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Doc ID: 033345010005 Type: GEN
Kind: MISCELLANEOUS
Recorded: 09/12/2018 at 01:10:22 PM
Fee Amt: \$27.00 Page 1 of 5
Revenue Tax: \$0.00
Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2018-00021379

BK 17074 PG 291-295

**Landlord's Waiver
Recorder's Cover Sheet**

Preparer Information:

23 Ingersoll, LLC
1964 W. Wayzata Blvd. Ste 200
Long Lake, MN 55356
952-250-5343

Return Document To:

Earlham Savings Bank
Attn: Tim McCarroll
1107 Keosauqua Way
Des Moines, IA 50309
515-883-3100

RETURN TO:

**AGREEMENT
Between**

**23 Ingersoll, LLC ("Lessor"),
Teddy Maroons II, LLC ("Lessee"), and
Earlham Savings Bank ("Lender").**

THIS AGREEMENT is effective the **29th** day of **August, 2018**, between Lessor, Lessee and Lender.

1. Premises; Lease; Term. The Lessor owns certain premises that are leased to Lessee: (i) premises known as **The Soll**, located at **2301 Ingersoll Ave, Des Moines, IA 50312** ("Premises"), which are leased to Lessee pursuant to a Lease dated **July 15, 2018**.

2. Security Agreement; Personal Property. Lender has or desires to establish a credit facility in favor of Lessee evidenced by loan documents, and secured pursuant to a security agreement by and between the Lessee and the Lender dated **September 5, 2018**, as amended from time to time (the "Security Agreement"), covering certain personal property belonging to the Lessee located at or in the Premises ("Personal Property") described on Exhibit A attached hereto. The Personal Property is, for purposes of this Agreement specifically excludes any building fixtures or Lessee improvements placed or installed upon the Premises.

3. Waiver. During the term of the Agreement, Lessor hereby releases and waives any interest in the Personal Property. Lessor agrees that any lien of the Lender shall be superior to any right, title, interest, claim or lien that Lessor may have in any items that may be determined to be Personal Property.

4. Lender Not Liable for Lessee's Obligations. The Lessor acknowledges that, except as set forth in Paragraphs 6 and 7 hereof, the Lender shall have no duty, obligation or liability whatsoever for rent or otherwise with respect to the possession, occupancy or use of the Premises.

5. Right to Cancel Lease. Subject to Paragraphs 6 and 7 hereof, the Lessor reserves in all respects the right to cancel or terminate the Lease for nonpayment of rent or otherwise, whether or not the Lender is in possession of the Premises.

6. Lender's Limited Right to Occupy Premises. The Lessor agrees to recognize a limited right of possession granted to the Lender by the Lessee pursuant to the Security Agreement subject to the terms and limitations set forth in this Section 6 and in Section 7 below. Upon any Default or Event of Default, as those terms are defined under the Security Agreement, Lender shall have the right, upon reasonable advance notice to Lessor and without further consent on the part of Lessor, to enter upon the Premises during normal business and to take possession of the Personal Property and to deal with the Personal Property as provided in the Security Agreement and under any applicable provision of law including, but not limited to, Sections 9-601 et seq. of the Uniform Commercial Code of Iowa. Lender shall remove any Personal Property in a commercially reasonable and prompt manner, unless the Lender elects to exercise its rights under Paragraph 7 below, and shall repair any damage caused by Lender's actions or the removal of any Personal Property and shall leave the Premises in good order, condition and repair, ordinary wear and tear excepted. Furthermore, Lender shall not disturb or damage the common area in the building or the structural integrity of the Premises. In addition, Lender shall defend and hold Lessor harmless from and against any and all claims, demands, actions, proceedings, losses, damages, liabilities, obligations, penalties, costs and expenses, including, without limitation, all lost profits and other consequential damages, attorneys' fees, consultants' fees and court costs incurred or suffered by or asserted against Lessor by reason of any damage done to the Premises or the common area of the building in connection with such removal by or on behalf of Lender.

7. Lender's Obligations. Upon reasonable advance notice to Lessor, Lender may retain possession of the Premises for such time as shall be required by Lender to hold, store, liquidate, realize upon or otherwise dispose of or effect a complete removal of the Personal Property, but such duration of possession shall in no event exceed a period of 120 days from the date of entry by the Lender on the Premises ("Extended Expiration Period"). Lender shall give at least five (5) days written notice to Lessor of Lender's intent to vacate the Premises. Lender shall pay to Lessor with respect to such Extended Expiration Period a monthly rent equal to the monthly non-default rent provided for in the Lease. However, if such Extended Expiration Period or any portion thereof shall occur after the

expiration of the Lease term, Lender shall pay, with respect to the portion of the Extended Expiration Period after the expiration of the Lease term, the greater of (a) any holdover rent which Lessee would have been required to pay pursuant to the Lease or (b) the then current market rent for the Premises. For purposes of the preceding sentence, Lease term shall mean the original term of the Lease and not as shortened by any default provision of the Lease or other agreement, right or remedy of the Lessor. In addition, Lender shall defend and hold Lessor harmless from and against any and all claims, demands, actions, proceedings, losses, damages, liabilities, obligations, penalties, costs and expenses, including, without limitation, all lost profits and other consequential damages, attorneys' fees, consultants' fees and court costs incurred or suffered by or asserted against Lessor by reason of Lender's failure to surrender the Premises as required by this Agreement.

8. Notices. All notices given hereunder by either party shall be given by (i) personal delivery, or (ii) facsimile transmission, with confirming copy by first class United States mail, postage prepaid, or (iii) first class United States mail, postage prepaid, addressed as follows:

If to Lessor: **1964 W. Wayzata Blvd. Ste 200, Long Lake, MN 55356**

If to Lender: **130 N. Chestnut Ave., Earlham, IA 50072**

or such other address as Lessor or Lender may designate pursuant to this paragraph. Notice given as aforesaid shall be deemed sufficient service and shall be deemed given as of the third business day after the date deposited in the United States mail or upon actual receipt, whichever is earlier.

9. Miscellaneous. This Agreement shall be binding upon and inure to the benefit of the signatories hereto and their successors and assigns. This Agreement may not be amended, supplemented or modified except in writing. This Agreement shall be governed by and construed in accordance with the substantive law (other than conflict laws) of the State of Iowa. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one agreement.

10. Construction. Wherever possible, each provision of this Agreement and each related document shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement or any related document shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or remaining provisions of this Agreement or such related documents. The language in all or any part of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any party hereto. The parties hereto acknowledge and understand that each party and that party's counsel have reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any modification or amendment hereto.

11. Lessor will endeavor to give Lender prior written notice to remove the Personal Property as a result of a termination of the Lease or the Lessee's right to possession of the Premises (such written notice being, the "Removal Notice"). After Lessor provides Lender with the Removal Notice, Lender shall be permitted to peaceably enter and retain possession of the Premises in accordance with the terms and conditions set forth in Section 6 of this Agreement. Any failure on the part of Lessor to provide the notice required by this paragraph will not result in any liability of Lessor to Lender or any other person.

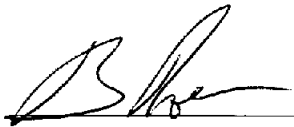
12. Lessee hereby authorizes Lessor and Lender to communicate directly with each other at any time and as often as Lessor or Lender may desire, without prior notice to Lessee and without in any way involving Lessee, with respect to any and all matters concerning the Lease, including, but not limited to, the existence of any default or event of default under the Lease or any other matter pertaining to the Lease or the Premises. Lessee agrees to promptly provide to Lender any notices from Lessor or its representatives regarding the existence or alleged existence of any default under the Lease, any non-renewal or termination of the Lease, or any other matter materially affecting Lessee's rights or obligations under the Lease or with respect to the Premises.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed effective as of the date set forth above.

23 Triggsoll, LLC

Lessor

By:



Brian Roer

Its:

Manager

Date:

9/7/18

Teddy Marsons II, LLC

Lessee

By:



CHRISTOPHER DIEBER

Its:

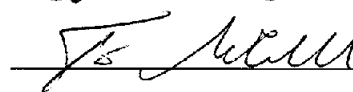
MANAGING PARTNER

Date:

9/7/18

Lender

By:

Earlham Savings Bank


Tom McCarroll

Its:

Loan Officer

Date:

9-7-18



Bryanna L. Manley

EXHIBIT A

COLLATERAL

2408343.1

All Inventory, Chattel Paper, Accounts, Equipment, General Intangibles, Consumer Goods, Fixtures and Minerals, Oil and Gas. All assets of the debtor now owned and hereafter acquired.