

## COMMERCIAL BUILDING LEASE

**THIS LEASE**, dated for reference purposes only on the 21st day of September, 2010, is made and entered into, to commence on the 22nd day of September, 2010, by and between **KITTITAS COUNTY**, a municipal corporation in the State of Washington, hereinafter referred to as the **LESSOR**, and **Kellen B Properties, LLC**, hereinafter referred to as the **LESSEE**.

### WITNESSETH:

Lessor does hereby lease to Lessee, and Lessee hereby leases from Lessor, a portion of that certain real property legally described in **EXHIBIT "A"** (legal description) annexed hereto and by this reference incorporated herein (the "Property"). The portion of the Property leased is adjacent to a County-owned building and Common Area, and is occupied by a freestanding building of approximately 306 square feet, and appurtenances of approximately 82 square feet, more or less, shown on **EXHIBITS B-1 and B-2** (lot depiction and building site plan, hereinafter the "Premises"). Said Premises are located in the City of Ellensburg, County of Kittitas, State of Washington.

This Lease is made in accordance with chapters 2.81 KCC and 36.34 RCW, and is subject to the terms, covenants and conditions herein set forth. Lessee covenants as a material part of the consideration for this Lease to keep and perform each and all of the said terms, covenants and conditions by it to be kept and performed.

1. **TERM.** The term of this Lease shall be for Five ( 5 ) years and will commence on the 1<sup>st</sup> day of September, 2010 and terminate on the last day of December, 2015, except as provided hereunder.
2. **USE.**
  - a. Lessee shall use the Premises for a free standing building owned by Lessee for the retail sale of beverages and food items and shall not use or permit the Premises to be used for any other purpose without the prior written consent of the Lessor.
  - b. Upon termination of Lessee's right to lease the Property, Lessee may at Lessee's option remove its building and any improvements placed or constructed thereon by Lessee and restore the Property to a condition suitable for occupancy of another building, namely, to such condition as existed prior to construction of such buildings and improvements. If Lessee chooses not to remove such buildings and improvements within Thirty (30) days after giving written notice of termination of this Lease and or within such reasonable additional necessary time as may be approved in writing by the Lessor, then upon Lessee's termination of the Lease, such buildings and improvements shall become the property of the Lessor, and Lessor may take

whatever action is permitted under the law and under the additional terms of this Lease to alter or clean up the Premises for further use and occupancy in Lessor's discretion.

3. **RENT:**

- a. Lessee agrees to pay Lessor as Rent, without notice or demand, the monthly sum of **Five Hundred Seventy-Five Dollars (\$575.00)** in advance, on or before the first day of each and every successive calendar month during the term hereof, except that the first and last month's rent shall be paid upon the execution of this Lease.
- b. Pursuant to the Leasehold Tax provisions of the State of Washington set forth in chapter 82.29A RCW, Lessee's monthly rent of Five Hundred Seventy-Five Dollars (\$575.00) shall be calculated as a base rent amount of Five Hundred Nine Dollars and Fifty-Seven Cents (\$509.57) per month and a Leasehold Excise Tax, owing to the State Department of Revenue, of 12.84 percent of the base rent amount, or Sixty-Five Dollars and Forty-Three Cents (\$65.43) per month.
- c. In the event of a percentage increase in the Leasehold Tax amount owing to the State Department of Revenue, then Lessee's base rent amount shall increase accordingly, commencing on the first day of the month in which said increase shall come into effect as payable to the Department of Revenue.
- d. Said total rent, including the leasehold excise tax amount, shall be paid to Lessor, without deduction or offset, in lawful money of the United States of America, at the following location:

Kittitas County Auditor  
205 West 5<sup>th</sup>, Room 105  
Ellensburg, Washington 98926

Or at such other place as Lessor may from time to time designate in writing.

- e. Lessor shall receive rent as stated above and shall be responsible for real estate taxes, Property liability insurance and maintenance, subject to the Lessee's obligations for insurance and basic maintenance as set out below, incurred by reason of Lessee's ownership and/or operation of the Premises.
- f. However, in addition to the rent reserved by paragraph 3(a) above, Lessee shall pay to the parties respectively entitled thereto all impositions, operating charges, basic maintenance charges, construction costs and any other charges, costs and expenses which arise or may be contemplated under any provisions of this Lease by reason of Lessee's use of the Property and occupation of the Premises during the term hereof. All such charges, costs and expenses shall constitute additional charges, and upon the failure of Lessee to pay any of such costs, charges or expenses, Lessor shall have the same rights and remedies as otherwise provided in this Lease for the failure of Lessee to pay rent. It is the intention of the parties

hereto that this Lease shall not be terminable for any reason by Lessee and that Lessee shall in no event be entitled to any abatement of or reduction in rent payable hereunder except as expressly provided. Any present or future law to the contrary shall not alter this agreement of the parties.

4. **LATE CHARGES.** Lessee hereby acknowledges that late payment by Lessee of Rent or other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which may be difficult to ascertain. Such costs include, but are not limited to, processing, accounting, and late charges. Accordingly, if any installment of Rent or any sum due from Lessee shall not be received by Lessor or Lessor's designee within ten (10) days after written notice that said amount is past due, then Lessee shall pay to Lessor a late charge equal to ten (10%) percent of such overdue amount. Acceptance of such late charges by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor shall it prevent Lessor from exercising any of the other rights and remedies granted hereunder.
5. **UTILITIES:** The Lessee shall pay for all sewer service, telephone service, garbage and trash removal and all other services and utilities supplied to the Premises, together with any taxes thereon. Any utility extensions requested by the Lessee shall be subject to advance review by the Lessor.
6. **USES PROHIBITED.** Lessee shall not do or permit anything to be done in or about the Premises nor shall Lessee bring or keep anything therein which will in any way increase the existing rate of or affect any fire or other insurance upon the Premise or the contents of any building thereon, or which would cause a cancellation of any insurance policy covering any part of said Premises or its contents. Lessee shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Property or injure or annoy such other tenants or occupants, nor shall Lessee use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Lessee cause, maintain or permit any nuisance in, on or about the Premises. Lessee shall not commit or allow to be committed any waste in or upon the Premises.
7. **RULES AND REGULATIONS.** The Lessee agrees to faithfully observe and comply with all pertinent rules and regulations of the federal, state and local governments, as are presently in effect and may in the future be adopted. Lessee shall also faithfully observe and comply with the rules and regulations that Lessor shall from time to time promulgate and/or modify. The latter such rules and regulations shall be binding upon the Lessee upon delivery of a copy of such rules and regulations by Lessor to Lessee. Lessor shall not be responsible to Lessee for the nonperformance of any of said rules and regulations by any other tenants or occupants.
8. **MAINTENANCE, REPAIRS AND ALTERATION OF PREMISES.**
  - a. **Lessee's Obligations.** Lessee shall, during the term of this Lease, keep the Premises in good order, condition and repair. Lessee shall keep the Premises free

of all debris, weeds and brush for the term of this Lease. Lessee shall reimburse Kittitas County for any costs incurred in the event that the County Weed Authority or Kittitas County Department of Public Works undertakes noxious weed or vegetation control measures. Lessor shall incur no expense nor have any obligation of any kind whatsoever in connection with maintenance of the Premises. Lessee accepts the Premises in "AS IS" condition and expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the Premises in good order, condition and repair. Any improvements to the Premises which are necessary for the Lessee to demise, occupy and use the Premises for the purposes set forth in this Lease shall be done at Lessee's sole cost and expense in accordance with the terms of this Lease.

- b. **Lessee Not to Commit Waste.** Lessee agrees that it will not commit waste and that it will keep said premises in a safe, sanitary, neat, presentable, and otherwise good condition, and in general shall comply with all the applicable governmental rules, ordinances and regulations as may be required or imposed by such authorities on said premises and shall comply with any direction pursuant to law of any public officer or officers who shall be empowered to enforce local, state and federal rules, regulations and ordinances upon the Lessee with respect to the said Premises or the use, occupancy, or control thereof, and shall not suffer any improper or offensive use of said Premises.
- c. **Surrender.** On the last day of the term hereof, or on any sooner termination, Lessee shall surrender the Premises to Lessor in good condition broom clean, ordinary wear and tear excepted. Lessee shall repair any damage to the Premises occasioned by its use thereof, or occasioned by the removal of Lessee's buildings, trade fixtures, furnishings and equipment pursuant to Article 8(e)(4), which repair shall include the patching and filling of holes and repair of structural damage.
- d. **Lessor's Rights.** If Lessee fails to perform Lessee's obligations under this Article 8, Lessor at its option may (but shall not be required to) enter upon the Premises, after ten (10) days prior written notice to Lessee, and put the same in good order, condition and repair, and the cost thereof together with interest thereon at the rate of twelve (12%) percent per annum shall become due and payable as additional rental to Lessor together with Lessee's next rental installment.
- e. **Alterations and Additions.**
  - (1) Lessee shall not, without Lessor's prior written consent, make any alterations, improvements, or additions in, on or about the Premises, except for non-structural alterations not exceeding \$1,000.00 in cost. As a condition to giving such consent, Lessor may require that Lessee remove any such alterations, improvements, additions or utility installations at the expiration of the Lease term, and restore the Premises to its prior condition.

- (2) Lessee, at Lessee's sole cost and expense, shall pay any and all costs necessary to construct any facilities to be used on the Premises by Lessee. Lessee shall share equally with other tenants the cost of creating, segregating and securing any Common Areas to which Lessee has access.
- (3) Before commencing any work relating to alterations, additions and improvements affecting the Premises or Common Areas, Lessee shall notify Lessor in writing of the expected date of commencement thereof. Lessor shall then have the right at any time and from time to time to post and maintain on the Premises such notices as Lessor reasonably deems necessary to protect the Premises and Lessor from mechanic's liens, materialmen's liens or any other liens. In any event, Lessee shall pay, when due, all claims for labor or materials furnished to or for Lessee at or for use in the Premises. Lessee shall not permit any mechanic's or materialmen's liens to be levied against the Premises for any labor or material furnished to Lessee or claimed to have been furnished to Lessee or to Lessee's agents or contractors in connection with work of any character performed or claimed to have been performed on the Premises or at the direction of Lessee. Lessee shall not undertake any alterations or additions to the Premises without first obtaining the appropriate permits from any governmental agency having jurisdiction over improvements to the building.
- (4) Unless Lessor requires their removal, as set forth in Article 8(e)(1), all alterations, improvements or additions which may be made on the Premises subsequent to Lessee's first occupation of the Premises, shall become the property of Lessor and remain upon and be surrendered with the Premises at the expiration of the Lease term. Notwithstanding the provisions of this Article 8(e)(4), Lessee's machinery, affixed to the Premises so that it cannot be removed without material damage to the Premises, shall remain the property of Lessee and may be removed by Lessee subject to the provisions of Article 8(c).

9. **DAMAGE AND DESTRUCTION.**

- a. In the event that improvements on the Premises are damaged or destroyed, partially or totally, from any cause whatsoever, whether or not such damage or destruction is covered by any insurance, this Lease shall terminate.
- b. All property and improvements placed upon or made to the Premises shall be at Lessee's sole risk. Any property remaining on or about the Premises after Lessee's vacation thereof may be disposed of by Lessor as Lessor determines.

10. **COMMON AREAS.** The Common Areas shown on **EXHIBIT B** are available to Lessee and Lessee's respective officers, agents, employees, contractors, customers and invitees. With respect to the Common Areas, the following shall apply:

- a. **Definitions.** The phrase "Common Areas" means all areas and facilities outside the Premises designated on **EXHIBIT B** that are provided and designated for general

use and Lessee's officers, agents, employees, customers, and invitees together with certain other tenants of the Property. Common Areas include only sidewalks, landscaped areas, and driveways but shall exclude parking areas. Lessor reserves the right from time to time to make changes in the shape, size, location, number and extent of the land and improvements constituting the Common Areas. Lessor may designate from time to time additional parcels of land for use as a part thereof, and any additional land so designated by Lessor for such use shall be included until revoked by Lessor.

- b. **Common Area Maintenance.** During the term of this Lease, Lessee shall jointly use, operate, manage and maintain the Common Areas together with any other tenants having similar access so that the Common Areas are clean and free from accumulations of debris, filth, rubbish, and garbage. The manner in which such Common Areas shall be so maintained shall be at the sole discretion of Lessor, and use of the Common Areas shall be subject to such reasonable regulations and changes as Lessor shall make from time to time, including (but not by way of limitation) the right to close from time to time, if necessary, all or any portion of the Common Areas to such extent as may be legally sufficient in the opinion of Lessor's counsel, to prevent a dedication thereof or the accrual of rights of any person or of the public therein, or to close temporarily all or any portion of such Common Areas for such purposes.
- c. **Lessee's Rights and Obligations.**
- (1) **License to Use Common Areas.** Lessor hereby grants to Lessee during the term of this Lease, the license to use, for the benefit of Lessee and its officers, agents, employees, contractors, customers, and invitees, in common with others entitled to such use, the Common Areas as they from time to time exist, subject to the rights, powers, and privileges herein reserved to Lessor.
- (2) **Storage.** Storage, either permanent or temporary, of any materials, supplies or equipment in the Common Areas is strictly prohibited. Should Lessee violate this provision of the Lease, then in such event, Lessor may at Lessor's option either terminate this Lease or, without notice to Lessee, remove said materials, supplies, or equipment from the Common Areas and place such items in storage, the cost thereof to be reimbursed by Lessee within ten (10) days from receipt of a statement submitted by Lessor. All subsequent costs in connection with the storage of said items shall be paid to Lessor by Lessee as accrued. Failure of Lessee to pay these charges within ten (10) days from receipt of statement shall constitute a breach of this Lease.
- (3) **Parking.** Lessee and its officers, agents, employees, customers and invitees shall park their motor vehicles only in areas designated by Lessor for that purpose from time to time. Within five (5) days after request from Lessor, Lessee shall furnish to Lessor a list of the license numbers assigned to its motor vehicles, belonging to Lessee or to others, so as not to interfere with the

pedestrian sidewalks, roadways, loading areas, or any portion of the parking areas not designated by Lessor for such use by Lessee. Lessee agrees that receiving and shipping of goods and merchandise and all removal of refuse shall be made only by way of loading areas constituting part of the Premises. Lessee shall repair, at its cost, all deterioration or damage to the Common Areas occasioned by its lack of ordinary care.

d. **Construction.** Lessor, or any other tenant of the Property having such rights or obligations, while engaged in constructing improvements or making repairs or alterations in or about the Premises or in their vicinity, shall have the right to make reasonable use of the Common Areas.

11. **LIENS.** Lessee shall keep the Premises, Common Areas, Property, and the building(s) in which the Premises are situated, free from any liens arising out of any work performed, materials furnished or obligation incurred by Lessee. Lessor may require, at Lessor's sole option, that Lessee shall provide to Lessor, at Lessee's sole cost and expense, a lien and completion bond in an amount equal to one and one-half (1-1/2) times the estimated cost of any improvements, additions, or alterations in the Premises which Lessee desires to make, to insure Lessor against any liability for mechanic's and materialmen's liens and to insure completion of the work.

12. **ASSIGNMENT AND SUBLETTING.**

a. **By Lessee.** Lessee shall neither voluntarily nor by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, and shall not sublet said Premises or any part thereof, or any right or privilege appurtenant thereto, or allow any other person (the officers, employees, agents, servants, and invitees of Lessee excepted) to occupy or use said Premises or any portion thereof, without the prior written consent of Lessor. Any assignment or subletting done without Lessor's written approval shall be void, and shall, at the option of the Lessor, constitute a default under the terms of this Lease.

b. **By Lessor.** Lessor reserves the right to assign this Lease and/or all rights of Lessor for any purpose to any third party whereupon Lessee shall then and thereafter render all performance under this Lease to such assignee except as to any and all residual obligations to Lessor.

13. **INSURANCE.** Lessee shall obtain and maintain in force during the term of this agreement a comprehensive liability insurance policy, which provides protection for bodily injury (including death) and property damage. Said insurance shall provide coverage by the Lessee to any officers, agents, employees, invitees or permittees of the Lessee, and shall name the Lessor as co-insured. Lessee shall provide the Lessor with a copy of said insurance policy.

a. The Lessee's liability insurance policy shall at a minimum have the following provisions:

(1) Premises and leased area liability coverage in an amount not less than \$1,000,000 each occurrence. Lessee may provide this insurance under a blanket policy, provided that said insurance shall have a Lessor's protective liability endorsement attached thereto.

(2) Provision for not less than thirty (30) days advance written notice to Kittitas County regarding any material change or termination of the policy. If Lessee shall fail to maintain said insurance, Lessor may, but shall not be required to, procure and maintain the same, but at the expense of Lessee.

b. The limit of any such insurance shall not, however, limit the liability of Lessee hereunder.

c. Proof of insurance shall be in a form acceptable to and approved by the County as Lessor. A certificate of insurance **naming the County, its elected officers and employees as additional insureds, and naming the County as a certificate holder shall accompany this Lease for signature.**

d. **No contract shall form until and unless a copy of the certificate of insurance, in the amount required, is attached hereto.**

e. Lessee hereby releases Lessor of and from every and all right, claim and demand that Lessee may hereafter have against Lessor, its successors or assigns, arising out of or in connection with any loss or losses occasioned by fire and such items as are included under the normal extended coverage clauses of insurance policies, and does hereby waive all rights of subrogation in favor of insurance carriers against Lessor arising out of such losses sustained by Lessee in or to the said Premises and leased area.

14. **HOLD HARMLESS.**

a. Lessee hereby agrees to defend, indemnify and hold harmless the County (Lessor), its elective and appointed officers and employees, from and against any and all claims or demands whatsoever arising out of any loss, damage, or injury to persons or property resulting from the Lessee's use or occupancy of the Premises, Leased Area and Common Areas. It is further expressly provided that no liability shall attach to the County by reason of entering into this Lease, except as expressly provided herein.

b. This hold harmless and indemnification provision shall extend to any and all claims arising from Lessee's use of the Premises and Leased and Common Areas or from the conduct of its business or from any activity, work or things which may be permitted or suffered by Lessee in or about the Premises. This hold harmless and indemnification provision shall further apply to any and all claims arising from any breach or default or performance of any obligation on Lessee's part to be performed under the provisions of this Lease arising from any negligence by Lessee or any of its officers, agents, contractors, employees or invitees, and from any and all costs,



attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon.

- c. Lessee hereby assumes all risk of damage to the property or injury to persons in or about the Premises from any cause and Lessee hereby waives all claims in respect thereof against Lessor except for when the said damage or injury arises out of the sole negligence of Lessor.
- d. Lessee hereby agrees that Lessor shall not be liable for injury to Lessee's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Lessee, Lessee's officers, agents, employees, invitees, customers or any other person in or about the Premises; nor, unless through its own negligence, shall Lessor be liable for injury to the person of Lessee, Lessee's employees, agents, customers or other invitees, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, or from any other cause, whether said damage or injury results from conditions arising upon the Premises or upon other portions of the real Property of which the Premises are a part or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Lessor or Lessee.
- e. Lessor shall not be liable for any damages arising from any act or negligence of any other Tenant, if any, of the Property of which the Premises are a part.

15. **NOTICES.** Any notice or demand given by one party to the other in connection with this agreement shall be in writing and shall be sent postage prepaid by United States certified or registered mail, return receipt requested, to the addresses hereinbelow stated, or to such other place as may from time to time be otherwise designated, as follows:

- (a) If to Lessor, addressed to:  
Kittitas County Auditor  
205 West 5<sup>th</sup>, Room 105  
Ellensburg, Washington 98926
- (b) If to Lessee, addressed to:

Upon a change of address, the party whose address has changed shall notify the other party in writing within Ten (10) days of the date the change is to become effective. Notice shall be deemed to have been received on the date of receipt as shown on the return receipt. Notice need be sent to but one Lessee where the Lessee is more than one person.

16. **ATTORNEY FEES.** In case Lessor shall bring suit to recover any Rent or other charges due hereunder, or for breach of any provision of this Lease, or to recover possession of the Leased premises, or if Lessee shall bring any action for any relief against Lessor, declaratory or otherwise, arising out of this Lease, the prevailing party shall recover reasonable attorney fees which shall be determined and taxed by the court as part of the costs of such action.
17. **HOLDING OVER.** If Lessee remains in possession of the Premises or any part thereof after expiration of the term herein with the express written consent of Lessor, such occupancy shall become a tenancy from month to month at a rental in the amount of the last monthly Rent, plus all other charges payable hereunder, and upon all other terms hereof applicable to a month to month tenancy, until such time as the parties may enter into another Lease agreement under such agreement's stated terms and conditions.
18. **ENTRY BY LESSOR.** Lessor reserves, and shall at any and all reasonable times have the right to enter the Premises to inspect the same and to submit the Premises to prospective purchasers or tenants and post notices of non-responsibility and for any other purpose that Lessor, in its sole discretion, deems necessary; PROVIDED, however, that the business of Lessee shall not be interfered with unreasonably.
- a. Upon entry by Lessor, Lessee hereby waives any claim for damages, injury, inconvenience to or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Premises and any other loss occasioned thereby.
  - b. For each of the aforesaid purposes, Lessor may have and retain a key with which to unlock all doors in, upon and about the Premises, excluding Lessee's vaults, safes and files, and Lessor shall have the right to use any and all means which Lessor may deem proper to open said doors in an emergency in order to obtain entry to the Premises, without liability to Lessee except for any failure by Lessor to exercise due care for Lessee's property.
  - c. Any entry to the Premises obtained by Lessor by any of said means, or otherwise, shall under no circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, nor shall such entry be deemed an eviction of Lessee from the Premises or any portion thereof.
19. **LESSEE'S DEFAULT.** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Lessee.
- a. Lessee's abandonment of the Premises.
  - b. Lessee's failure to make any payment of Rent or any other payment required hereunder, as and when due.
  - c. Lessee's failure to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by the Lessee, other than failure to pay Rent, where such failure shall continue for a period of Fifteen (15) days after written

notice thereof by Lessor to Lessee; PROVIDED, however, that if the nature of Lessee's default is such that more than Fifteen (15) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within said Fifteen (15) day period and thereafter diligently pursues such cure to completion.

- d. Lessee's making of any general assignment or general arrangement for the benefit of creditors, or the filing by or against Lessee of a petition to have Lessee adjudged a bankrupt, or the filing of a petition for reorganization or arrangement under any law relating to bankruptcy, unless, in the case of a petition filed against Lessee, the same is dismissed within Sixty (60) days.
- e. The appointment of a trustee or a receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within Thirty (30) days.
- f. The attachment, execution or other judicial seizure of substantially all of Lessee's interest in this Lease, where such seizure is not discharged within Thirty (30) days.
- g. In the case of Lessee's insolvency or bankruptcy, or any assignment for the benefit of creditors or the appointment of a receiver for the Lessee, this Lease shall be immediately forfeited and shall be of no further force and effect, and the Trustee in Bankruptcy, Receiver, or Assignee for the benefit of creditors shall have no rights whatsoever in the Lease or in the demised Premises.

20. **LESSOR'S REMEDIES IN DEFAULT.**

- a. In the event that Lessee shall fail to comply with any of Lessee's commitments, duties or responsibilities under this Lease or any of its conditions or terms as herein stated, Lessee shall be in default or breach of this agreement. At any time thereafter, Lessor may terminate this Lease by giving Thirty (30) days written notice of the conditions or terms being violated. If said failures are not corrected within the Thirty (30) day period, this Lease may be terminated and the Lessor shall be entitled to peaceably retake possession of the premises, provided the Lessee shall have the right to remove improvements as herein provided. In addition to the provisions hereinabove, and/or as an alternative or cumulative remedy, Lessor may, at its sole election, pursue any other action, redress, or remedy now or hereafter available to Lessor under the laws of the State of Washington, including its Landlord-Tenant laws.
- b. Notwithstanding the foregoing, at any time after Lessee's default, when in accord with Washington law and with or without notice or demand, and without limiting Lessor in the exercise of a right or remedy which Lessor may have by reason of such default or breach, Lessor may take the following actions:

- (1) Terminate Lessee's right to possession of the Premises by any lawful means, in which case Lease shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event, Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of Lessee's default, including but not limited to the following:
  - a. Costs of recovering possession of the Premises;
  - b. Expenses of reletting, including necessary renovation and alteration of the Premises;
  - c. Reasonable attorney's fees;
  - d. The worth (at the time of award by the court having jurisdiction) of the amount by which the unpaid Rent (and other charges and adjustments) for the balance of the term after the time of the court's award which exceeds the amount of such loss for the same period that Lessee proves could be reasonably avoided; and that portion of any leasing commission paid by Lessor and applicable to the unexpired term of this Lease.
  - e. Unpaid installments of rent or other sums shall bear interest from the date due at the rate of ten (10%) percent per annum.
  
- (2) In the alternative, Lessor may maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease, including the right to recover the Rent and any other charges and adjustments as may become due hereunder; or,
  
- (3) Lessor may pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the State of Washington.

21. **DEFAULT BY LESSOR.** Lessor shall not be in default unless Lessor fails to perform obligations required of Lessor within a reasonable time, but in no event later than Thirty (30) days after written notice by Lessee to Lessor specifying wherein Lessor has failed to perform such obligation; PROVIDED, however, that if the nature of Lessor's obligation is such that more than Thirty (30) days are required for performance, then Lessor shall not be in default if Lessor commences performance within such Thirty (30) day period and thereafter diligently prosecutes the same to completion. In no event shall Lessee have the right to terminate this Lease as a result of Lessor's default and Lessee's remedies shall be limited to damages and/or injunction.

22. **SALE OF PREMISES BY LESSOR.** In the event of any sale of the Property or Premises leased by Lessor, Lessor shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission arising after consummation of such sale. The purchaser at such sale or any subsequent sale of the Property or leased Premises shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and any such

purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of Lessor under this Lease.

23. **WAIVER.** No assent, express or implied, by the Lessor to any breach of any of Lessee's covenants, agreements, conditions or terms hereof shall be deemed or taken to be a waiver of any succeeding breach of any covenant, agreement, condition or term hereof. The subsequent acceptance of Rent by Lessor shall not be deemed to be a waiver of any preceding default by Lessee of any term, covenant, condition or term of this Lease, other than the failure of Lessee to pay the particular Rent so accepted, regardless of Lessor's knowledge of such preceding default at the time of the acceptance of such rent.
24. **VENUE AND CHOICE OF LAW.** This Lease shall be governed by the laws of the State of Washington and in the event of any litigation between Lessor and Lessee arising out of this Lease, the venue for such action shall lie in Kittitas County, notwithstanding any contrary provision of the Revised Code of Washington.
25. **GENERAL PROVISIONS.**
- a. **Signs.** Lessee may affix and maintain upon the glass panes and supports of the show windows and upon the exterior walls of the Premises only such signs, advertising placards, names, insignia, trademarks, and descriptive material as shall have first received the written approval of Lessor as to type, size, color, location, copy nature and display qualities.
  - b. **Auctions.** Without the express written prior authorization and consent of Lessor, Lessee shall not conduct or allow to be conducted any sales by auction in, upon or from the Premises, whether said auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors or pursuant to any bankruptcy or other insolvency proceeding.
  - c. **Joint Obligation.** If there be more than one Lessee, the obligations hereunder imposed shall be joint and several.
  - d. **Marginal Headings.** The marginal headings and article titles to the articles of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.
  - e. **Time.** Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.
  - f. **Successors and Assigns.** The covenants and conditions, obligations and privileges herein contained, subject to the provisions as to assignment, apply to and shall be binding upon the heirs, successors, executors, administrators and assigns of the parties hereto.

- g. **Quiet Possession.** Upon payment by Lessee of the Rent reserved hereunder and upon Lessee's observation and performance of all the covenants, conditions and provisions on Lessee's part to be observed and performed, Lessee shall have quiet possession of the Premises for the entire term hereof, subject to all the provisions of this Lease.
- h. **Inability to Perform.** This Lease and the obligations of the Lessee hereunder shall not be affected or impaired due to the inability by Lessor to fulfill any of its obligations hereunder, or by reason of Lessor's delay in doing so, by reason of strike, labor troubles, acts of God, or any other cause beyond Lessor's reasonable control.
- i. **Partial Invalidity.** Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provisions shall remain in full force and effect.
- j. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- k. **Prior Agreements.** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or added to, except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Lease shall not be effective or binding on any party until fully executed by both parties hereto.
- l. **Applicability.** The covenants, agreements, terms and conditions contained in this Lease shall apply to and be binding upon Lessor and Lessee and their respective heirs, executors, administrators, successor and assigns.
- m. **Integration.** Exhibits and Recitals are incorporated herein by this reference. This Lease embodies the entire agreement between the parties with respect to the subject matter herein contained. No amendments or modifications hereof shall be enforceable unless in writing, signed by the parties.

IN WITNESS WHEREOF, Lessor and Lessee have signed their names and affixed their seals the day and year first above written.



ATTEST:

Catherine Dean  
Clerk of the Board

Approved as to form:

Neil P. Perkins  
Prosecuting Attorney

LESSOR:

BOARD OF COUNTY COMMISSIONERS  
KITTITAS COUNTY, WASHINGTON

7.7a  
Chair

[Signature]  
Commissioner

[Signature]  
Commissioner

LESSEE:

[Signature]

Kellen B Properties, LLC

Address: 370 Trinity LN  
Ellensburg, WA 98926

EXHIBIT A

THE NORTH  $\frac{1}{2}$  OF LOT 7, ALL OF LOTS 8, 9 AND 10, BLOCK 12,  
ELLENSBURG AS PER PLAT THEREOF RECORDED IN BOOK 1 OF PLATS,  
PAGE 1, RECORDS OF KITTITAS COUNTY, STATE OF WASHINGTON



EXHIBIT B-1

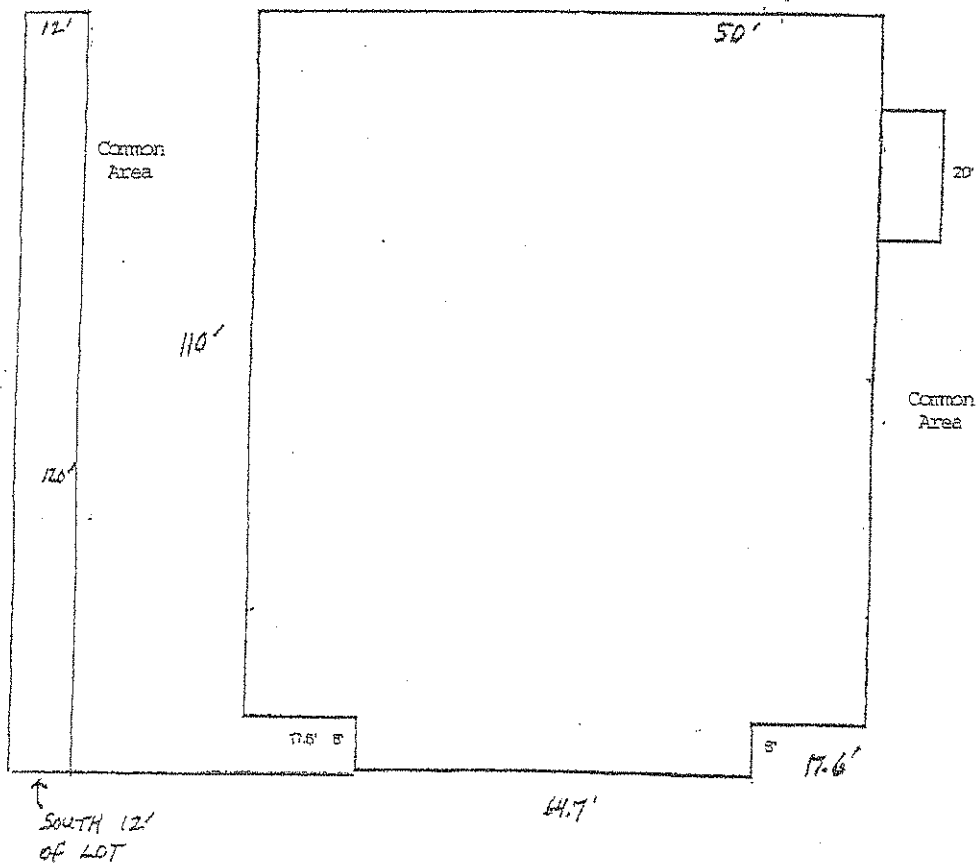


EXHIBIT B-2

	PDK LQ		(40)
	5	8 8	5
Cow Conc	6	8.5	
	7 6	7	
(42)	1-1 1st 349		
	36		36
	(306)		
	8.5		



Certificate of Insurance

This certifies that

- State Farm Fire and Casualty Company, Bloomington, Illinois
State Farm General Insurance Company, Bloomington, Illinois
State Farm Fire and Casualty Company, Aurora, Ontario
State Farm Florida Insurance Company, Winter Haven, Florida
State Farm Lloyds, Dallas, Texas

insures the following policyholder for the coverages indicated below:

Policyholder: BEEDLE, KENNETH & KELLY DBA KELLEN B PROPERTIES LLC
Address of policyholder: 370 TRINITY LN, ELLENSBURG, WA 98926
Location of operations: 409 N RUBY STREET, ELLENSBURG, WA 98926
Description of operations: DRIVE-THRU COFFEE STAND

The policies listed below have been issued to the policyholder for the policy periods shown. The insurance described in these policies is subject to all the terms, exclusions, and conditions of those policies. The limits of liability shown may have been reduced by any paid claims.

Table with columns: Policy Number, Type of Insurance, Policy Period (Effective Date, Expiration Date), Limits of Liability (at beginning of policy period). Includes policies 98-BK-X381-9, 47-GT-9700-7F, and 090 3731-B07-47B.

THE CERTIFICATE OF INSURANCE IS NOT A CONTRACT OF INSURANCE AND NEITHER AFFIRMATIVELY NOR NEGATIVELY AMENDS, EXTENDS OR ALTERS THE COVERAGE APPROVED BY ANY POLICY DESCRIBED HEREIN.

Name and Address of Certification Holder

COVERAGE IS PRIMARY & NON-CONTRIBUTORY
WAIVER OF SUBROGATION APPLIES
CERTIFICATE HOLDER IS NAMED AS ADDITIONAL INSURED

KITTITAS COUNTY, IT'S ELECTED OFFICERS & EMPLOYEES
C/O KITTITAS COUNTY AUDITOR
205 WEST 5TH, ROOM 105
ELLENSBURG, WA 98926

If any of the described policies are canceled before their expiration date, State Farm will try to mail a written notice to the certificate holder 30 days before cancellation.

Signature of Authorized Representative: Scott Rollins
LSA-5
Date: 09/24/2011
Title: SCOTT ROLLINS
Agent Name
Telephone Number: (509) 925-1483

Agent's Code Stamp
Agent Code: 2711
AFO Code: F489