition" for sixty days. If not, then Meadowbrook would be liable for the ESCO bill and D&B might be justified in withholding rental charges and assessments.

All acknowledged at trial that, in furtherance of its warranty obligation, Meadowbrook had paid A-Advantage over $7,000 for repairs to the units between April and October, 1994. Plaintiff's Ex. 4. Upon the completion of those repairs, according to Michael Mayor of A-Advantage who did the repairs and had the experience and expertise to so testify, the HVAC units were in "working condition." The officers of D&B countered with their own general assertions of equipment failure and deficiencies.

Most telling was the entire absence of any written communication from D&B to Meadowbrook between October, 1994 and June, 1995 giving notice as the Lease required of the

supposed failures and deficiencies. (F. 12) While D&B insisted at trial that it had given verbal notice of these matters, Meadowbrook's Chris Adams denied that Meadowbrook had received notice, written or verbal, of any deficiency or warranty claim.

No one disputed that, for a period of eight months after Meadowbrook's last repairs to the units, D&B failed to take the simple action mandated by Article 16 of the Lease to put the Landlord in default of its obligations under Article 23 of the Lease: to send a written notice of breach of the warranty. The first written notice came only after D&B had hired ESCO to perform repairs. If D&B thought that the units were not in "working condition," it had only to give Meadowbrook timely written notice to invoke the protections of the Lease. Thus, D&B becomes the foremost contemporaneous witness against its belated contentions of equipment deficiencies.

The evidence was clearly in dispute on the central issue. The trial court chose to believe Messrs. Adams and Mayor, whose testimony was consistent with the verifiable conduct of D&B's principals over the eight month period relevant to the warranty claims. The trial court deemed the undisputed actions of D&B at the time of the alleged malfunctions to speak much louder than their later contentions at trial. This resolution of conflicting evidence after hearing testimony, observing demeanor and weighing credibility is precisely the role that the Utah Rules of Civil Procedure allocate to the trier of fact. Utah R. Civ. P. 52(a).

C. The Authorities Cited By D&B Do Not Modify Meadowbrook's Duty.

The law does not define the term "working condition" with precision. Rather, the term must be defined by the facts and circumstances surrounding the particular agreement and alleged

breach. *See Gunset v. Mossman*, 196 Neb. 529, 243 N.W.2d 783, 785 (1976). The bargain that D&B struck in its Lease with Meadowbrook covered maintenance of a twenty-five year old HVAC system. The parties knew this; they recognized that the units would require some initial work. Meadowbrook promised that this maintenance would render the system in "working condition" for a period of sixty days. The parties did not bargain for an HVAC system to remain in "working condition" for the Lease term, for eight months or even for sixty-one days. As noted above, the evidence at trial established that Meadowbrook fulfilled its obligations under the warranty.

The authorities cited by D&B do not alter Meadowbrook's duty under the Lease. *Anchor Inn of Michigan, Inc. v. Knopman*, 71 Mich. App. 64, 246 N.W.2d 416 (Ct. App. Mich. 1976), presents facts and a procedural posture materially different from those before this Court on appeal. The landlord had covenanted to repair the "outmoded air conditioning unit" without a time limitation such as that set forth in the Lease before this Court. *Id.* at 418. Verbal notice (documented by diary entries) to the landlord of noncompliance, rather than the written notice required under the present Lease, was sufficient. As a consequence, the trial court found for the tenant and the appellate court affirmed those findings.

Kosena v. Eck, 635 P.2d 1287 (Mont. 1981) and *Dayton-Hudson Corp. v. Macerich Real Estate Co.*, 751 F.2d 219 (8th Cir. 1984), parallel *Anchor Inn* by requiring a landlord who makes a promise to repair to keep that promise or reimburse the tenant for the repairs. Meadowbrook clearly kept the promise it made.

Each of the cases cited by D&B involved replacement of equipment that, the evidence before the trial courts showed, could not be repaired. The issue of replacement was not before the trial court and it is not before this Court. D&B chose to hire ESCO to repair the HVAC units eight months after A-Advanced's last repairs without any input from Meadowbrook and with the clear intent of not paying the bill. By that time, responsibility for the condition of the HVAC units had shifted to D&B. Replacement of the units was no doubt an option, but D&B elected to repair. Meadowbrook had kept its promise under the language of Article 23 of the Lease to maintain the HVAC units in "working condition" for sixty days.

Wolfe v. White, 225 P.2d 729 (Utah 1950), the sole Utah authority, again involved a contractual provision not before the Court in this action : a landlord's promise to maintain a roof in "good condition and repair" during the entire term of the lease. Significantly, unlike the parties to the present Lease, neither party in *Wolfe* knew at the time of contracting the actual condition of the roof. The court's affirmance of a jury verdict for the tenant in *Wolfe* affords no guidance as to how the Court should read the present lease or enforce the rights and obligations thereunder.

In sum, the Lease established the scope of Meadowbrook's duty to repair the HVAC units. Meadowbrook fulfilled that duty. D&B was responsible to pay ESCO, which it had hired, for the repairs performed on the HVAC units in June, 1995. Failure to make that payment was a breach of the Lease.

II. THE TRIAL COURT CORRECTLY ACCOUNTED FOR ALL CAM PAYMENTS AND ACCURATELY CHARGED D&B FOR ALL UNPAID ASSESSMENTS.

D&B's argument regarding common area maintenance fees is devoid of any citation to the record, much less the requisite marshaling of the evidence. Meadowbrook presented evidence at trial of all Lease charges in summary form pursuant to Utah R. Evid. 1006. R. 276. D&B responded with a written submission that challenged only certain specific items included in these bills. R. 308-12 Meadowbrook responded to these contentions at closing argument. R. 433 at 6-10. The trial court accepted the evidence as presented by Meadowbrook. R. 319.

The calculations now offered by D&B fail to challenge any specific trial court findings. As early as 1994, D&B had refused to pay the full amount of its proportionate share of insurance charges until it was indebted to Meadowbrook, by January 29, 1997, in the amount of $9,250.41 (F. 7; R. 276) By April, 1996, D&B had ceased paying any CAM fees or other Lease assessments. (F. 8; R. 276)

Meadowbrook acknowledged at trial that the amount of escrowed CAM fees in certain years exceeded the amounts actually incurred in those years. (The totals were not known until the year's end.) In practice, the CAM surpluses served to offset the substantial shortfalls in the insurance and tax escrows brought on by D&B's refusal to pay the full amount of these asssessments. (R. 292) (For instance, on January 27, 1995, Meadowbrook used a $1,996.91 surplus in the CAM escrow to offset, in part, an insurance shortfall and a tax shortfall. (R. 276)) The trial court correctly determined what D&B owed Meadowbrook for unpaid Lease assessments.

III. D&B DID NOT ASSERT A CLAIM FOR UNJUST ENRICHMENT.

The First Amended Complaint does not include a claim for unjust enrichment. R. 88-94. As noted above, the rights and obligations of the parties with respect to the HVAC units are set forth in the Lease. The trial court required D&B to pay nothing more than what it promised to pay--the cost of maintaining the HVAC units after the expiration of the sixty-day warranty period.

CONCLUSION

The Court should affirm the Judgment of the court below in all respects.

Respectfully submitted this 16th day of September, 1998.

KIRTON & McCONKIE

By: _____

Eric C. Olson
Attorneys for Defendant/Appellee

CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed two copies of the foregoing BRIEF OF APPELLEE this 16th day of September, 1998, in the United States mail, postage prepaid to the following:

Dean H. Becker
50 West 300 South, Suite 1130
Salt Lake City, Utah 84101

Attorney for Plaintiff-Appellant

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APPENDIX

Index

D Park Center

LEASE

(SHOPPING CENTER)

BY THIS LEASE, dated as of the 28 th day of December, 1993

MEADOWBROOK ASSOCIATES, INC.

50 State Street, 4th Flr., Albany, N.Y. 12207

(Landlord"),

hereby leases to

DINING & BINGO, INC. AND COMPUTER STORE

335 Park Creeke Lane, Salt Lake City, Utah 84115
("Tenant"), with address of

and Tenant hereby accepts this Lease of approximately 17,600 square feet of space in the MEADOWBROOK Shopping Center ("the Shopping Center"), located at 4100 South Redwood Road, in the City of Salt Lake, County of Salt Lake, State of Utah and identified as MEADOWBROOK SHOPPING CENTER (herein referred to as "the Premises"), all upon the terms, covenants and conditions set forth in this Lease. The Premises are a portion of the property more fully described in Exhibit A attached hereto; a plot plan showing the Premises is attached hereto marked Exhibit B.

ARTICLE 1

Term of Lease

1.1 This Lease will be for a term of 5 years and 0 months ("the term") commencing April 1, 19 94 *, and expiring at midnight upon expiration of said term, unless terminated as otherwise set forth herein.

or whenever Tenant opens for business, whichever first occurs.

1.1.1 If for any reason Landlord is unable to deliver possession of the Premises to Tenant on the aforesaid commencement date, Landlord shall not be liable for any damages therefor, nor shall this Lease be void or voidable, but Tenant shall not be obligated to pay rent until possession is delivered. If possession is not delivered by Landlord to Tenant within 30 days of the commencement date, except for delays beyond the reasonable control of Landlord, Tenant may within ten (10) days thereafter cancel this Lease by giving Landlord written notice thereof, and thereafter neither party shall have any rights, duties or obligations hereunder.

1.1.2 Notwithstanding the foregoing, in the event the Premises prior to occupancy by Tenant must be improved by Landlord as set forth in the Addendum for Improvement Work attached hereto, if any, then the commencement date for the term shall be the date upon which Landlord notifies Tenant in writing that such improvement work has been completed and the Premises may be occupied.

1.2 In the event Tenant occupies the Premises prior to the aforesaid commencement date, this Lease shall be and become effective as of date of such occupancy and the term will be increased thereby. Occupancy after said commencement date shall not extend the term.

EXHIBIT P-3 ALL STATE LEGAL SUPPLY CO.

ARTICLE 2

Rent

2.1 Rent for the term shall be paid to Landlord in legal tender of the United States of America, at the address of Landlord set forth above, or such other address as Landlord may, from time to time, inform Tenant in writing, in monthly installments, and without offset for any reason whatsoever, of $ See Rent Schedule, in advance, on the 1st day of each calendar month (herein referred to as "the Minimum Rent") beginning ,

other than the first day of a calendar month, Tenant shall pay the rent for such month proportional to its occupancy of the Premises and the same shall be pro-rated on the basis of a thirty (30) day month. Tenant shall pay, in addition to the Minimum Rent, all other amounts as more specifically set forth below.

* Minimum rent schedule: NET, NET, NET

Year 1	($2.50/sq.ft.)	$44,000 annually	$ 3,666.67 monthly
Years 2-3	($3.25/sq.ft.)	57,200	4,766.67
Year 4	($4.50/sq.ft.)	79,200	6,600.00
Year 5	($5.00/sq.ft.)	88,000	7,333.33

OPTION PERIODS

One, Five-Year Option Period at a rent to be negotiated

2.1.1 In the event (i) the Minimum Rent (and/or additional rent as set forth below) is not paid within five (5) days of the due date, or (ii) of a dishonored bank check from Tenant, and because actual damages for a late payment or for a dishonored check are extremely difficult to fix or ascertain, but recognizing that damage and injury result therefrom, Tenant agrees to pay $45.00 as liquidated damages for each late payment and $21.00 as liquidated damages for each time a check is dishonored. (The grace period herein provided is strictly related to the liquidated damages for a late payment and shall in no way modify or stay Tenant's obligation to pay rent on the 1st day of each month.)

~~2.2 As to rent falling due subsequent to the date the term commences, Tenant,~~ in addition to Minimum Rent, shall pay as additional rent the following:

2.2.1 A sum equal to _____ % of the "Gross Sales" (defined below) made by Tenant in, upon or from the Premises during each calendar year of the term, less the aggregate amount of Minimum Rent paid by Tenant for said calendar year. Payment of such percentage shall be made on a monthly basis throughout the term as provided below. (For the years in which the Lease commences and ends, the aforesaid percentage rent, Gross Sales and Minimum Rent paid shall apply to that portion of each such year this Lease is in effect.) As to the foregoing, the following shall apply:

(a) On or before the 15th day of each calendar month of the term, commencing with the month following the commencement of rent (as hereinafter provided), and ending with the 15th day of the month nextfollowing the end of the term, whether by expiration, termination or otherwise, Tenant shall furnish to Landlord a statement in writing, certified by Tenant to be correct showing the total Gross Sales made in, upon, or from the Premises during the preceding calendar month, and shall accompany each such statement with a payment to Landlord equal to the aforesaid stated percentage of the total monthly Gross Sales made in, upon, or from the Premises during each calendar month, less the Minimum Rent for each such calendar month, if previously paid. Said statement and payment shall be made with the succeeding month's regular monthly rental payment. Within thirty (30) days after the end of each calendar year of the term, Tenant shall furnish to Landlord a statement in writing, certified by Tenant to be correct, showing the total Gross Sales by months made in, upon, or from the Premises during the preceding calendar year, at which time an adjustment shall be made between Landlord and Tenant to the end that the total percentage rent paid for each calendar year shall be a sum equal to said stated percentage of the total Gross Sales made in, upon or from the Premises during such calendar year of the term, less the Minimum Rent for each such calendar year, if previously paid.

(b) The term "Gross Sales" as used in this Lease shall include the entire gross receipts of every kind and nature from sales and services made in, upon, or from the Premises, whether upon credit or for cash, in every department operating in the Premises, whether operated by Tenant or by a subtenant or subtenants, or by a concessionaire or concessionaires, if such is permitted, excepting therefrom any rebates and/or refunds to customers and the amount of all sales tax receipts accounted for by Tenant to any government or any governmental agency. Sales upon credit shall be deemed cash sales and shall be included in the Gross Sales for the period which the merchandise is delivered to the customer, whether or not title to the merchandise passes with delivery.

(c) Tenant shall keep full, complete and proper books, records and accounts of its daily Gross Sales, both for cash and on credit, of each separate department, subtenant, and concessionaire operating in the Premises. Landlord and its agents and employees shall have the right at any and all times, during the regular business hours, to examine and inspect all of the books and records of Tenant including any sales tax reports pertaining to the business of Tenant conducted in, upon or from the Premises, for the purpose of investigating and verifying the accuracy of any statement of Gross Sales. Landlord may once in any calendar year cause an audit of the business of Tenant to be made by an accountant of Landlord's selection and if the statement of Gross Sales previously made to Landlord shall be found to be inaccurate, then and in that event, there shall be an adjustment and one party shall pay to the other on ~~demand such sums as may be necessary to settle in full the accurate amount~~

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~~of said percentage rent that should have been paid to Landlord for the period or periods~~ covered by such inaccurate statement or statements. Tenant shall keep ~~all said~~ records for three (3) years. If said audit shall disclose an inaccuracy ~~of greater~~ than two percent (2%) error with respect to the amount of Gross Sales reported by Tenant for the period of said report, then Tenant shall ~~immediately~~ pay to Landlord the cost of such audit; otherwise, the cost of such ~~audit shall~~ be paid by Landlord. If such audit shall disclose any willful or ~~substantial~~ inaccuracies, this Lease may thereupon be cancelled and terminated at the ~~option of~~ the Landlord; such option must be exercised within 60 days of the date ~~of completion of such audit.~~

2.2.2 A proportional amount (as defined below) of the costs incurred by Landlord to (i) supervise and administer the common areas (that is, exposed or enclosed mall or corridor areas, parking lots, sidewalks, landscaped areas and planters and any other areas or facilities which are used in common by tenants or occupants of the Shopping Center), (ii) pay all utilities and other costs, taxes, levies and expense of operating the common areas of the Shopping Center, general signs and the like; and (iii) maintain and repair all such common areas. Said costs shall include such fees as may be paid to a third party in connection therewith and, in any event, shall include a fee to Landlord for supervision and management thereof in an amount equal to five (5%) of Tenants minimum rent.

The "proportional amount" of such charges attributable to Tenant is the percent derived from dividing the square footage leased by Tenant hereunder by the total leasable square footage of the Shopping Center. Supervision, management and control of the common areas is within the sole discretion of Landlord.

(a) Upon commencement of the term, Landlord shall submit to Tenant a statement of the anticipated monthly charges hereof for the period between such commencement and the following January, and Tenant shall pay same and all subsequent monthly payments concurrently with the payment of Minimum Rent. Tenant shall continue to make said monthly payments until notified by Landlord of a change thereof. By April 1st of each year, Landlord shall endeavor to give Tenant a statement showing the total charges for the Shopping Center for the prior calendar year and Tenant's allocable share thereof, prorated from the commencement or the prior January 1, whichever is shorter. In the event the total of the monthly payments which were made for the prior calendar year be less than the Tenant's actual share of such charges, then Tenant shall pay the difference in a lump sum within ten (10) days after receipt of such statement from Landlord and shall concurrently pay the difference in monthly payments made in the then calendar year, and the amount of monthly payments which are then calculated as monthly charges based on the prior year's experience shall be adjusted accordingly. Any overpayment by Tenant shall be credited towards the monthly charges next coming due.

(b) The actual charges for the prior year shall be used for purposes of calculating the anticipated monthly charges for the then current year with actual determination thereof after each calendar year as above provided; excepting that in any year in which parking lot and driveway resurfacing is contemplated, Landlord shall be permitted to include the anticipated cost of same as part of the estimated monthly charge. Even though the term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's share of said charges for the year in which this Lease expires, Tenant shall immediately pay any increase due over the estimated charges previously paid and conversely, any overpayment made shall be immediately rebated by Landlord to Tenant.

2.2.3 Monthly on the date Minimum Rent is due one-twelfth (1/12th) of the aggregate annual amount of the taxes, assessments, costs and surcharges described below:

(a) "Real property taxes and assessments" shall include all city, county and all other taxes and general and special assessments levied upon or assessed against the Premises, or arising in respect of the occupancy, use or possession of the Premises; provided, however, that if any such taxes or assessments are payable over a period of more than one year, only such portion of such taxes and assessments as must be paid within any given year shall be included in the amount upon which Tenant's payments for that year are based. Tenant shall not be obligated to pay any income tax, profits tax, excise tax or other similar tax or charge of Landlord (other than the rental business tax defined below), nor any inheritance, transfer, estate, succession or other similar tax or charge that may be payable under any present or future law of the United States or any State, or imposed by any political or taxing subdivision thereof upon any transfer of Landlord's interest in the Premises. Tenant may, in good faith, and in lawful manner, contest the propriety or legality of any such tax or assessment or claim against the Premises, but all costs and expenses

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incident to such contest shall be paid by Tenant, and such contest by Tenant shall not affect or diminish the payments to be made by Tenant under this Lease. In the event Tenant is successful in challenging the propriety of any such tax, there shall promptly be made an adjustment in the amount of payments payable by Tenant, and Landlord shall credit Tenant's account with the pro-rata portion of any payments theretofore collected based upon the tax or assessment so challenged.

(b) "Rental business taxes" shall include any business tax imposed upon Landlord by the State in which the Premises are located or any political subdivision thereof which is based or measured in whole or in part by amounts charged or received by Landlord under this Lease; provided, however, that Tenant shall only pay the amount of such business tax that would be payable by Landlord if the Premises were Landlord's only property.

(c) "Environmental surcharges" shall include any and all expenses, taxes, charges or penalties imposed by or under the Federal Environmental Protection Agency, the Federal Clean Air Act, or any other federal or state governmental statute or entity now or hereafter vested with the power to impose taxes, assessments or other types of surcharges as a means of controlling or abating environmental pollution in regard to the use, operation or occupancy of the Premises or the Shopping Center.

(d) "Parking surcharges" shall include parking charges, utilities surcharges, or any other costs levied, assessed or imposed by, or at the direction of, or resulting from statutes or regulations, or interpretations thereof, promulgated by any governmental authority in connection with the use or occupancy of the Premises or the parking facilities serving the Premises.

(e) "Personal property taxes" shall include all city, county, and other jurisdictional impositions levied upon trade fixtures, furnishings, equipment and all other personal property of Landlord or Tenant on the Premises or otherwise connected with the Premises. (Tenant shall endeavor to secure from the taxing authorities the separate billing of its trade fixtures, furnishings, equipment and other personal property on the Premises; in such event, Tenant shall pay, prior to delinquency, such separate assessment in full.)

(f) "Insurance premiums" for the insurance coverage required of Landlord under Article 9 below. Tenant shall pay such premium if a stated sum is established by the carrier, or in the absence of a stated sum, the portion thereof determined by a fraction of which the numerator is the total square footage leased by Tenant hereunder and the denominator of which is the total leasable square footage of the Shopping Center (or such part thereof as covered by said premium).

Landlord shall notify Tenant in writing of the aforesaid additional rent which notice Landlord shall endeavor to give on or before January 1st of each calendar year, except for the year in which the Lease commences; delay in giving such notice by Landlord shall not relieve Tenant of its obligation to pay such additional rent. Notwithstanding the foregoing, all assessments and surcharges for the years in which the term commences and ends shall be apportioned between the parties so that Tenant shall pay thereof the part determined by a fraction of which the numerator is the number of days in each said year this Lease is in effect and the denominator is 360.

ARTICLE 3

Security, Etc. Deposit

3.1 Landlord hereby acknowledges receipt of the sum of $7,333.33 being a combined cleaning, damage and security deposit ("the Deposit") for insuring Tenant's proper performance of this Lease, including in the vacating of the Premises that the same are not damaged or in need of repair. Tenant acknowledges that the Premises are in good order and repair and agrees to surrender same upon vacating in such condition, except for normal wear and tear. Landlord shall have no obligation to pay interest on the Deposit and may commingle same.

3.1.1 The Deposit shall be returned to Tenant after vacation of the Premises; however, Landlord is permitted to deduct from the Deposit (i) such amounts as necessary to compensate Landlord for delinquent rent and other sums owed by Tenant under this Lease, (ii) all charges for cleaning over normal wear and tear or repairing the Premises due to Tenant's use thereof and (iii) all charges for repairing damage in general to the building of the Shopping Center wherein the Premises are located which was caused by or is directly attributable to Tenant.

3.2 In the event Tenant, from time to time, fails to pay any sum required under this Lease to be paid by Tenant, or is otherwise in breach of this Lease, Landlord may,

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but is not required to, use, apply or retain all or any portion of the Deposit to satisfy the aforesaid breach (including any sum for which Landlord may become obligated because of Tenant's breach or to compensate Landlord for any loss or damage which it may suffer thereby). Upon such use, application or retention as the case may be, Landlord shall notify Tenant in writing of such action and may demand that Tenant deliver to Landlord cash equivalent thereto in order to restore the Deposit to its full amount; Tenant's failure to comply with such demand within five (5) days thereof shall constitute a breach of this Lease.

3.3 Tenant may not deduct from its rent or other payments to Landlord the Deposit, and Landlord's right to possession of the Premises or to take appropriate action for non-payment of rent or for any other reason shall not be affected by the fact that Landlord holds the Deposit and does not use, apply or retain same as set forth in Paragraph 3.2.

ARTICLE 4

Utilities

4.1 Tenant shall pay, prior to delinquency, all charges for water, gas, electricity, sewer service, telephone and other utilities supplied whether by Landlord or otherwise to the Premises, including all taxes thereon, during the term.

4.1.1 In the event any such service shall not be separately metered, Landlord shall be obligated to pay to the supplier the charges therefor, and Tenant shall pay to Landlord, following written request therefrom, the proportion of such charges reasonably attributable to the Premises. In the event Landlord shall decide to eliminate separate metering for any such utilities required of Tenant, Tenant shall fully cooperate with Landlord to accomplish same.

ARTICLE 5

Use of Premises

5.1 The Premises shall be used and occupied only for the following purpose(s): Bingo Social Center and Restaurant, and for no other purpose(s). Any unauthorized use shall be a breach of this Lease.

5.2 Tenant shall, at its sole cost and expense, comply with all federal, state, and municipal statutes, ordinances, and regulations in force during the term and affecting the Premises. Further, Tenant shall not use the Premises so as to create waste or constitute a nuisance or disturb other tenants located in the Shopping Center.

5.3 Tenant acknowledges that neither Landlord nor any representative or agent thereof has made any representation or warranty to Tenant as to the suitability of the Premises to the conduct of Tenant's business.

5.4 See Page 5-A attached to and made part of this Lease.

ARTICLE 6

Parking and Common Areas

6.1 The parking and common areas as shown on the plot plan of the Shopping Center shall be, at all times, available for the non-exclusive use of Tenant during the term of this Lease and any extension hereof; provided, however, that the condemnation or taking by any public authority or sale in lieu of condemnation, of any or all of such parking and common areas shall not constitute a violation of this Article. Landlord reserves the right to (i) change the entrances, exits, traffic lanes and the boundaries and locations of all such parking area(s), provided that any change shall not substantially reduce the parking area(s) as shown on said plot plan and (ii) restrict certain portions of the parking areas for the exclusive use of customers and invitees of Tenant and other tenants of the Shopping Center, and thus, prohibit employees of Tenant and other tenants of the Shopping Center from utilizing such parking areas.

6.1.1 Landlord, at its sole discretion, shall keep the parking and common areas in a neat, clean and orderly condition and shall repair any damage to same. However, the expenses thereof shall be borne by Tenant as set forth in Article 2 of this Lease.

6.2 Tenant, its agents, employees, customers, licensees, and subtenants and concessionaire (when permitted) shall have the non-exclusive right in common with Landlord, its successors and assigns, and other tenants of the Shopping Center and their agents, employees, customers, licensees, invitees, and subtenants and concessionaires (when permitted) use of such

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INSERT NO. 1

To Lease between: MEADOWBROOK ASSOCIATES, INC.

and

DINING & BINGO, INC.

ARTICLE 5

Use of Premises (cont'd)

5.4 Tenant shall not allow, suffer or permit any odors, vapors, steam, water, vibrations, noises or other undesirable effects to emanate from the Premises or any equipment or installation therein into other portions of the Shopping Center which would interfere with the safety, comfort or enjoyment of the Shopping Center by Landlord or any other occupants of the Shopping Center or their customers, invitees or others in or upon the Shopping Center.

Tenant shall cause the collection of rubbish only through the rear service door or doors of the Premises. Tenant shall not permit any rubbish or refuse of any nature emanating from the Demised Premises to accumulate in the Shopping Center or in the rear of the Demised Premises and shall dispose of all such rubbish or refuse daily.

Tenant, at its own cost and expense, shall keep the Premises free of vermin, rodents or anything of like objectionable nature and shall employ only such vermin exterminating contractors as are approved by Landlord, which approval shall not be unreasonably withheld.

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of such parking and common areas during the term of this Lease, for ingress, egress and parking of automobiles and other passenger vehicles, as the case may be, but subject to the reservations of Landlord as set forth in Paragraph 6.1 above. Tenant agrees to comply with such reasonable rules, regulations and charges for parking as Landlord may, from time to time, adopt in its sole discretion. Without limiting the foregoing, such rules may relate to (i) restricting the use of portions of the parking area(s) from employee parking and (ii) control of storage, removal and disposal of refuse and rubbish of Tenant.

6.2.1 Tenant shall not obstruct, or cause to be obstructed, any sidewalk or corridor of the common area(s) of the Shopping Center adjacent to the Premises or any portion thereof, by placing any item thereon, including, without limitation, newspaper racks, bicycle stands, amusement rides, and display racks or tables.

6.3 Landlord, or its agents, if Landlord has delegated such privileges, shall have the right to cause to be removed any cars or other vehicles of Tenant, its employees or agents that are parked in violation hereof or in violation of rules and regulations of the Shopping Center, without liability of any kind to Landlord, its agents or employees, and Tenant agrees to hold Landlord harmless from and defend it against any and all claims losses, damages and demands asserted or arising in respect to or in connection with the removal of any such automobile(s) aforesaid. Tenant shall, from time to time, upon request of Landlord, supply Landlord with a list of license plate numbers of all automobiles owned by its employees and agents who are to have parking privileges hereunder. Landlord may, as a part of the regulations promulgated by it for use of the parking areas, require that Tenant cause an identification sticker issued by Landlord to be affixed to the bumpers of all automobiles of Tenant and its employees or agents who are authorized to park in the parking areas.

(See ARTICLE 24 (C)

ARTICLE 7

Maintenance, Repair and Alteration

7.1 Tenant's possession of the Premises shall constitute Tenant's acknowledgement that the Premises are in good and tenantable condition. Should any standard or regulation now or hereafter be imposed on Landlord or Tenant by any body, state or federal, charged with the establishment, regulation and enforcement of occupational, health or safety standards for employers, employees, lessors or lessees, then Tenant agrees, at its sole cost and expense, to comply promptly with such standards or regulations. Tenant shall, upon the expiration or sooner termination of this Lease, surrender the Premises to Landlord in good condition, broom clean, ordinary wear and tear and damages from causes beyond the reasonable control of Tenant excepted. Any damage to adjacent portions of the Shopping Center caused by Tenant's use of the Premises shall be repaired at the sole cost and expense of Tenant.

7.2 Throughout the term Tenant shall, at its sole cost and expense, maintain and repair the Premises and every part thereof, (including without limitation heating, air conditioning and ventilating systems; lighting; storefronts; window casements; ceilings; doors; glazings; plumbing; electrical wiring and conduits) in order that the Premises shall at all times during the term, be in good and sanitary condition, taking into account (i) the increasing age of the improvements and (ii) reasonable wear and tear. Tenant shall maintain a service contract for maintenance and repair of the heating and air conditioning system of the Premises taking into account any existing warranty requirements therefor.

7.2.1 Each work of repair or maintenance accomplished by Tenant shall be at its sole cost and expense and Tenant shall save and hold Landlord, the Premises (and any such building or improvement connected therewith) free of and harmless from any cost, charge, expense or lien arising from or on account of such work. If such work will cost more than $1,000.00, Tenant, prior to commencement thereof, will deliver to Landlord a surety bond (i) issued by a surety company authorized to do business in the State "In which the Premises are situated", (ii) in favor of Landlord (either solely or as co-obligee), (iii) in amount equal to 100% of Tenant's estimated cost of such work and (iv) conditioned upon the payment of all labor and material costs of such work.

7.2.2 Within ten days after Tenant acquires knowledge that any person has filed for record a claim of mechanics' or materialmans' lien on the Premises arising out of any such work of repair or maintenance or alteration, Tenant shall deliver written notice thereof to Landlord.

7.3 Tenant may (but shall not be required to), from time to time during the term, alter the Premises, all in the sole discretion of Tenant. However, no alteration shall be made without the prior written approval of Landlord which approval shall not be unreasonably withheld.

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7.3.1 Each such work of construction or alteration accomplished by Tenant shall be at its sole cost and expense and Tenant shall save and hold Landlord, the Premises (and any building or improvement connected therewith) free of and harmless from any cost, charge, expense or lien arising from or on account of such work, and Tenant shall comply with the provisions of subparagraphs 7.2.1 and 7.2.2.

7.4 Notwithstanding the provisions above, Landlord shall repair and maintain the structural portions of the building in which the Premises are situated, including the exterior walls, underflooring and roof, and the plumbing and electrical systems to the building in which the Premises is located, or the respective meter for the Premises, unless such maintenance and repair are caused in part, or in whole, by the act, neglect, fault or omission of any duty by the Tenant, its agents, servants, employees, invitees, or any damage caused by breaking and entering, in which case Tenant shall pay to Landlord the reasonable cost of such maintenance and repair. Landlord shall not be liable for any failure to make any repair or to perform any maintenance unless such failure shall persist for an unreasonable time after written notice of the need of such repair or maintenance is given to Landlord by Tenant. There shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of such building or in or to fixtures, appurtenances and equipment therein.

ARTICLE 8

Breach; Landlord's Remedies

8.1 As used in the Lease, "breach" means any of the following:

8.1.1 The failure of Tenant to pay or cause to be paid when due any rent, monies or charges required by this Lease to be paid or caused to be paid by Tenant.

8.1.2 The failure of Tenant to do or cause to be done any act, other than the payment of rent, monies or charges, required by this Lease to be done or caused to be done by Tenant, within 10 days after receipt by Tenant of written notice from Landlord stating that such act to be done by Tenant has not been done. In the event such act cannot be accomplished within said 10-day period, then Tenant to preclude a breach, must commence the accomplishment of such act within said 10-day period and thereafter proceed with diligence and good faith to accomplish same.

8.1.3 Tenant causing, permitting or suffering to be done any act (i) required by this Lease to have the prior written consent of Landlord, unless such consent is so obtained, or (ii) prohibited by this Lease.

8.1.4 Tenant's abandonment of the Premises.

8.1.5 Any (i) attachment, execution or other judicial levy upon the leasehold estate hereunder; (ii) assignment of said leasehold estate for the direct or indirect benefit of creditors of Tenant; (iii) any agreement whereby Tenant loses control of its business to a committee of its creditors; (iv) judicial appointment of a receiver or similar officer to take possession of said leasehold estate or the Premises; or (v) filing of any petition by, for or against Tenant under any chapter of the Federal Bankruptcy Act.

8.1.6 Tenant's failure to maintain a reasonable inventory of merchandise in the Premises in order for the normal conduct of its business to be carried out.

8.2 If any breach occurs, Landlord may recover from Tenant the rent as it becomes due hereunder and any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the Lease, or which, in the ordinary course of things, would be likely to result therefrom. Landlord may sue therefor monthly, annually or after such equal or unequal periods as Landlord may desire.

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8.3 If any breach occurs, and the same is not cured as set forth above, Landlord, either as an alternative to the remedy set forth in the preceding Paragraph, or at any time after exercising said remedy, may terminate Tenant's right to possession of the Premises by and upon delivery to Tenant of Landlord's written notice thereof. Landlord shall then have the immediate right to re-enter the Premises and take possession thereof pursuant to legal proceedings and to remove all persons and property from the Premises. If Tenant shall have abandoned the Premises, Landlord may give the appropriate notice and proceed as permitted under applicable law.

8.4 The foregoing shall not be construed to adversely affect the right of Landlord to indemnification for any liability of Tenant arising prior to termination for personal injuries or property damage. Further, no right or remedy herein set forth shall be exclusive of any other right or remedy granted or conferred upon Landlord by statute, judicial decision or common law, as each and every such right and remedy shall be cumulative.

ARTICLE 9

Fire Insurance and Destruction

9.1 Landlord shall maintain in full force and effect throughout the term a policy (or policies) of fire insurance insuring the Shopping Center against loss by or damage due to risks covered by the broadform policy, or such broader coverage as may from time to time be customary. (Such coverage shall include the risk of fire, lightning, extended coverage, vandalism and malicious mischief.) Such policy may also include, at Landlord's option, a rental loss endorsement. Such policy, exclusive of the rental loss endorsement, shall be in the face amount of not less than 90% of the full value of the improvements covered thereby. The rental loss endorsement shall cover Landlord's loss of rentals in an amount of not less than 60% of one (1) year's aggregate Minimum Rent of the Shopping Center. Tenant shall reimburse Landlord for such insurance premium(s) as set forth in subparagraph 2.2.3 (f).

9.1.1 Nothing herein shall preclude any such policy from bearing a loss payee endorsement(s) in favor of the holder(s) of any mortgage or deed of trust encumbering the interests of Landlord hereunder.

9.1.2 Proceeds from said fire insurance policy shall be payable, first, to the holder(s) of any such mortgage or deed of trust to the extent required thereby, and the balance shall be payable to Landlord. If after paying all costs of repair or restoration as set forth below, any balance of funds remains, the same shall belong to Landlord absolutely.

9.2 Tenant shall not use the Premises, nor permit the Premises to be used, nor acts to be done therein which will (i) increase the premium of any insurance described above or (ii) cause a cancellation of any such insurance policies. Tenant shall not keep in or about the Premises any article which may be prohibited by any standard form policy of fire insurance. If Tenant's conduct or use of the Premises causes any increase in the premium for such insurance policies, then Tenant shall pay as additional rent hereunder, on demand from Landlord, all of such increase. Tenant shall, at Tenant's expense, comply with all insurance company requirements pertaining to the use of the Premises so that the Premises shall at all times be insurable for fire, extended coverage and the risks specified above.

9.3 Except as provided in Paragraph 9.4, in the event the Premises are damaged by fire or other perils covered by such extended coverage insurance, Landlord agrees to forthwith repair same, and this Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of the Minimum Rent from the date of damage, and while such repairs are being made such proportionate reduction to be based upon the (i) rental loss recovery received by Landlord under said insurance, if any, or (ii) ratio set forth in subparagraph 11.2.1, if there be no rental loss recovery. If the damage is due to the fault of Tenant or its employees, there shall be no abatement of rent.

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9.3.1 In the event the Premises are damaged as a result of any cause other than the perils covered by fire and extended coverage insurance, then Landlord shall forthwith repair the same, provided the extent of destruction be less than ten (10%) percent of the then full replacement cost of the Premises. In the event the destruction of the Premises exceeds ten (10%) percent of the full replacement cost, then Landlord shall have the option (i) to repair or restore such damage, this Lease continuing in full force and effect, but the Minimum Rent to be proportionately reduced as above provided or (ii) to give notice to Tenant, at any time within sixty (60) days after such damage, to terminate this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of the giving of such notice, this Lease shall terminate and all interests of Tenant in the Premises shall terminate on the date so specified in such notice and the Minimum Rent, reduced, as aforesaid, and the other obligations for additional rent and the like shall be paid up to the date of such termination.

9.3.2 Upon repair or restoration by Landlord, Tenant shall, at its expense, promptly restore the interior of the Premises and conduct its business.

9.4 Notwithstanding anything to the contrary contained in this Article, Landlord shall have no obligation whatsoever to repair, reconstruct or restore the Premises when the damage resulting from any casualty covered under this Article occurs during the last twelve (12) months of the term or any extension thereof.

9.5 Landlord shall not be required to repair any injury or damage by fire or other cause, or to make any repairs or replacements of any leasehold improvements made by Tenant or fixtures, inventory or other personal property of Tenant.

9.6 As long as their respective insurers so permit, Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss insured by fire, extended coverage and other property insurance policies exsiting for the benefit of the respective parties. Each party shall apply to their insurers to obtain said waivers. Each party shall obtain any special endorsements, if required by their insurer, to evidence compliance with the aforementioned waivers.

ARTICLE 10

Public Liability and Insurance

10.1 Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease a policy of Comprehensive Public Liability Insurance (including Comprehensive General Liability Supplement Insurance) insuring Tenant against any liability arising out of the ownership, use, occupancy or maintenance of the Premises. Such insurance shall be in the amount of not less than $500,000.00 for such injury or death in any one occurrence. Such insurance shall further insure Tenant against liability for property damage of at least $300,000.00. The limit of any such insurance shall not, however, limit the liability of Tenant hereunder. Tenant may provide this insurance under a blanket policy. If Tenant shall fail to procure and maintain said insurance, Landlord may, but shall not berequired to, procure and maintain same, but at the expense of the Tenant. Insurance required hereunder shall be in companies rated A+AAA or better in "Best's Insurance Guide". Tenant shall deliver to Landlord, prior to, or at commencement of the term, a copy of the policy of liability insurance required herein or certificate evidencing the existence and amounts of such insurance. No policy shall be subject to reduction of coverage, but not below the minimum set forth above, without thirty (30) days prior written notice. All such policies shall be written as primary policies not contributing with and not in excess of coverage which Landlord may carry. Each such policy shall provide that it shall not be cancellable or reduced as aforesaid by the insurer without first giving to Landlord at least thirty (30) days prior written notice.

10.2 Tenant shall, at Tenant's expense (including without limitation all attorneys' fees, court and other costs of defense), defend against and indemnify and hold harmless Landlord and its agents from all liability, cost or claim for damages by reason of any injury or death to any person(s) or property of any kind or in any way connected with the Premises or the use or occupancy thereof during the term.

ARTICLE 11

Condemnation

11.1 In the event of any taking of or damage to all or any part of the Premises (or any interest therein) prior to the expiration or earlier termination of this Lease and by reason of any exercise of the power of eminent domain (whether by condemnation proceedings or otherwise), or by reason of any transfer of all or any part of the Premises (or any interest therein) made in avoidance of such an exercise, the rights and obligations of Landlord and Tenant with respect thereto shall

11.2 In the event of an appropriation of all the Premises, this Lease shall terminate as of the date of such appropriation. In the event of an appropriation of 25% or more of the Premises, but less than all thereof, either party hereto shall have the right, at its election, to terminate this Lease upon thirty (30) days written notice to the other party; such election must be made within 60 days of the appropriation.

11.2.1 In the event of an appropriation of less than said 25%, or if such appropriation exceeds said 25% but neither party elects to so terminate as aforesaid, this Lease shall continue in full force and effect, except that for the remainder of the term (i) the Minimum Rent shall be abated to an amount which bears the same ratio to such prior monthly Minimum Rent as the square footage of the Premises after the appropriation bears to the square footage of the Premises existing immediately prior to such appropriation and (ii) the Premises shall be reduced by the portion so appropriated. Further, any other sums payable hereunder which are based upon the square footage of the Premises shall likewise be accordingly reduced.

11.2.2 If this Lease is not terminated as aforesaid, Landlord will make any restoration of the unappropriated Premises necessitated by reason of the appropriation. However, Landlord shall in no event be required to make any expenditure in excess of the amount of any damages included in the award for that purpose (severance damages).

11.3 Landlord and Tenant (and all subtenants if permitted and if their subleases explicitly so provide) shall each have the right to represent its respective interest in each proceeding or negotiation with respect to an appropriation or intended appropriation and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authority shall be made without the consent of Landlord.

11.4 All awards, settlements and the like for the taking of the Premises, or any part thereof, shall be paid to Landlord and shall belong to Landlord absolutely, and Tenant shall have no claim or right against Landlord for the value of any unexpired term of this Lease. Tenant shall be entitled to any award, settlement or the like applicable to relocation costs, lost business profits and damage to Tenant's inventory, trade fixtures and other personal property.

ARTICLE 12

Improvements and Trade Fixtures

12.1 At and after the (i) exercising by Landlord of any remedy under Article 8 or (ii) expiration of the term (including any extended terms), all improvements (other than trade fixtures) then situated on the Premises shall belong to Landlord and are hereby quitclaimed to Landlord effective upon the happening of either of said events. Landlord may waive the entitlement given it by this Article, but only by written notice thereof delivered to Tenant within 60 days after the happening of either of said events.

12.2 Tenant shall have the right to remove, at its sole cost and expense and at any time prior to or within ten (10) days after Landlord repossesses the Premises, any trade fixtures installed by Tenant during or prior to the term hereof and which are not affixed to the floors, walls or ceilings of the Premises; any person holding a security interest in such trade fixtures shall have the same right of removal or such greater right as Landlord may grant to such person. Tenant shall, within five (5) days after such removal (whether the same shall be accomplished by Tenant or a secured party), repair at its sole cost and expense any damage caused to the Premises by such removal; the foregoing covenant shall survive the termination or expiration of this Lease.

12.3 If Tenant fails to remove, pursuant to the foregoing Paragraph any trade fixture, the same shall be conclusively deemed to be abandoned by Tenant and shall belong to Landlord absolutely without claim or right on the part of Tenant.

ARTICLE 13

Assignment, Subletting and Encumbering

13.1 Tenant may not (i) assign, transfer, encumber or hypothecate this Lease or any interest herein, (ii) sublet the Premises, or any part thereof, or (iii) enter into a license agreement or other arrangement whereby the ownership or use of the leasehold estate herein is held or utilized by another party, without the prior written consent of Landlord. Any such act (whether voluntary or involuntary, by operation of law or otherwise) prohibited as aforesaid is a breach under this Lease and Landlord may terminate this Lease under the provisions of Article 8 above.

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13.1.1 Landlord's consent to any such act shall not be unreasonably withheld, but may be based upon such terms, conditions and provisions as Landlord, in its reasonable and sole discretion, determines. Consent to any one such act shall not be deemed or construed to be consent to a future act.

13.1.2 In the event Landlord is requested, and consents, to an act under clause (i), (ii) or (iii) of Paragraph 13.1, Tenant shall pay to Landlord the sum of $200.00 as reimbursement to Landlord for its legal, accounting and other expenses connected with its giving such consent.

13.1.3 Upon Tenant notifying Landlord of Tenant's intent to sublease, license or assign this Lease, Landlord shall within thirty (30) days from receipt of such notice (i) consent to such proposed assignment, subletting, or licensing or (ii) refuse such consent, or (iii) elect to cancel this Lease. In the event of Landlord's election to cancel, Tenant shall have ten (10) days from receipt of such notice in which to notify Landlord of Tenant's acceptance of such cancellation or Tenant's desire to remain in possession of the Premises under the terms and conditions and for the remainder of the term of this Lease. In the event Tenant fails to so notify Landlord of Tenant's election to accept cancellation or to continue as Tenant hereunder, such failure shall be deemed an election to terminate and such termination shall be effective as of the end of the 10-day period provided for in Landlord's notice as herein provided.

13.2. Anything in the foregoing provisions to the contrary notwithstanding, Tenant shall be entitled to assign and transfer this Lease to any corporation or affiliated firm owned or controlled by Tenant, or to the surviving corporation in the event of a consolidation or merger to which Tenant shall be a party; provided, however, that (i) such subsidiary, affiliated firm or surviving corporation shall in writing expressly assume all of the provisions, covenants and conditions of this Lease on the part of Tenant to be kept and performed, and (ii) no such assignment or transfer shall act as a release of Tenant from any of the provisions, covenants and conditions of this Lease on the part of Tenant to be kept and performed.

ARTICLE 14

Conduct of Business by Tenant

14.1 Tenant covenants and warrants that after the opening of its business in the Premises under this Lease, that it will continously and uninterruptedly during the term of this Lease, conduct and carry on Tenant's business which it is permitted to perform and operate at the Premises. Such covenant and warranty shall not be applicable to such period of time that the Premises are untenantable due to fire or other casualty. With respect to Tenant's conduct of its business, Tenant further covenants and warrants that:

14.1.1 The Premises shall be kept open for business during the usual business hours of each and every business day as it customary for business of a like character of that of Tenant in the Shopping Center. The foregoing shall not be applicable if there shall be any strikes, lockouts or similar causes beyond the reasonable control of Tenant, or for closing out of respect of memory of a deceased officer or employee of Tenant or any relative thereof, but under no circumstances shall such closing consume more than three (3) consecutive days therefor.

14.1.2 Tenant will, for the conduct of its business, fixturize and maintain the Premises in a condition which could reasonably be expected for the conduct of its business and to further adequately stock merchandise to satisfy the ordinary and usual demands of customers of Tenant. Further, Tenant shall maintain in the Premises such personnel as necessary to properly staff its business and meet the needs of its customers.

14.1.3 All trash, rubbish and other waste of the Premises shall be deposited in appropriate receptacles, and the Premises shall be maintained in a neat, clean and orderly condition. (If Landlord provides receptacles for trash, such action shall in no way relieve Tenant of any obligation to pay its pro-rata share of such cost as otherwise provided in this Lease.)

14.2 In the event of a breach by Tenant of any covenant or warranty as set forth in Paragraph 14.1 and subparagraphs 14.1.1 or 14.1.2 Landlord shall, in addition to any other remedies hereunder, have the right at its option to collect not only the Minimum Rent, but further additional rent at the rate of 1/30th of the Minimum Rent for each and every day that Tenant shall be in breach of any such covenant or warranty. Further, additional rent shall be deemed to be in lieu of any percentage rent that might have otherwise been earned during such period of Tenant's breach of any such covenant or warranty. Notwithstanding any such breach of covenant or warranty as aforesaid, the

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additional rent as aforesaid, shall not prohibit or in any way prevent Landlord from exercising its remedies for breach of Lease under Article 8 above; the aforesaid further additional rent is permitted as damages to Landlord and is a remedy cumulative with all other remedies provided under this Lease.

14.3 During the term of this Lease, and any extensions thereof, Tenant covenants that it shall not directly or indirectly be in any similar or competing business within an automobile driving radius of three (3) miles from the outside boundary of the Shopping Center.

14.3.1 In the event Tenant is in breach of the aforesaid covenant, Landlord shall be entitled to include for computation of the Gross Sales under Article 2 above, such sales generated by Tenant from said competing business. The within restriction on competition is not intended to restrain Tenant's ability to conduct its business operations, but is necesssary to protect Landlord and the Shopping Center in general in connection with the execution of this Lease and Landlord's entering into this Lease with Tenant.

ARTICLE 15

Merchants' Association

15.1 ~~Tenant agrees to become a member of, and participate fully in, and remain~~ in good standing as a member of any Merchants' Association (whether same is ~~existing~~ at the commencement of this Lease or is formed subsequent thereto) ~~composed~~ of Tenants occupying space in the Shopping Center and established for the ~~benefit~~ of the tenants of the Shopping Center. Tenant agrees to abide by the rules, ~~regulations~~, by-laws and other operating provisions of such Merchants' ~~Association~~. Membership shall include the obligation of tenant to pay assessments or ~~other~~ similar charges determined and imposed by such Merchants' Association ~~in order~~ to cover expenses of its operations. However, Tenant shall not be ~~obligated~~ to pay in each full fiscal year of operation of the Merchants' Association ~~a sum~~ in excess of 20 cents per square foot of the Premises leased by Tenant; ~~provided~~, once said 20 cent maximum is reached, such costs may be increased ~~only in~~ accordance with increases in the general cost of living applicable to the ~~community~~ wherein the Shopping Center is situated. Tenant's failure to satisfy its ~~obligations to said Merchants' Association shall be a breach of the terms of this Lease.~~

ARTICLE 16

Default by Landlord

16.1 Landlord shall not be in default of this Lease unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord and to the holder of any mortgage(s) or deed(s) of trust covering the Premises whose name and address shall have theretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes same to completion. In no event shall Tenant have the right to terminate this Lease as a result of Landlord's default and Tenant's remedy shall be limited to damages therefor.

ARTICLE 17

Conveyance of Reversion

17.1 Each conveyance prior to expiration or termination hereof by Landlord of the reversionary interest hereunder shall (i) be subject to this Lease and (ii) relieve the grantor of any further liability as lessor.

ARTICLE 18

Indemnification of Landlord

18.1 Tenant shall indemnify and hold harmless Landlord from any and all claims, actions, liabilities and damages (including reasonable attorneys' fees of Landlord for its defense) arising from Tenant's (i) use and occupancy of the Premises, (ii) conduct of its business and any other activity in or about the Premises, (iii) breach or default in the performance of any obligation of Tenant under this Lease and (iv) negligence of Tenant or that of any officer, director, partner, employee, agent, licensee or invitee

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of Tenant. In case any action or proceeding be brought against Landlord by reason of such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant as a material part of the consideration to Landlord hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises, from any cause other than Landlord's negligence, and Tenant hereby waives all claims in respect thereof against Landlord.

ARTICLE 19

Attorneys' Fees

19.1 If either party commences litigation against the other for the specific performance of this Lease, for damages for the breach hereof or to otherwise enforce any remedy hereunder, the prevailing party shall be entitled to recover from the other party such costs and reasonable attorneys' fees as may be incurred.

19.2 Notwithstanding the foregoing and in addition thereto, Landlord shall be entitled to immediate receipt from Tenant for each breach hereof of such reasonable attorneys' fees, but not less than $50.00, as may be incurred in connection with each notice or demand delivered to Tenant pursuant to Article 8. Tenant hereby acknowledges its understanding and agreement that such sums constitute reimbursement to Landlord only of the reasonable cost to Landlord of the preparation and delivery of each such notice caused by Tenant's breach hereunder.

ARTICLE 20

Notices

20.1 Notices, requests, demands and documents required or desired to be given hereunder shall be in writing and delivered either personally or by deposit into the United States Mail, postage prepaid, certified or registered mail, addressed to the party at its address set forth at the beginning hereof, or to such other address as notice thereof may have been given pursuant hereto. If delivered personally, delivery shall be conclusively deemed effected at such time. If delivered by certified or registered mail, delivery shall be conclusively deemed effected (i) 48 hours after said deposit into the mail or (ii) at the time the receipt, if used, is marked, whichever shall first occur.

ARTICLE 21

Certificate of Good Standing

21.1 Tenant will, promptly after Landlord's request therefor, execute and deliver to any proposed purchaser of, or beneficiary under a deed of trust encumbering, the reversionary interest hereunder, a certificate declaring (i) the existence of this Lease and amendments, if any, to it and (ii) Landlord's breaches hereunder, if any, known to Tenant as of the date of such certificate. Any such certificate may contain such other reasonable provisions as the recipient thereof may desire. The declarant giving such certificate shall be estopped to thereafter deny the truth of any declaration made in such certificate.

ARTICLE 22

General Provisions

22.1 Any holding over after the expiration of the term with the express or implied consent of Landlord shall be construed to be a tenancy from month-to-month only, at the Minimum Rent, additional rent and other terms and conditions herein set forth. (The term shall be construed to include any written extension thereof.)

22.2 Timely performance of this Lease by each party is essential.

22.3 The waiver by Landlord of the breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of a subsequent breach of such term, covenant or condition. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

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22.4 The termination or mutual cancellation of this Lease shall not work a merger, and shall at the option of Landlord, terminate all subleases and subtenancies (to the extent same are permitted hereunder) or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or subtenancies.

22.5 Tenant shall faithfully observe and comply with the rules and regulations that Landlord shall, from time to time, promulgate and/or modify as to the parking areas and other common or public areas of the Shopping Center. The rules and regulations shall be binding upon the Tenant upon delivery of a copy thereof to Tenant. Landlord shall not be responsible to Tenant for the nonperformance of any of said rules and regulations by any other tenants or occupants of the Shopping Center.

22.6 Tenant shall not affix, attach or otherwise place any sign on the roof, exterior walls, corridors, or any other area of the Shopping Center without the prior written consent of Landlord.

22.7 Upon written request of Landlord, Tenant will execute and deliver such documents necessary to subordinate its leasehold estate to the lien of any mortgage or deed of trust encumbering the Shopping Center and the Premises. In the event of a foreclosure of any mortgage or deed of trust, or deed in lieu thereof, Tenant shall attorn to the purchaser or grantee thereof and recognize such party as Landlord hereunder.

22.8 This Lease and all of the covenants and conditions herein contained shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, assigns and other successors in interest (to the extent permitted hereunder) of each of the parties.

22.9 The title or captions of the Articles of this Lease are for reference purposes only and have no effect upon the construction or interpretation of any part hereof. The use herein of the singular includes the plural and vice versa, and the use herein of the neuter gender includes the masculine and the feminine and vice versa, whenever and wherever the context so requires.

22.10 If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with the bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms.

22.11 Liability of Landlord.

Tenant shall look only to Landlord's estate and interest in the Shopping Center (or the proceeds thereof) and offset against the rents payable under this lease (but only if and to the extent expressly provided for in this lease) for the satisfaction of Tenant's remedies for the collection of any judgement (or other judicial process) requiring the payment of money by Landlord in the event of any default by Landlord under this lease, and no other property or other assets of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's under or with respect to this lease, the relationship of landlord and tenant hereunder or Tenant's use and occupancy of the Demised Premises. However, nothing contained in this Article shall be construed to permit Tenant to offset against rents due a successor landlord, a judgment (or other judicial process) requiring the payment of money by reason of any default of a prior landlord.

Tenant shall store its property in and shall occupy the Demise Premises at its own risk and hereby releases Landlord, to the fullest extent permitted by law, from all claims of every kind resulting in loss of life, personal or bodily injury or property damage.

22.11 replaced
22.12 deleted
22.13 deleted

22.14 All exhibits, amendments and addendums attached hereto are hereby incorporated herein and made a part hereof.

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22.15 This Lease sets forth the entire understanding between the parties hereto with respect to all matters referred to herein, and the provisions hereof may not be changed or modified except by an instrument in writing signed by both parties hereto. Tenant acknowledges that in executing and delivering this Lease that it is not relying on any verbal or written understanding, promise or representation outside the scope of this Lease and not described or referred to herein.

22.16 This Lease is made and delivered within the State "in which the Premises is situated" and shall be construed and enforced in accordance with the laws of the State "in which the Premises is situated".

22.17 Delivery of this Lease, duly executed by Tenant, constitutes an offer to lease the Premises as herein set forth, and under no circumstances shall such delivery be deemed to create an option or reservation to lease the Premises for the benefit of Tenant. This Lease shall only become effective and binding upon execution hereof by Landlord and delivery of a signed copy to Tenant.

22.17.1 Upon acceptance of Tenant's offer to lease under the terms hereof and receipt by Landlord of a deposit in connection with Tenant's submission of said offer, Landlord shall be entitled to retain such deposit and apply same to damages, costs and expenses incurred by Landlord in the event Tenant fails to occupy the Premises. If Landlord declines said offer, any such deposit shall be returned to Tenant.

ARTICLE 23

Construction

23.1 Landlord to provide Premises in "As Is" condition, except the HVAC must be in working condition. Landlord to warranty HVAC for sixty (60) days. Roof leaks must be repaired and ceiling tile having stains or missing must be replaced.

23.2 Tenant's use, maintenance and operation of the demised premises and the conduct of the business related thereto, shall at all times be in compliance with all applicable federal, state, county or local laws, regulations and ordinances of any governmental authorities relating to Hazardous Materials.

Without limiting the generality of the above paragraph, Tenant will operate the demised premises, and will at all times receive, handle, use, store, treat and dispose of all Hazardous Materials in compliance with all applicable environmental laws, regulations and ordinances and will not cause any Hazardous Materials to be unlawfully deposited, discharged, placed or disposed of at the demised premises or the Shopping Center. Further, Tenant will not install any underground petroleum storage tanks on the demised premises without the express written consent of Landlord and will immediately upon receipt of notice of any violation of any of the matters referred to in this paragraph, deliver a copy of same to Landlord. Tenant must clean up any violation within thirty (30) days of notification.

Except for the negligence of Landlord, its agents, employees or sub-contractors, Tenant expressly acknowledges and agrees that it will reimburse, defend, indemnify and hold Landlord harmless from and against any and all liabilities, claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limit, attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses) which may now or in the future be undertaken, suffered, paid, awarded, assessed, or otherwise incurred as a result of any violation of any of the matters referred to in the preceding paragraphs.

Tenant must present Landlord with a copy of the BUILDING PERMIT before Tenant starts construction of their premises.

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ARTICLE 24

24.1 SPECIAL CONDITIONS

(A) Renewal Option Periods

Tenant shall have the option, provided that Tenant is not in default of any terms of this Lease at the time of its exercise or at the commencement of the renewal term, to renew this Lease for one additional five (5) year term, (the Option Period) under the same terms and conditions as the existing Lease, with the exception of the Minimum Rent which shall be negotiated as set forth in Article 2.1 of this Lease. Tenant must give Landlord written notice, twelve months (one year) prior to expiration of term, or then extended term, as may be appropriate, of its intent to exercise its Option.

(B) Forced Closing of Business

In the event the business is closed by any State or Federal Agency, this Lease will terminate thirty (30) days after written notice has been given.

(C) Parking and Common Areas (cont'd)

If other Tenants in the Center complain because of lack of parking spaces for their customers, Dining and Bingo, Inc. will have to make other arrangements for their customers parking or downsize their operation.

If the aforestated options do not resolve the problem, then in that event Landlord shall have the right to terminate this Lease with thirty (30) days written notice to Tenant.

IN WITNESS WHEREOF, this Lease has been executed as of the date set forth at the beginning hereof.

WITNESS:

LANDLORD:MEADOWBROOK ASSOC.INC.

By:

TENANT:DINING & BINGO, INC.

By:

By:

By:

000017

G U A R A N T Y

Brendt Ault and Jim Anderson hereby personally and unconditionally guarantee, for a period of one and one-half (1 1/2) years the obligations of Tenant, DINING & BINGO,INC AND COMPUTER STORE to the above lease between:

Meadowbrook Associates, Inc.

AND

Dining & Bingo, Inc and Computer Store

dated December 28, 1993, for premises located at, Meadowbrook Shopping Center, 4100 So. Redwood Road, Town of Salt Lake City, County of Salt Lake, State of Utah.

Brent Ault

Jim Anderson

Rob Kropf

000016

LEGAL DESCRIPTION

Beginning on the east line of Redwood Road at a point which is south 0°03'15" east 60.00 feet and east 33.00 feet from the north quarter corner of Section 3, Township 2 South, Range 1 West, Salt Lake Base and Meridan, and running thence south 89°56'15" east 23.88 feet to the point of tangency with a 1928.34 foot radius curve to the left; thence easterly 230.64 feet along the arc of said curve (the chord bears north 86°38'10" east to 30.50 feet); thence north 82°41'08" east 259.27 feet; thence north 68°24'02" east 25.34 feet; thence south 0°16'15" west 840.16 feet to the north line of 4200 South Street; thence north 89°43'45" west along the north of 4200 South Street 530.00 feet to a point on the east line of Redwood Road; thence north 0°03'15" west along the east line of Redwood Road 506.806 feet; thence east 150.00 feet; thence north 0°03'15" west 120.00 feet; thence west 150.00 feet to the east line of Redwood Road, thence north 0°03'15" west along the east line of Redwood Road 155.00 feet to the point of beginning.

EXHIBIT A

INITIAL

EXHIBIT A

3,600 Sq.Ft.
RENT-A-CENTER
PAINT & BINGO INC
AND COMPUTER
STORE
1600 SOUTH STREET
MEADOWBROOK SHOPPING CENTER
BONNEVILLE ENGINE
CONSULTING ENGINEE
SALT LAKE CITY UTA
LAND TITLE SURVEY
MEADOWBROOK PLAZA ASSOCIATES, INC.

FILED DISTRICT COURT
Third Judicial District

MAY 19 1997

SALT LAKE COUNTY
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE DINNER & BINGO CLUB INC.,	:	MEMORANDUM DECISION
Plaintiff,	:	Civil No. 950905316
vs.	:	
MEADOWBROOK ASSOCIATES, INC.,	:	
Defendant.	:	

This matter was last before the Court on February 25, 1997 for closing remarks of counsel following an evidentiary hearing and trial in December of 1996 supplemented by written Memoranda from counsel, and an updated and Amended Accounting from the defendant and counterclaimant.

Since this matter was submitted, the Court has had an opportunity to review carefully the trial notes of the evidence received on the issues, and has had an opportunity to review carefully the written submissions of the parties, including the defendant's Amended Accounting filed on January 29, 1997. The Court being fully advised, enters the following Memorandum Decision.

There are two general issues requiring resolution by this Court. The first issue is the responsibility as between the parties for the monies paid to the HVAC system repairman ESCO. The

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plaintiff alleges that the defendant breached the lease agreement between the two by not providing a "working condition" HVAC system as required by the lease. The defendant asserts that it, in fact, did provide a "working condition" HVAC system, and further that even if the system did not function as required, the defendant as lessor under the lease agreement was not provided with written notice in a timely fashion as required by the lease, therefore barring any claim by the plaintiff, even if the HVAC system was not properly functioning.

The second area requiring resolution is the amount due, if any, from the plaintiff to the defendant for outstanding rent and common area maintenance fees. The defendant in its Counterclaim asserts that the plaintiff is seriously delinquent, all in accordance with the calculations made in the Amended Accounting above-referenced. The plaintiff asserts that the fees requested are inappropriate, unreasonable, and that the accounting is mathematically incorrect. The plaintiff asserts in its Post-Trial Memorandum that the sum of $1,915.65 is due from the plaintiff to the defendant after all the appropriate adjustments have been made.

Finally, both the plaintiff and the defendant seek attorney's fees and costs incurred in connection with these proceedings, based upon the attorney's fees provisions in the lease, each claiming the

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other has breached the terms and defaulted under the terms of the lease agreement.

Turning first to the question of the HVAC system. Between the time of the evidentiary hearing in December of 1996 and final arguments in February of 1997, the defendant Meadowbrook satisfied the claim of the materialmen ESCO. The responsibility for the ESCO payment was reserved to be decided by this Court as between the plaintiff and the defendant, effectively removing ESCO from this suit.

Under the terms of the lease, the plaintiff took the premises in an "as is" condition, with the exception that the HVAC system must be in working condition. Further, the landlord (defendant) was to warrant the HVAC system for 60 days.

A further important provision of the lease relating to the HVAC system was Article 16 of the lease that provides that the landlord shall not be in default of the lease provisions, unless the landlord fails to perform obligations required under the terms of the lease within a reasonable time, but in no event later than 30 days after written notice by the tenant to the landlord.

There are significant disputes between the positions of the parties as to whether or not the HVAC system was ever in "working condition". There is no dispute that the plaintiff, as tenant, did

not advise the defendant, as landlord, in writing that the landlord had not provided a working HVAC system until in excess of a year after the tenant moved into the leased premises, and following the 60 day warranty period.

Plaintiff takes the position that the HVAC system was never in "working condition". Neither at the time that the plaintiff moved into the premises under the terms of the lease, nor was it in working condition during the 60 day warranty period agreed to by the defendant as landlord. The plaintiff contends that the system, even as of the date of the trial, following the replacement work accomplished by ESCO, still was not in proper working condition.

Plaintiff asserts that it orally advised the defendant of the inadequacies in the HVAC system through the year period before formal notice was sent. Defendant denies that it was advised that the HVAC system was not in working condition, or that it was notified the plaintiff was incurring substantial expense which resulted in the materialman's lien to replace part of the HVAC system.

The plaintiff has the burden of convincing the Court that the defendant breached the terms of the agreement by not providing an HVAC system in "working condition". While it is clear from the evidence that the HVAC system from time to time did not operate up

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to the satisfaction of the plaintiff and that there were difficulties controlling the heating and air conditioning system, the evidence does not preponderate in favor of the proposition that either at the inception of the lease, or at the conclusion of the 60 day warranty period, there was not an HVAC system that was in "working condition". The parties did not stipulate in the lease that it be in working condition satisfactory to the plaintiff, or any other particular working condition. The fact that the plaintiff never complied with the terms of the lease, placing the landlord on notice of its claims that a working HVAC system had not been provided, seriously dilutes the credibility of the plaintiff's assertions that the defendant defaulted as to the HVAC system.

The concept of a "working condition" HVAC system must take into account the age of the system, a fact known to both the plaintiff and defendant at the inception of the lease. It is without dispute that the system was old and frequently required repair. The fact that the system required repair during the 60 day warranty period does not establish that the system was not in a "working condition".

The Court finds that a "working system" HVAC was provided by defendant.

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Having determined that the plaintiff has not prevailed by a preponderance of the evidence on its claim that the defendant defaulted under the terms of the lease by not providing a "working condition" HVAC system, the Court determines that the responsibility for the repairs after October of 1994 must be the responsibility of the plaintiff and not the defendant. The Court finds in favor of the defendant and against the plaintiff on plaintiff's claim that there was a breach by the defendant under that provision of the lease.

Turning next to the question of arrearages relating to rent, late fees and common area maintenance fees, the Court is satisfied that the Amended Accounting submitted by the defendant in support of its Counterclaim satisfactorily shows the amount due to the defendant by the plaintiff for rents, late fees and common area maintenance fees not paid through the term of the Accounting. Defendant is entitled to a Judgment in those amounts in its favor and against the plaintiff.

The defendant is entitled to an award of attorney's fees as the prevailing non-defaulting party under the terms of the lease agreement between the plaintiff and the defendant. The question of amount of attorney's fees was reserved by the parties at the time of trial in this matter.

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Counsel for the defendant may submit an itemized Affidavit in support of the amount of fees requested for the Court's review, and the plaintiff's comments. The Court will determine the amount of fees, having now determined that the defendant is entitled to fees and costs.

Counsel for the defendant should prepare an appropriate set of Findings of Fact, Conclusions of Law, and Judgment, all in accordance with the foregoing Decision, showing the defendant to be the prevailing party on both issues. The final documents, once prepared, should be submitted in accordance with the Code of Judicial Administration, and should be prepared in such a fashion so as to allow the Court to insert the amount of attorney's fees that ultimately may be awarded in this matter.

Dated this 19 day of May, 1997.

TIMOTHY R. HANSON
DISTRICT COURT JUDGE

STATE OF UTAH
3RD DISTRICT COURT
SALT LAKE

000027

320

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, to the following, this 19 day of May, 1997:

Dean H. Becker
Attorney for Plaintiff
10 Exchange Place, Suite 309
Salt Lake City, Utah 84111

Eric C. Olson
Attorney for Defendant
50 S. Main, Suite 1600
P.O. Box 45340
Salt Lake City, Utah 84145

Frederick N. Green
Attorney for ESCO Services
10 Exchange Place, Suite 622
Salt Lake City, Utah 84111

000048

FILED DISTRICT COURT
Third Judicial District

JUL - 8 1997

SALT LAKE COUNTY
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE DINNER & BINGO CLUB INC.,	:	MINUTE ENTRY AND ORDER
Plaintiff,	:	Civil No. 950905316
vs.	:	
MEADOWBROOK ASSOCIATES, INC.,	:	
Defendant.	:	

The Court has before it a request for entry of Findings of Fact, Conclusions of Law, and Judgment in favor of the defendant and counterclaimant in this matter pursuant to a finding by the Court by way of Memorandum Decision, dated and filed May 19, 1997, determining the defendant and counterclaimant was the prevailing party.

The Court originally received proposed Findings of Fact, Conclusions of Law, and a proposed Judgment from Mr. Olson, counsel for the defendant Meadowbrook, together with an Affidavit in support of an award of attorney's fees and costs. Meadowbrook was entitled to fees and costs on the basis that it was the prevailing party in the suit.

The Court received Objections filed by plaintiff's counsel, also on June 3, 1997.

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In further response to the Objections filed by plaintiff's counsel, defendant's counsel filed a Response to the Objections and Amended proposed Findings of Fact, Conclusions of Law, and Judgment. Since the modified proposed Findings of Fact, Conclusions of Law and Judgment have been submitted, there is no further filings on the part of the plaintiff. While there is no formal request for decision on the Objection, the matter is ripe for this Court's review.

The Court has in that regard examined the original submission of the defendant, and the Affidavit filed in support of defendant's request for attorney's fees and costs. The Court has also reviewed the plaintiff's Objection, the defendant's modified proposed Findings of Fact, Conclusions of Law, and proposed Judgment, together with the defendant's Response to plaintiff's Objections. The Court being fully advised, enters the following ruling.

With the modifications proposed by defendant's counsel, the Court is satisfied that the Findings of Fact and Conclusions of Law, and Judgment properly represent the decisions made by this Court, either directly or by inference in its Memorandum Decision above-referenced. While it is unclear to the Court whether or not the plaintiff continues to object to the Findings of Fact and Conclusions of Law as modified, the Court would note that the

000030

general objection on the part of the plaintiff that the defendant's proposed Findings and Conclusions go beyond the direct statements of the Court made in the Memorandum Decision is misplaced. It is never the intent of the Court in making a general ruling to attempt to deal with every disputed fact, or deal precisely with every issue raised by the parties during the course of a trial. The purpose of the Memorandum Decision is to set forth general guidelines so that the party designated to prepare Findings of Fact and Conclusions of Law has direction in preparing a proposed specific and detailed set of Findings of Fact, Conclusions of Law, and appropriate Judgment. Accordingly, the defendant's observations regarding insurance, taxes and management fees are correct.

The Court assumed that the decisions made in the Memorandum Decision would indicate to the parties that the plaintiff was in breach of the lease, and that the defendant would be entitled to an Order of Restitution pursuant to its Counterclaim. The Court agrees with counsel that perhaps that should have been more explicitly stated, rather than left to inference based upon the Court's rulings. To the extent the Memorandum Decision needs to be supplemented to indicate that the defendant is entitled to an Order of Restitution of the premises upon failure of the plaintiff to

000031

satisfy the obligation determined owing by the plaintiff to the defendant in this case, the Court so finds and orders. The period of fifteen (15) days proposed by the defendant is appropriate under the circumstances of this case.

With regard to the remaining objections raised by the plaintiff and to the extent that they have not been addressed in the supplemental and revised Findings of Fact and Conclusions of Law, and Judgment proposed by the defendant, the Court overrules those objections and finds in favor of the defendant on those issues.

The defendant is entitled to an award of attorney's fees and costs. Entitlement is not in dispute, however, the plaintiff questions the amount. The defendant has responded, indicating that the Affidavit setting forth attorney's fees and costs comports with the Code of Judicial Administration. The Court is satisfied that it does. The plaintiff has not requested an opportunity to examine underlying time records or expense records of defendant's counsel, and taking into account the nature of these proceedings, the fact that it included another party before that party was paid by the defendant so as to settle those claims, the amount of attorney's fees requested is in line with the complexity of the case, the time necessary to develop and properly present the case, and consistent

with the result obtained by defendant's counsel. The Court will award attorney's fees and costs in accordance with the request of the defendant, and has inserted that amount in the final draft of the proposed Judgment.

No formal Order will be necessary in connection with this Court's ruling on the Objections proposed by the plaintiff, unless defendant's counsel believes that a specific Order more detailed than this Minute Entry decision and Order is necessary. If so, such an Order should be submitted in accordance with the Code of Judicial Administration.

Counsel are advised that the Findings of Fact and Conclusions of Law as now approved and adopted by this Court were entered on a date contemporaneous with the date of this Minute Entry decision and Order.

Dated this 8 day of July, 1997.

TIMOTHY R. HANSON
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry and Order, to the following, this 8 day of July, 1997:

Dean H. Becker
Attorney for Plaintiff
10 Exchange Place, Suite 309
Salt Lake City, Utah 84111

Eric C. Olson
Attorney for Defendant
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P.O. Box 45340
Salt Lake City, Utah 84145

Evelyn Thompson

VAN COTT, BAGLEY, CORNWALL & McCARTHY
Eric C. Olson (4108)
Alison D. Johnson (6899)
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P. O. Box 45340
Salt Lake City, Utah 84145
Telephone: (801) 532-3333

FILED DISTRICT COURT
Third Judicial District

JUL - 8 1997

SALT LAKE COUNTY
By _____ Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

THE DINNER AND BINGO CLUB, INC., Plaintiff, vs. MEADOWBROOK ASSOCIATES, INC., Defendant.	FINDINGS OF FACT AND CONCLUSIONS OF LAW Civil No. 950905316 Judge Timothy R. Hanson

This action was tried to the Court on December 19, 1996 and February 25, 1997. The plaintiff The Dinner & Bingo Club ("D&B") was represented by Dean H. Becker. The defendant Meadowbrook Associates, Inc. ("Meadowbrook") was represented by Eric C. Olson. The Court having heard and reviewed the evidence admitted at trial, having considered the written and oral argument of counsel, and having entered its Memorandum Decision dated May 19, 1997, now enters the following Findings of Fact and Conclusions of Law.

000035

FINDINGS OF FACT

1. Meadowbrook owns the Meadowbrook Plaza Shopping Center (the "Center"), 4100 South Redwood Road, Salt Lake City, Utah.

2. Pursuant to a Lease dated December 28, 1993 and amended by a writing dated February 9, 1994 (the "Lease"), D&B rented certain space from Meadowbrook consisting of 17,600 square feet or 17.48% of the total square foot space of the Center.

3. The Lease provided that D&B would pay the following:

a. Rent on a monthly basis for the first year at the rate of $3,666.67 commencing May 1, 1994 or "whenever [D&B] opens for business, whichever first occurs," with rent increasing to $4,766.67 in the second and third years, $6,600 in the fourth year, and $7,333.33 in the fifth year.

b. Common area maintenance ("CAM") fees in proportion to the percentage of square footage leased by D&B.

c. A management fee in the amount of 5% of the minimum rent.

d. Taxes and insurance in proportion to the percentage of square footage leased by D&B.

e. Cost of all maintenance of the HVAC system following a sixty-day warranty period.

4. Under the Lease, D&B was to pay into escrow on a monthly basis one-twelfth of (a) its proportionate share of estimated CAM charges, (b) its proportionate share of

000034

aggregate tax and insurance charges and (c) annual management fees for reimbursement of those amounts to Meadowbrook as they accrued or were paid by Meadowbrook.

5. At the time D&B executed the Lease, it knew that the HVAC system servicing the leased premises was old and might require repair. As a consequence, the parties agreed to the following language in paragraph 23 of the Lease: "Landlord to provide Premises in "As Is" condition, except the HVAC must be in working condition. Landlord to warranty HVAC for sixty (60) days."

6. D&B occupied the leased premises and opened for business on April 12, 1994, but failed to pay any rent for the time period between April 12 and May 1, 1994. The amount of that rent is $2,322.22.

7. Commencing in 1994, D&B failed and refused to pay the full amount of its proportionate share of the actual insurance charges claiming that such charges were unreasonable. D&B failed at trial to offer evidence as to the reasonableness of the insurance charges or to demonstrate that Meadowbrook undertook a duty to secure insurance at a particular rate. As of January 29, 1997, the total amount owing to Meadowbrook from D&B for insurance charges as reflected in the Amended Accounting was $9,250.41.

8. Commencing in April, 1996, D&B failed and refused to pay its proportionate share of CAM charges, management fees and tax accruals. As of January 29, 1997, the total amounts owing to Meadowbrook from D&B for CAM/management fee charges and tax accruals as reflected in the Amended Accounting were $4,661.95 for CAM/management and $2,857.10 for tax accruals.

000037

9. D&B has failed to pay rent in a timely fashion under the Lease. As of January 29, 1997, the total amount of late monthly rent owing to Meadowbrook from D&B as reflected in the Amended Accounting, excluding the amount set forth in paragraph 6 above was $4,766.67.

10. Meadowbrook made repairs to the HVAC system as late as early October , 1994, pursuant to its warranty under the Lease.

11. The HVAC system was in working condition as of the last date that Meadowbrook made repairs to the system and thereafter for sixty days.

12. D&B first gave written notice to Meadowbrook of deficiencies in the HVAC system on June 8, 1995, eight months after the last repairs by Meadowbrook.

13. At the request of D&B, ESCO Services performed repairs on the HVAC system in the summer of 1995.

14. D&B failed to pay ESCO for the work performed. As a consequence, ESCO filed a lien on the Center and sought enforcement of that lien in this litigation.

15. After the commencement of trial in this action, Meadowbrook paid ESCO the sum of $12,500 in settlement of the lien claim.

16. The Lease provided for the award of costs and reasonable attorney's fees to the prevailing party in any litigation for breach of the Lease.

17. Meadowbrook reasonably expended the sum of $19,438 in attorney's fees and $1146.06 in costs in this consolidated action.

000038

CONCLUSIONS OF LAW

1. The Lease is valid and legally binding and defines the rights and obligations of Meadowbrook and D&B with respect to the rental of the leased premises.

2. D&B was legally obligated pursuant to the terms of the Lease to pay the amounts set forth in the Amended Accounting. D&B failed to establish any defense to payment of these amount. Meadowbrook is entitled to Judgment against D&B for the unpaid amounts in a total sum of $23,956.16 together with prejudgment interest thereon at the statutory annual rate of 10 % from January 29, 1997, the date of the Amended Accounting.

3. D&B is liable to Meadowbrook for the amount paid to ESCO in the principal amount of $12,500 together with prejudgment interest thereon from the date of payment at the statutory annual rate of 10 %.

4. Meadowbrook did not breach its warranty of the HVAC system and any oral notice by D&B was not effective to put Meadowbrook in breach of the Lease.

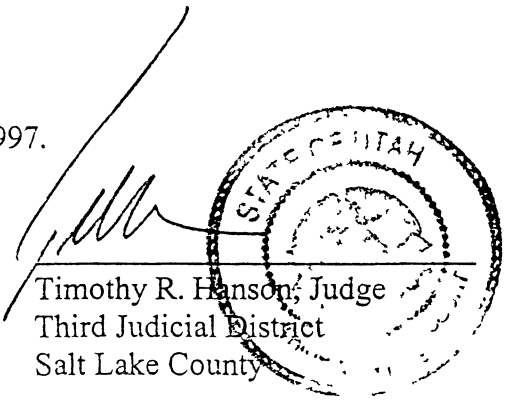
5. Meadowbrook's warranty of the HVAC system terminated in early December, 1994 and Meadowbrook is not liable to D&B for the condition of the HVAC system or any maintenance or repairs to the HVAC system after early December, 1994.

6. Pursuant to the Lease as the prevailing party on all issues, Meadowbrook is entitled to the award of its reasonable attorney's fees and costs expended in this consolidated action.

7. In the event that D&B fails to pay the amount of the Judgment herein within fifteen days of the entry thereof, the Court shall enter an Order of Restitution directing D&B to vacate the leased premises and declare a forfeiture of the Lease.

000039

DATED this 8 day of ~~June~~ July, 1997.



Timothy R. Hanson, Judge
Third Judicial District
Salt Lake County

JUDGMENT

FILED DISTRICT COURT
Third Judicial District

JUL - 8 1997

SALT LAKE COUNTY

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IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

THE DINNER AND BINGO CLUB, INC., Plaintiff, vs. MEADOWBROOK ASSOCIATES, INC., Defendant.	JUDGMENT Civil No. 950905316 Judge Timothy R. Hanson 2216335 7-9-97- 8:02AM

The Court having entered its Findings of Fact and Conclusions of Law and being otherwise sufficiently advised,

IT IS HEREBY ORDERED AND ADJUDGED that the defendant Meadowbrook be, and hereby is, awarded Judgment against the plaintiff The Dinner and Bingo Club, Inc. in the principal amount of $36,456.16 together with prejudgment interest thereon in the amount of $ 1215.20 and costs and reasonable attorney's fees in the amount of $20,584.06 TMW

IT IS FURTHER ORDERED AND ADJUDGED that all claims asserted by the plaintiff The Dinner and Bingo Club, Inc. in this action be, and hereby are, dismissed with prejudice.

IT IS FURTHER ORDERED AND ADJUDGED that, if the plaintiff The Dinner and Bingo Club, Inc. fails to pay the full amount of this Judgment to the defendant Meadowbrook Associates, Inc. within fifteen days of the date of this Judgment, then upon submission of an affidavit of counsel so representing and a proposed form of Order, the Court shall enter an Order of Restitution requiring the plaintiff to vacate the leased premises immediately and shall declare the Lease forfeited.

DATED this 8 day of ~~June~~ July, 1997.

Timothy R. Hanson, Judge
Third Judicial District
Salt Lake County

344