

LEASE AGREEMENT

DelYaqui-12-1-1--  
Yorkm

DATE: June 20, 2001

LANDLORD: Town of Guadalupe  
9241 S. Avenida del Yaqui  
Guadalupe, AZ 85283-2598  
(480) 730-3080  
Facsimile: (480) 505-5368

TENANT: Guadalupe Martinez  
d/b/a Del Yaqui Restaurant  
9201 S. Avenida del Yaqui  
Guadalupe, Arizona 85283  
Work Phone Number: (480) 839-8170

RECITALS:

- A. Landlord is the true and lawful owner of the Premises, as described below, and has the right to lease the same in the manner set forth in this Lease.
- B. Tenant desires to lease the Premises from Landlord and Landlord is willing to lease the Premises to Tenant upon the terms and conditions of this Lease.

FOR VALUABLE CONSIDERATION, it is agreed as follows:

1. Description of Leased Premises. Landlord, in consideration of the rents to be paid and the covenants and agreements to be performed by Tenant, hereby leases to Tenant Suite(s) 4, 5 & 6 located in the commercial center known as "The Mercado", 9201 S. Avenida del Yaqui, Guadalupe, Arizona, consisting of approximately 2,070 square feet, with all improvements located thereon, including an indivisible right in and to the Common Area as set forth below (the "Premises" or the "Leased Premises").

Tenant and its employees and customers shall have the non-exclusive right to use the Common Area, in common with Landlord and other tenants and persons permitted the use of the Common Area. The term "Common Area" is defined for all purposes of this lease as that part of the commercial center intended for the common use of all tenants, including but not limited to the parking area, covered walkways, open patio space, public restrooms, landscaping, drinking fountains and the like, excluding space in buildings designed for rental for commercial purposes. Landlord reserves the right to change the dimensions and locations of the Common Area. Tenant shall not display or sell merchandise in the covered walkway space immediately in front of Tenant's premises; or elsewhere in the Common Area, without first obtaining the written consent of Landlord. The open patio area is a common area and Landlord reserves the right to rent or utilize that area for the benefit of the commercial center.

Landlord shall be responsible for the operation, management and maintenance of the common areas, including, but not limited to, trash removal and custodial service.

2. Term. The term of this Lease shall be for a period of two (2) year commencing on July 1, 2001 (the "Commencement Date") at 12:01 a.m., and continuing to 11:59 p.m. on the 30th day of June, 2003 (the "Termination Date"), subject to the terms and conditions set forth in this Lease which may permit or provide for an earlier termination. Tenant may terminate this Lease on

sixty (60) days written notice to Landlord. The lease can be renewed for one year increments upon mutual agreement between the tenant and landlord.

3. **Rental and Expenses.**

- A. **Rent.** Tenant shall pay to Landlord as rent during the term hereof, the sum of One Thousand One Hundred Ninety Seven DOLLARS (\$1,197.00) per month plus rental taxes required by law. All rental payments shall be made monthly in advance on the first day of each month during the term of this Lease, in United States dollars, without deduction, offset, prior demand, or notice. Rent for partial months at the commencement and termination of this Lease shall be charged pro rata, based on the actual number of days this Lease is in effect during those months. Payments shall be made to Landlord at the address specified on the first page of this Lease or as modified by subsequent notice. After one year, and on subsequent agreement renewals, the Town reserves the right to increase the rent amount as deemed appropriate.
- B. **Operating Expenses.** Subject to the provisions set forth in Paragraph 7, Tenant shall be responsible for its pro rata share of (i) the costs of water, sewer service, electricity, and other utilities and services for the Premises and any utility taxes, charges or similar impositions paid or incurred in connection therewith; (ii) the cost of security and supplies and janitorial, gardening, and other maintenance service; (iii) the costs of upkeep, repair and maintenance of the rented Premises; (iv) license permit and inspection fees; (v) all other costs directly associated with the management, operation and maintenance of the Premises.
- C. **Tenant Improvements.** Pursuant to the provisions of Paragraphs 4 and 7 hereof, Tenant shall be responsible for the costs of all Tenant Improvements to the Premises. In the event that Tenant's plans are disapproved by any governmental authority required to approve the plans, and as a result of such disapproval, Tenant is not able to use the Premises for their intended purpose, at Tenant's option this Lease may be terminated upon fourteen (14) days written notice to Landlord, and neither party shall have any further obligations to each other hereunder.
- D. **Late Charges.** Tenant acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Therefore, if any monthly payment of rental or other amount due to Landlord hereunder shall not be received by Landlord within ten (10) days after notice, Tenant shall pay to landlord a late charge equal to three percent (3%) of such amount; provided, however, that such late charge shall be increased to ten percent (10%) of the amount due for each late payment made by Tenant after Tenant has made two (2) such late payments. Landlord and Tenant agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant and shall be in addition to any interest which may accrue thereon pursuant to the following Paragraph.
- E. **Interest on Past-Due Obligations.** Any amounts due and owing by Tenant which are not paid within thirty (30) days after such amounts are due shall bear interest from the date thirty (30) days after such amounts are due until paid at a rate equal to three percent (3%) in excess of the rate announced from time to time by Bank One Arizona

as its "prime rate." Payment of such interest shall not excuse or cure any default by Tenant under this Lease.

4. **Use of Leased Premises; Improvements and Repairs.**

- A. Tenant may use and occupy the Leased Premises for any lawful business purpose approved by Landlord, which approval will not be unreasonably withheld (the "Permitted Business"). No use of the Premises for any activity other than the Permitted Business can be made without the prior written notice to Landlord. Tenant agrees not to commit or permit any waste of the Leased Premises. Tenant agrees to comply with all laws, ordinances, regulations and conditions, covenants, conditions and restrictions, public or private, affecting the Premises and not to suffer or permit any act to be done in or about the Premises in violation thereof.

Tenant covenants and agrees that it shall, continuously during the entire term hereof, conduct and carry on Tenant's business and cause Tenant's business to be conducted therein during the usual business hours of each and every business day as is customary for businesses of like character in the Town of Guadalupe; provided, however, that this provision shall not apply if the demised premises should be closed and the business of Tenant temporarily discontinued therein on account of strikes, lockouts, or similar causes beyond the reasonable control of Tenant or closed out of respect to the memory of any deceased officer or employee of Tenant, or the relative of any such officer or employee.

Tenant shall keep the Leased Premises adequately stocked with merchandise, and with sufficient sales personnel to care for the patronage, and to conduct said business in accordance with sound business practices. Tenant shall not knowingly sell merchandise which has been illegally obtained, nor sell merchandise which is represented to be the product of any particular country or region and which is not in fact such a product.

Tenant shall not commit or suffer to be committed any waste upon the Leased Premises or any nuisance or other act against public policy which may disturb the quiet enjoyment of any other tenant of the Mercado. Tenant agrees not to use or permit the use of the Leased Premises or any part thereof as living quarters, nor permit any business or display of merchandise to be operated or maintained in front of the Leased Premises or on or about the common facilities, nor to permit any fire, liquidating, bankruptcy or auction sale to be held or conducted on or about the Leased Premises, nor to allow electronic or mechanical game devices of any type whatsoever upon the Leased Premises, except as may be granted by the landlord.

Tenant agrees not to use or permit the use of the Leased Premises or any part thereof for any purpose prohibited by law. Tenant agrees, at its sole expense, to comply with and conform to all of the requirements of all governmental authorities having jurisdiction thereof, present or future, relating in any way to the condition, use and occupancy of the Leased Premises throughout the entire term of this Lease, and to indemnify and save Landlord harmless from any and all liabilities, costs, and expenses

relating thereto; provided, however, that this subparagraph shall not be construed to require Tenant to make any structural change in or to the Leased Premises.

- B. Tenant shall not remove, demolish or impair the structural character of any existing improvement to the Leased Premises without Landlord's prior written consent. Tenant may, at its sole cost and expense, improve, remodel, or alter improvements, on the Leased Premises; however, all such work shall be done in compliance with and pursuant to plans, drawings and specifications first approved in writing by Landlord; in compliance with all applicable building codes, zoning and other governmental regulations and restrictions; and made only by a licensed and bonded contractor. Tenant agrees to indemnify and hold Landlord harmless from and against any and all claims for damages on the part of the owners, tenants, or occupants of adjacent buildings arising from the uses of the Leased Premises by or activities of Tenant and to take all necessary, prudent and proper measures to protect the Premises of such adjacent owners, tenants and occupants from injury of any nature arising from any such use or activity.
- C. The parties agree, and notice is hereby given, that Tenant is not the agent of Landlord for the alteration or repair of any improvements on the Leased Premises, the same being done at the sole direction and expenses of Tenant. Tenant shall hold harmless and indemnify Landlord from and against any costs, expenses and liabilities from any mechanic's, laborers or materialmen's liens which may be filed against the Premises during the term of this Lease.
- D. Upon the termination of this Lease for any cause whatsoever, Tenant shall immediately surrender peaceable possession of the Leased Premises, and all improvements and fixtures then located on the Premises, all of which shall be in an attractive good and safe condition and state of repair (ordinary depreciation and reasonable wear and tear excepted), and become the Property of Landlord subject, however, to the right of removal provided in Paragraph 14.
- E. If Tenant should remain in possession of the Premises after the expiration of the Lease term with the express written consent of Landlord and without executing a new lease, then such holding over shall be construed as a tenancy from month-to-month, subject to all conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy. Tenant shall continue in possession until such tenancy is terminated by either Landlord or Tenant giving written notice of termination to the effective date of termination.
- F. In addition to and not in limitation of the foregoing, Tenant shall neither use, generate, manufacture, produce, store or Release on, or dispose of, under or about the Leased Premises, or transfer to or from the Leased Premises, any amount of any Hazardous Substance nor knowingly permit any third party to do so except in compliance with all applicable Environmental Law, and Tenant will indemnify and hold Landlord and its successors in interest and assigns harmless from all claims, causes, and costs, including attorneys' fees, and actions which may result or be asserted from or in connection with any Hazardous Substance and the Leased Premises. As used herein, the following terms shall have the meanings specified below:

The term "Environmental Law" shall mean any federal, state or local statute, ordinance, or regulation pertaining to the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et sec. ("CERCLA"); the Resource Conservation and

Recovery Act of 1976, 42 U.S.C. Section 6901, et seq. ("RCRA"); and the Arizona Environmental Quality Act, Title 49, Arizona Revised Statutes, and all successors statutes and amendments and all rules adopted and guidelines promulgated pursuant to the foregoing.

The term "Hazardous Substance" shall include:

- (1) those substances included within the definitions of "hazardous substances," "hazardous material," or "toxic substances" in CERCLA, RCRA, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., and in the regulations promulgated pursuant thereto;
- (2) those substances defined as "hazardous substances" in A.R.S. § 49-201 and in rules adopted or guidelines promulgated pursuant thereto;
- (3) those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302 and amendments thereto); and
- (4) all other substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under, any Environmental Law. For such substances, materials and wastes that first become subject to regulation after the date hereof, Tenant shall have the period of time permitted by law or administrative decision, or if no such period of time is specified (unless a period of time is expressly prohibited), then a reasonable period of time not to exceed 180 days, within to effect compliance with all applicable Environmental Laws.

The term "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, disposing, or dumping.

- G. **Landlord's Access to Premises.** Upon reasonable notice to Tenant, Landlord and its agents, at all reasonable times, shall have free access to the Premises for the purpose of examining or inspecting the condition thereof, for the purpose of determining if Tenant is performing the covenants and agreements of this Lease.
5. **Encumbering the Leased Premises.** During the term of this Lease, Tenant shall not cause or permit any lien, claim, charge or encumbrance of any nature or description whatsoever to attach to or encumber this Lease or the Leased Premises.
6. **Insurance.**
- A. Landlord will, during the term of this Lease and at the sole cost and expense of Landlord, keep the Premises insured for the benefit of Landlord against loss or damage from fire and other risks normally insured against.
  - B. Tenant, at the sole cost and expense of Tenant, shall during the term of this Lease maintain in force an insurance policy or policies which will name Landlord and Tenant as insured insuring against all liability resulting from injury or death occurring to persons in or about the Premises, the liability under such insurance to be not less than \$1,000,000 for one person injured, \$1,000,000 for any one accident, and \$1,000,000 for property damage. Any insurance on Tenant's contents or Tenant improvements shall be at Tenant's option and expense. The original of such policy or policies shall

remain in possession of Tenant; provided, however, that Landlord shall have the right to receive from Tenant, upon written demand, a duplicate policy or policies of any such insurance. Tenant shall also maintain and keep in force all employees' compensation insurance on its employees, if any, required under the applicable workmen's compensation laws of the State of Arizona.

- C. All insurance policies required under this Paragraph shall contain provisions to the effect that the insurance shall not be canceled or modified without ten (10) days' prior written notice to the additional insured and that no modification shall be effective unless approved in writing by the additional insured. All such policies shall be issued by a company or companies responsible and authorized to do business in the State of Arizona, as the primary insured shall determine, and as shall be approved by the additional insured, such approval not to be unreasonably withheld.
7. **Condition and Suitability of Premises.** Prior to the commencement of the Tenant Improvements, Landlord shall be obligated to make, at its sole expense, any and all necessary repairs (as determined by Landlord in its reasonable discretion) to the roof and air conditioning and heating systems. Tenant shall be entitled to inspect the Premises prior to the Commencement date of the Lease to certify that the Premises are in good and satisfactory condition, except for latent defects, if any. Failure of Landlord to make such necessary repairs in a satisfactory manner shall constitute a default under the Lease. Upon such default which has not been timely cured by Landlord after written notice by Tenant, Tenant shall be entitled to terminate this Lease and neither party shall have any further obligation hereunder.
8. **Condemnation.**
- A. If the whole or more than fifty percent (50%) of the Leased Premises shall be taken or condemned under the right of eminent domain (or agreement in lieu thereof), this Lease shall terminate, and the rent hereunder shall be prorated as of the date upon which title shall vest in such condemning authority.
- B. If less than fifty percent (50%) of the Leased Premises shall be taken or condemned this Lease shall remain in full force and effect and the rent hereunder shall be reduced, commencing with the date of the taking or condemnation, by a fraction, the numerator of which shall be the total square footage taken and the denominator of which shall be the total square footage of the Leased Premises.
- C. Tenant shall only be entitled to the portion of any awards attributable to the taking of fixtures and improvements installed by Tenant.
9. **Damage.** If Leased Premises or any improvements shall be destroyed or damaged in whole or in part by fire, or as a result directly or indirectly of war, or by act of God, or occurring by reason of any other cause whatsoever, this Lease shall not be terminated but the rent hereunder shall be reduced, commencing with the date of the damage, by a fraction, the numerator of which shall be the total square footage damaged and unusable and the denominator of which shall be the total square footage of the Leased Premises. Notwithstanding the foregoing, in the event that damage to the Premises is caused by Tenant, the rent hereunder shall not be reduced. If Landlord determines that the leased Premises has been substantially damaged, Landlord may elect not to rebuild the Premises, and the obligations of the parties under this Lease shall automatically be at end and if Landlord elects to rebuild, this Lease shall continue in full force.
10. **Telephone Charges.** Tenant shall pay or cause to be paid, when due and prior to delinquency, any and all charges for telephone service, used in or upon the Leased Premises during the term

of this Lease and agrees not to permit any charges of any kind to accumulate or become a lien against the Premises.

11. **Common Areas.** Tenant, its agents, employees, customers shall have access to all of the parking areas, sidewalks and other facilities in and around the Premises. Further, Tenant shall be entitled to use the signage existing at the Premises in accordance with applicable governmental regulations.
12. **Assignment and Sublease.**
  - A. Tenant may assign, transfer or convey all or part of this Lease Agreement, only with the prior written consent of Landlord, which consent shall not be unreasonably withheld. Any such assignment, transfer or conveyance shall not release Tenant from liability to Landlord under this Lease.
  - B. Tenant may sublet all or any portion or portions of the Leased Premises, only with Landlord's prior written consent, which consent shall not be unreasonably withheld.
  - C. Tenant may assign this Lease in whole or in part without Landlord's consent to any entity which is owned at least 75% by the same persons as Tenant currently is owned.
13. **Security Deposit.** Tenant shall deposit with Landlord contemporaneously with the execution of this lease the sum of \$1,000 (the "Security Deposit") as security for the full and faithful performance of each and every term of this Lease. If Tenant defaults under any provision of this Lease, Landlord shall be entitled, at Landlord's option and in addition to all other rights and remedies available to Landlord, to apply or retain the whole or any part of the Security Deposit for the payment of any rent or any other sum in default, any other amount that Landlord may spend or become obligated to spend by reason of Tenant's default. If the Security Deposit is so used or applied, Tenant shall, in five (5) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount. Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. If Tenant fully complies with all of the terms provisions, covenants, and conditions of this Lease, the Security Deposit or any balance thereof shall be returned to Tenant after Landlord is able to determine the final amounts of Tenant's obligations hereunder after the expiration of the term or any period of holding over. Tenant agrees that if Landlord sells or exchanges Landlord's interest in the Premises during the Lease Term, Landlord may transfer the Security Deposit to any subsequent owner and in that event, Tenant does hereby release Landlord from all liability for the return of the Security Deposit. Tenant shall not assign, pledge, mortgage or otherwise hypothecate its interest in the Security Deposit.
14. **Removal of Personal Property and Tenant's Fixtures and Trade Fixtures.** Upon any termination of this Lease, ownership and possession of all improvements and fixtures if any, located upon the Premises as of such date shall pass to Landlord; provided, however, Tenant may, if not in default under any of the terms of this Lease and within a reasonable time after such termination, remove any and all personal property, including, but not limited to, furniture, equipment, and fixtures belonging to Tenant; provided, however, Tenant shall repair any damage to any improvements on the Premises caused by such removal.
15. **Default.** The following shall constitute events of default hereunder:

- A. The nonpayment of the whole or any portion of the rental or any other sum or sums of money when due under the provisions of this Lease more than five (5) days following written notice of such default from Landlord to Tenant; or
- B. The non-performance by Tenant of any other of its covenants or the conditions set forth in this Lease, provided, however, Landlord shall not be entitled to exercise its remedies for default unless Landlord shall have given Tenant written notice of the default and Tenant shall have failed to cure such default (i) within thirty (30) days after notice, if such default relates to the non-payment of money, or (ii) unless provided otherwise in this Lease thirty (30) days after such notice, for any default other than non-payment of money, or if such non-monetary default can not be cured within thirty (30) days Tenant commences to cure such default within thirty (30) days and diligently continues to cure until the required performance is rendered in full.
16. **Remedies.** Upon any event of default and the expiration of the applicable grace period, if any, Landlord may, at its option, declare a termination of this Lease and re-enter upon the Leased Premises and repossess the Premises and all the improvements free of any claims or interest of Tenant whatsoever. In addition, upon such default, Landlord shall be entitled to avail itself of whatever remedies it may have at law or in equity for the collection of any unpaid rentals hereunder, past and future, or for any damages that it may have sustained by reason of the breach by Tenant of the terms and conditions thereof. No termination of this Lease by forfeiture or an event of taking or recovering or not taking or recovering possession of the Leased Premises shall deprive Landlord of any other action, right, or remedy against Tenant.
17. **Obligations of Landlord.** Landlord shall furnish to the Premises, at Tenant's expense, during normal business hours water and electricity, heat and air conditioning required for the comfortable use of other services and occupancy of the Premises typical of similar buildings located in the metropolitan Phoenix area. Upon prior written notice to Tenant, Landlord may interrupt service, plumbing, heating, ventilation, air conditioning and electric or other mechanical systems, when necessary by reason of accident or emergency or, for the purpose of inspection, repairs, alterations, additions or improvements, which in the reasonable judgment of Landlord are desirable or necessary to be made. Such interruptions of service shall only be for reasonable periods of time only, and to the extent possible, not during regular business hours of Tenant.
18. **Subordination.**
- A. **Subordination.** At Landlord's option, this Lease shall be subordinate to Landlord's Covenant of Use, Purpose and Ownership to the U.S. Department of Commerce, Economic Development Administration, any ground lease, mortgage, deed of trust or any other hypothecation for security now or hereafter placed upon the Premises and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof without the necessity of the execution and delivery of any further instruments on the part of Tenant to effectuate such subordination; provided that Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms.
- B. **Agreements.** Tenant agrees to execute any agreements required to effectuate such subordination or to make this Lease prior to the lien of any mortgage, deed of trust or ground lease, as the case may be, and failing to do within ten (10) days after written

demand, does hereby make, constitute and irrevocably appoint Landlord as Tenant's attorney-in-fact and in Tenant's name, place and stead, to do so.

- C. **Attornment.** Tenant hereby agrees, at the written request of the lienholder or the purchaser of Landlord's interest pursuant to foreclosure or other proceedings to attorn to such lienholder or purchaser or, at such lienholder's or purchaser's option, to enter into a new lease for the balance of the term hereof upon the same terms and conditions as are contained herein.

19. **Signs, Store Fronts and Auctions.**

- A. Tenant shall not, without Landlord's prior written consent: make any changes to or paint the store front; install any exterior lighting, decorations or paintings; erect or install any signs, window or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of the Leased Premises. All signs, decorations and advertising media shall conform in all respects to the sign criteria established by Landlord for the Mercado from time to time in the exercise of its sole discretion, and shall be subject to the prior written approval of Landlord as to construction, method of attachment, size, shape, height, lighting, color and general appearance and use. Anything to the contrary in this Lease notwithstanding, Tenant shall not affix any sign to the roof of any building in the Leased Premises.
- B. Tenant shall keep its signs, exterior lighting and display windows lit during those hours that Landlord in its sole discretion may reasonably require.
- C. Tenant shall not conduct or permit to be conducted any going out of business sale or any sale by auction in, upon or from the Leased Premises, whether said auction be voluntary, involuntary, pursuant to any assessment for the payment of creditors or pursuant to any bankruptcy or other solvency proceeding.
- D. The Tenant may not display or sell merchandise, or allow grocery carts or other similar devices within the control of Tenant to be stored or to remain outside the defined exterior walls and permanent doorways of any building in the Leased Premises, except upon prior written consent from Landlord. Tenant further agrees not to install any exterior lighting, amplifier or similar devices or use in or about the Lease Premises or any advertising medium which may heard or seen outside any building in the demised premises, such as flashing lights, searchlights, loudspeakers, sound recordings or radio broadcasts.

20. **Attorneys Fees.** If Landlord is involuntarily made a party defendant to any litigation concerning this Lease or the Leased Premises by any reason or any act or omission of Tenant, then Tenant shall defend and hold harmless Landlord from all liabilities by reason thereof, including reasonable attorney fees and all costs incurred by Landlord in such litigation. If Landlord finds it necessary to retain an attorney in connection with the default by Tenant in any of the agreements or covenants contained in this Lease, Tenant shall pay reasonable attorney fees and all costs incurred by Landlord in such litigation. If Landlord finds it necessary to retain an attorney in connection with the default by Tenant in any of the agreements or covenants contained in this Lease, Tenant shall pay reasonable attorney fees to said attorney. If either Landlord or Tenant, or their successors and assigns shall commence any legal proceedings either in court or by arbitration against the other with respect to the enforcement or interpretation of any of the terms and conditions of this Lease, the non-prevailing party therein shall pay to the other all expense of said litigation, including any reasonable fees as may be fixed by the court, or arbitrator having jurisdiction over the matter. The parties hereto agree

that the Superior Court, State of Arizona, in and for the County of Maricopa, located in the City of Phoenix is the proper venue and jurisdiction for litigation of, or performance under any matter relating to this Lease.

21. **Rules and regulations.** Tenant shall comply with all reasonable rules and regulations made by Landlord from time to time for the overall operation of the Mercado for the benefit of all Tenants.
22. **General.**
- A. **Waiver of Breach.** No waiver by Landlord or Tenant of the breach of any provision of this Lease shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Lease, nor shall the acceptance of rent by Landlord during any period of time in which Tenant is in default in any respect other than payment of rent be deemed to be a waiver of such default.
- B. **Notices.** Notices shall be in writing and shall be given by personal delivery, by deposit in the United States mail, certified mail, return receipt requested (which receipt shall be preserved as evidence of delivery), postage prepaid, by facsimile or reliable overnight courier addressed to Landlord and Tenant at the respective addresses first set forth above. The date notice is given shall be the date upon which the notice is delivered if given by personal delivery or by facsimile or three (3) days after the date mailed if sent through the United States mail. Either party may furnish to the other in writing a different mailing address and designate another individual upon whom all notices may be served as herein provided.
- C. **Quiet Enjoyment.** Conditioned upon Tenant paying the rent herein provided and performing and fulfilling all the covenants, agreements, conditions, and provisions herein to be kept, observed or performed by Tenant, Tenant may at all times during the term hereby granted, peaceably, quietly, and exclusively have, hold, and enjoy the Leased Premises.
- D. **Entire Agreement.** This Lease sets forth all the promises, inducements, agreements, conditions, and understandings between Landlord and Tenant relative to the Leased Premises, and there are no promises, agreements, conditions, or understandings, either oral or written, express or implied, between them other than are set forth herein. No subsequent alteration, amendment, change, or addition to this Lease shall be binding upon any party unless in writing and signed by the party sought to be charged. Parol evidence shall not be admissible in any court, tribunal, arbitration or governmental agency to modify, amend, or vary any of the terms of this Lease.
- E. **Construction.** The titles which are used following the number of each paragraph are so used only for convenience in locating various provisions of this Lease and shall not be deemed to affect the interpretation or construction of such provisions. The parties acknowledge that each party and its counsel have reviewed and revised this Lease. This Lease shall not be construed for or against Landlord or Tenant.
- F. **Successors.** Subject to the restrictions contained in Paragraph 12 above, this Lease and all of provision hereof shall be binding upon the inure to the benefit of the successors and assigns of Landlord and Tenant.

- G. **Governing Law.** The terms, conditions, covenants, and agreements herein contained shall be governed, construed, and controlled according to the substantive laws of the State of Arizona.
- H. **Time of the Essence.** Time is of the essence of this Lease and in the performance of all of the covenants and conditions hereof.
- I. **Merger.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, or a termination by Landlord, shall not work a merger, and shall at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.
- J. **Authority.** Any individual executing this Lease on behalf of, or as representative for, a corporation or other person, firm, partnership or entity represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, person, firm, partnership, or other entity and that this Lease is binding upon said entity in accordance with its terms.
- K. **Incorporation of Exhibits and Rider.** All Exhibits and riders, if any, attached hereto shall be deemed as part of this Lease.
- L. **No Third Party Rights.** Except as expressly provided herein, no term or provision of this Lease is intended to or shall be for the benefit of any person not a party hereto, and no such other person shall have any right or cause of action hereunder.
- M. **No Partnership.** Nothing contained in this Lease shall create any partnership, joint venture or other arrangement between Landlord and Tenant other than that of Landlord and Tenant.
- N. **Plurals.** The words "Landlord" and "Tenant," as herein used, shall include the plural as well as the singular. Also, the neuter gender includes the masculine and feminine.

23. **Estoppel Certificate.**

- A. Tenant shall at any time within ten (10) days after written request by Landlord, execute, acknowledge and deliver to Landlord a statement in writing: (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rents and other charges are paid in advance, if any; (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord thereunder, or specifying such defaults if any are claimed; and (iii) certifying or acknowledging such other matters that Landlord may reasonably request. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Building.
- B. Tenant's failure to deliver such statement shall be conclusive upon Tenant: (i) that this Lease is in full force and effect, without modifications except as may be represented by Landlord; (ii) that there are no uncured default in Landlord's performance; and (iii) that not more than one (1) month's rent has been paid in advance, or such failure may be considered by Landlord as a default by Tenant under this Lease.

This Lease is executed as of December \_\_\_\_\_, 2001.

"LANDLORD"

"TENANT"

Town of Guadalupe

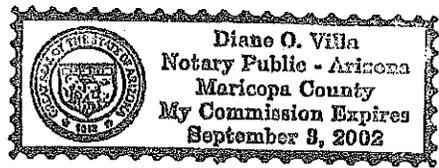
By Margarita Cota, Mayor BYX Margarita Cota, its owner

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 31 day of ~~December~~ <sup>June</sup>, 2001  
by Margarita Cota, Mayor, Town of Guadalupe.

Diane O. Villa  
Notary Public

My commission expires:  
Sept 3, 2002



STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 31 day of ~~December~~ <sup>June</sup>, 2001,  
by M. Polky Martinez, as owner of Dolores Restant.

Diane O. Villa  
Notary Public

My commission expires:  
Sept 3, 2002

