

## LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into on or as of the 22<sup>nd</sup> day of April, 2004, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, 200 East Main Street, Lexington, Kentucky 40507 ("Lessor") and **ALFALFA RESTAURANT, LLC**, a Kentucky limited liability company, of 13433 Mound Avenue, Glen Ellen, California 95442 ("Lessee").

### WITNESSETH:

1. **Premises:** Lessor does hereby let, lease and demise unto Lessee a portion of the premises located at 141-143 East Main Street in Lexington, Kentucky (the "Building"). The premises which the Lessee shall have the right to occupy under the terms of this Lease are a portion of the premises known as the Downtown Arts Center which is a portion of the premises leased to Lessor by lease from the Commonwealth of Kentucky and recorded in Deed Book 1893, Page 629, Fayette County Clerk's Office. The area which the Lessee is to occupy consists of approximately 2245 square feet of commercial space and approximately 183 square feet of adjacent storage space on the ground floor of the Building as shown on the floor plan attached hereto as *Exhibit A* (hereinafter the "Premises").

2. **Use:** Lessee shall use the Premises for a restaurant with live entertainment serving food, alcoholic and non-alcoholic beverages and related services and for no other purpose.

3. **Term:** To have and to hold unto Lessee for a term of three (3) years commencing on July 1, 2004 and continuing thereafter for a period of thirty-six (36) consecutive months. Lessee may renew this Lease for additional terms of one (1) year each by giving written notice to Lessor one hundred twenty (120) days prior to the expiration of the original term. This renewal option is subject to Lessor's right to terminate this Lease in accordance with the terms of Paragraph 5 below. Further, Lessor grants Lessee possession of the Premises effective April 30, 2004 for the purpose of making Lessee Improvements; but Lessee's right to occupy and use the Premises as a restaurant commences July 1, 2004; and, Lessee's obligation to pay rent for the Premises shall not accrue until July 1, 2004.

4. **Rent:** The Premises contain an area of 2,428 square feet (more or less) and the initial rental rate for the three (3) year original terms is as follows: One Thousand Nine Hundred Dollars and No Cents (\$1,900.00) per month for year one (1), Two Thousand One Hundred Dollars and No Cents (\$2,100.00) per month for year two (2), and Two Thousand Three Hundred Dollars and No Cents (\$2,300.00) per month for year three (3).

Lessee hereby covenants and agrees to pay to Lessor, without demand, at its office or such other place as Lessor may from time to time designate, said rent for the Premises during the term of this Lease, in advance, beginning on July 1, 2004, and continuing thereafter, on the first day of each and every calendar month.

Lessee shall pay all taxes and assessments against its personal property and permit, inspection and license fees, if any, for operation of the business as proposed herein.

5. **Rent Negotiations for the first twelve (12) month renewal period:** Not less than ninety (90) days prior to the expiration of the original three (3) year term, the parties shall meet to negotiate the amount of rent to be paid during the first renewal period of twelve (12) months if Lessee desires to exercise its option to renew, based upon market rates for comparable space, utility expenses incurred by Lessor, and other factors deemed relevant by the parties, however, in no case shall the monthly rent increase be less than 7.50% nor more than 15.00% of the monthly rent in year three (3) of the original term. Lessor shall not be obligated to agree on a rental rate for the first renewal period less than 15.00%, and therefore Lessor shall not be obligated to renew this Lease for the first renewal period for an amount less than 15.00%. Lessee shall not be obligated to agree on a rental rate for the first renewal period more than 7.50%, and therefore Lessee shall not be obligated to renew this Lease for the first renewal period for an amount more than 7.50%. However, if the parties do agree on the rent for the renewal period, same shall be evidenced in writing. For the second and subsequent renewal periods of twelve (12) months each the rental rate shall be based on the previous year's rental rate multiplied by the cumulative percentage increase in the Consumer Price Index (CPI)-All Items index (as published by the Bureau of Labor Statistics of the U. S. Department of Commerce, Southeastern Regional Office) from the April 1 through March 31 time period prior to the beginning of a renewal period. For example the rental rate for the renewal period of July 1, 2008 through June 30, 2009 would be the rental rate of July 1, 2007 through June 30, 2008 multiplied by the CPI of April 1, 2007 through March 31, 2008.

6. **Termination:** Lessor may terminate this Lease by giving Lessee one hundred twenty (120) days prior written notice; but only upon reimbursement of Lessee's actual cost of Lessee Improvements, not to exceed Seventy Thousand Dollars and No Cents (\$70,000.00). However, beginning July 1, 2005, and on the like date of each year thereafter, the aforesaid reimbursement of Lessee Improvements shall be reduced by Fourteen Thousand Dollars and No Cents (\$14,000.00). Notice shall be sent to Lessee at the address designated in Paragraph 23 below. Lessor's Commissioner of the Department of General Services (the "Commissioner") is authorized at his discretion to terminate this Lease on behalf of Lessor. Lessor's reimbursement to Lessee of the cost of Lessee Improvements, as adjusted annually, shall be made within sixty (60) days of Lessee's vacancy of the Premises. Reimbursement as provided in this paragraph shall be required only in the event of voluntary termination of this Lease by Lessor or as provided in paragraph 14(d) and under no other circumstance shall Lessor be responsible for any such reimbursement.

7. **Alterations by Lessee:**

(a) **Types of Alterations and Improvements:** Lessee shall have the right during the term of this Lease to make such alterations or improvements in the Premises, excepting structural alterations or improvements, as may be proper and necessary for the conduct of Lessee's business and for the full beneficial use of the Premises; provided, that Lessee shall pay all costs and expenses and charges thereof, shall make such alterations and improvements in accordance with applicable laws and building codes and in a good and workmanlike manner, and shall fully and completely indemnify Lessor against any mechanic's or materialman's liens or other liens or claims in conjunction with the making of such alterations and improvements. Any and all alterations or improvements must be approved by the Lessor, in writing, and such approval shall

not be unreasonably withheld. Lessor may impose reasonable requirements as a condition of such approval, including, without limitation, the submission of plans and specifications, the obtaining of permits, posting of bonds, affidavits from engineers or technicians acceptable to Lessor stating that the work will not adversely affect the Building, and requirements as to the manner and times in which such work will be done. Lessor's Commissioner or his designee is authorized to approve all additions, changes, alterations or improvements and may sign any writing evidencing such consent.

**(b) Removal of Improvements:** Any and all improvements once installed, affixed or located in or on the Premises shall be and remain on the Premises and belong to the Lessor as further consideration of this Lease, for example, plumbing, electrical wiring/conduit, duct work, flooring, and ceiling tiles. Except as otherwise provided, all inventory, furnishings, trade fixtures, and other equipment installed in the Premises by Lessee and paid for by Lessee shall remain the property of Lessee and may be removed by Lessee upon the termination of this Lease; provided (1) that any of such as are affixed to the Premises and require severance may be removed only if Lessee shall repair any damage caused by such removal, and restore the damaged Premises to the same condition they were in before any of such as were installed or affixed, and (2) that Lessee shall have fully performed all of the covenants and agreements to be performed by Lessee under the provisions of this Lease.

**(c) Utility Capacity:** Lessee agrees that any alterations or improvements will not exceed or overload the capacity of any utilities installed by Lessor as set forth in Paragraph 13 below.

**8. Signs:** Lessee shall not place any sign or paint, or permit to be painted, its name or any advertisement directly on any part of the Premises or the Building except as provided herein. However, Lessee shall be permitted to place, at its expense, its name or sign on the exterior of the Building and on the entrance to the Premises from the lobby of the Building, provided such signs comply with the applicable ordinances of the Lexington-Fayette Urban County Government, are aesthetically consistent with the exterior architecture and interior decor of the Building, and are approved in writing by the Lessor's Commissioner before being affixed by or posted on the Building and/or the Premises. Such approval shall not be unreasonably withheld. Lessor retains the right to place such signs or banners on or in the Building as it may deem appropriate.

**9. Condition of Premises:** Prior to occupancy, Lessee will have inspected the Premises or have had an opportunity to do so and have determined them to be suitable for its intended use as described herein. By taking occupancy of the Premises, Lessee accepts the Premises "as is", in their present condition, without any representation or warranty by Lessor as to the suitability of the site for such use and without any agreements, representations, understandings or obligations on the part of the Lessor to perform any additions, changes, alterations, repairs or improvements to the Premises, or provide any fit-up allowance. Lessee shall keep the Premises in a neat and clean condition, including all exterior and interior portions of all windows and doors, and all other glass. No exterior windows shall be blocked or covered by fixtures, furniture or signs of any type unless approved by Lessor in writing.

Without limiting the generality of the foregoing, Lessee shall be responsible for the cost and expense of interior wall coverings, floor coverings, and ceiling finish. Further, Lessee at its own cost and expense shall install all equipment and fixtures to properly fit up kitchen facilities in the Premises.

Notwithstanding the above, Lessor represents and warrants to the Lessee that the Building and Common Areas are ADA compliant; and Lessor shall be responsible for maintaining the Building and Common Areas in ADA compliant condition.

**10. Rubbish and Trash Disposal:**

**(a) Rubbish:** Lessee shall not permit the accumulation of garbage, trash, debris or waste of any kind on or around the Premises or cause same to accumulate on or around the Building (except as provided for in Paragraph 10(b) below), including contiguous sidewalks, and in the event Lessee fails to remove any accumulation of garbage, refuse, trash, debris or waste of any kind within twenty-four (24) hours after notice to remove the same, Lessor shall have the right to remove the same, in which event the cost of such removal shall be paid by Lessee as additional rent for the following month, excepting Lessor shall at no time be obligated to remove same but may terminate this Lease if two (2) or more violations of this subsection occur within any consecutive twelve (12) month period during the term or any renewal term of this Lease.

**(b) Trash Disposal:** All garbage, trash, debris or waste of any kind for disposal must be placed in an appropriate container within the designated area for collection or otherwise made ready for collection by Lessor, and Lessee shall strictly comply with all ordinances and regulations of Lessor with respect to trash disposal.

**11. Indemnification, Insurance:**

**(a)** Lessee agrees to obtain and maintain at all times, at a minimum, Commercial General Liability Insurance providing coverage at least as broad as Insurance Services Form CG-0001 (07/98) with a combination of primary and umbrella coverage limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage. Such insurance shall be placed with an insurance company having an A.M. Best rating of A-, X or better and authorized to do business in the Commonwealth of Kentucky. Lessee shall cause Lessor to be named additional insured on such insurance policy, and shall deliver a copy of the policy or certificate of insurance to Lessor prior to July 1, 2004. Such insurance shall provide an endorsement that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice, to Lexington-Fayette Urban County Government, Division of Risk Management, 200 East Main Street, Lexington, Kentucky 40507.

**(b)** Lessee will indemnify, save and hold harmless Lessor from and against any and all claims, actions, damages, liability and expenses (including but not limited to reasonable attorney fees) in connection with loss, personal injury, loss of life or damage to property arising from or out of any occurrence in, upon or at the Premises or the occupancy, use, repair or

maintenance by Lessee of the Premises or any part thereof occasioned fully or in part by any act or omission of Lessee, its agents, contractors, employees, licensees, guests or invitees, except to the extent such injury or damage results from a negligent or willful act or failure to act of Lessor.

(c) Lessor will indemnify, save and hold harmless Lessee from and against any and all claims, actions, damages, liability and expenses (including but not limited to reasonable attorney fees) in connection with loss, personal injury, loss of life or damage to property arising from or out of any occurrence in, upon or at the Premises or the occupancy, use, repair or maintenance by Lessor of the Premises or any part thereof occasioned fully or in part by any act or omission of Lessor, its agents, contractors, employees, licensees, guests or invitees, except to the extent such injury or damage results from a negligent or willful act or failure to act of Lessee.

**12. Operation of Business:**

(a) Lessee agrees to keep the Premises open for business during such times as are in keeping with good business practices and in the manner in which other businesses of the same type and class are operated, but in any event Lessee agrees at a minimum to keep the Premises open for business during lunch and evening hours, Monday through Saturday of each week exclusive of holidays, and open for dinner (but may elect to offer a limited menu) prior to performances and special events conducted in the theater portion of the Building; subject, however, to restrictions imposed by law, to union agreements and restrictions, and except as it may be necessary that the Premises be closed on account of the order of any duly constituted authority, or for the purpose of making repairs or improvements, or during the period of strikes, lockouts, emergencies or other causes beyond Lessee's reasonable control, so long as Lessee shall make all reasonable efforts to shorten such periods.

(b) Lessee shall maintain a wine and beer license for the Premises (including the sidewalks), and shall operate in compliance with all applicable laws, regulations and ordinances, and specifically refrain from serving customers who are underage, or service of excessive quantities to customers or guests.

(c) Lessee acknowledges that Lessor has entered into an agreement for the lease and management of the Downtown Arts Center and that such agreement will require that Lessee be given the right to negotiate to provide catering services (including the provision for providing food, wine and beer) during all events held at the Center. The opportunity to provide such services is contingent upon successful negotiations between Lessee and the particular client/host of the event, and Lessee covenants that it will act in good faith when negotiating to provide such services. Lessee is not obligated to provide such catering services.

(d) Lessee covenants that it will comply with good health and sanitation practices and all ordinances and regulations relating thereto.

(e) Lessee shall at its own cost and expense apply for, secure and maintain all permits and licenses necessary for the operation of its business.

**13. Utilities, Parking and Common Areas:**

(a) Lessor agrees to provide basic heating, air conditioning, electric, water and natural gas services to the Premises, and basic water and sewer service to restroom facilities serving the Premises. In the event electric service to all or any part of the Premises is separately metered at any time during the term or any extensions, Lessee shall secure such services at its own expense directly with the utility providing such services, and the rent provided herein shall not be reduced or adjusted. Lessee understands, acknowledges and agrees that any one or more of the utilities or other building services identified herein may be interrupted by reason of accident, emergency or other causes beyond Lessor's reasonable control, or the quality or character of utility service may be changed or such service may no longer be suitable for Lessee's requirements, or such services may be discontinued or diminished temporarily by Lessor or other persons until certain repairs, replacements, alterations, improvements or cleaning can be made, and that Lessor does not represent or warrant the uninterrupted availability of such utilities or building services.

Failure by Lessor to any extent to furnish any services to Lessee, the Premises or the Building, or any cessation (including any partial curtailment) thereof, shall not render Lessor liable in any respect for damages to person, property or otherwise (other than as a direct result of Lessor's gross negligence), nor be construed as an eviction of Lessee, nor work an abatement of rent, nor relieve Lessee from fulfillment of any covenant or agreement hereof, provided, however, that should Lessor cease to furnish any such service or such services are interrupted as a result of Lessor's negligence but not as a result of (i) curtailment in services imposed by any governmental authority, (ii) failure of the public utilities to furnish necessary services, or (iii) Lessee's negligence, gross negligence or willful misconduct (a "Service Interruption") and if, as a result of such Service Interruption, the Premises (or any part thereof) is untenable, and such Service Interruption continues for a period of twenty-four (24) hours and Lessee delivers notice to Lessor of such Service Interruption promptly upon the occurrence thereof then all rent shall abate as to those portions of the Premises rendered untenable, such abatement shall commence on the second full day after such Service Interruption occurs and shall continue until such space is again tenantable. The foregoing rights of Lessee shall constitute the sole and exclusive remedy involving, or with respect to, any interruption in the services to be provided in accordance herewith, Lessee hereby waiving any and all right to seek damages or exercise any other rights or remedies. Notwithstanding the foregoing, should any of the equipment or machinery utilized in supplying the services listed herein break down, or for any cause cease to function properly, Lessor shall use due diligence to repair same within a reasonable time.

(b) Lessee agrees that it will not install any equipment which will exceed or overload the capacity of any utility facilities installed by Lessor and that if any equipment installed by Lessee shall require additional utility facilities, such facilities shall be installed at Lessee's expense in accordance with plans and specifications to be approved in writing by Lessor.

(c) Lessee shall not utilize the lot on which the Building is located for parking. However, the east side of the "loading dock" area shown on *Exhibit A*, and the paved area adjacent thereto to the extent reasonably necessary for loading and unloading purposes, is

intended for Lessee's exclusive use and may be utilized by Lessee for parking when not otherwise in use by Lessee.

(d) Lessor grants Lessee, its employees, customers, invitees, together with and subject to the same right granted from time to time by Lessor to other parties and other tenants and occupants of the Building, the non-exclusive right to use the common areas of the Building or the real property on which it is located (the "Common Areas" as hereinafter defined), subject to such non-discriminatory rules and regulations as may be adopted by Lessor, and as such Common Areas may be modified by Lessor, which modifications shall not (i) materially interfere with Lessee's business, or (ii) materially restrict access to and from the Premises. The Common Areas shall include all common entrances to and exits from the Building, driveways, serviceways, crosswalks and sidewalks, hallways (exclusive of hallways and/or elevator lobbies on single tenant floors), stairways located outside of the Premises, common restroom facilities and elevators. Lessor shall provide adequate housekeeping and janitorial services for the Common Areas.

(e) Lessee shall have the right to use the exterior sidewalk portion of the Common Areas of the Building as a sidewalk café in the general area shown on *Exhibit A*, but such use shall be strictly in compliance with and to the extent allowed by the ordinances and regulations of Lessor, as same may from time to time exist or be amended. Further, to the extent allowed by ordinance and regulation of the Lessor and, further, subject to Lessor's approval of the design, which shall not be unreasonably withheld, Lessee may install an awning across that portion of the sidewalk to be used as the sidewalk café.

#### **14. Maintenance and Repair:**

(a) **Maintenance.** Except as expressly provided in this Lease, Lessor shall have no maintenance or repair responsibility for the Premises, except such as may be required thereto by reason of the acts or omissions of Lessor, as herein required; and at no time shall Lessor have any responsibility to maintain or repair any additions, changes, alterations or improvements made to the Premises by Lessee.

(b) **Repairs by Lessor:** Lessor shall maintain the plumbing, electrical, heating and air conditioning systems servicing the Premises, as provided in Paragraph 13(a); and Lessor shall maintain the roof, foundation and structural portion of the Building and Common Areas in good repair, except such as may be required thereto by reason of the acts of Lessee.

(c) **Repairs by Lessee:** Lessee shall at its own cost and expense keep and maintain the interior of the Premises in a neat and clean manner, in good condition and repair, and in as safe and clean condition as it was when Lessee took possession, including but not limited to the floor surfaces, exterior and interior doors and window frames and the replacement of all interior and exterior glass broken or cracked by Lessee. Lessee shall not commit or permit others to commit any waste on the Premises. Provided, however, notwithstanding anything in this Lease to the contrary, Lessee shall routinely service any clogged drain or sewer lines, or leaking water service or drain lines in the kitchen portion of the Premises.

**(d) Liability:** Lessor shall be liable for any damage to the Premises occasioned by reason of failure to keep the Premises in repair; however, in the event of such damage and/or need for repair, Lessee shall promptly give Lessor written notice thereof. From the date of Lessor's receipt of the aforesaid notice, Lessor shall have a period of thirty (30) days to make all necessary repairs and correct the damage. If the Lessor fails to make the repairs and correct the damage within thirty (30) days after notice, Lessee shall have the right to terminate this Lease as provided in Paragraph 31 and reimbursement of Lessee Improvements in the same manner as provided for in Paragraph 6 above. In any event, Lessor shall not be liable for any loss or damage done or occasioned by or from the electrical, heating, air-conditioning or plumbing installations in the Premises and/or the Building, damage resulting from action or inaction on the part of the Lessee, nor for any damage arising from acts of negligence of co-tenants or other occupants of the Building or buildings of which the Premises may form a part, nor the acts of any owners or occupants of adjoining or contiguous property. Lessor shall not be responsible for, and shall not be obligated to insure against, any loss of or damage to any personal property of Lessee or which Lessee may have in the Building or the Premises or any trade fixtures installed by or paid for by Lessee on the Premises or any additional or leasehold improvements which Lessee may construct on the Premises; and, notwithstanding anything contained herein to the contrary, Lessor shall not be liable, and Lessee releases Lessor from liability, for any loss or damage to such property, regardless of cause, including the negligence of Lessor and its employees, agents, customers and invitees. Lessee may insure all of its property, fixtures, equipment, and leasehold improvements for Lessee's benefit.

**(e) Damage by Casualty:** Lessee agrees that in the event the Premises or the property and improvements of Lessee therein are damaged or destroyed by fire, casualty or the elements, the rights, if any, of Lessee against Lessor with respect to such damage or destruction are waived and all policies of fire or extended coverage insurance maintained by Lessee shall be endorsed to effect such waiver.

**15. Use and Care of Premises:**

**(a)** Lessee shall use and occupy the Premises in a careful, safe and proper manner and shall keep the Premises in a clean and safe condition in accordance with the Code of Ordinances and lawful direction of proper public officers.

**(b)** Lessee shall not permit the Premises to be used for any unlawful purpose, or in any way that will injure the reputation of the Building in which the Premises are situated, and shall not use or allow the Premises to be used for any other purpose other than as specified herein without the prior written consent of the Lessor.

**16. Transfer of Lease:** Lessee shall not assign, transfer or encumber this Lease or sublet the Premises, in whole or in part, voluntarily or involuntarily, by operation of law or otherwise, without the express, prior written approval of Lessor, which consent shall not be unreasonably withheld.



17. **Obstruction of Passageway:** Any passageways used for delivery purposes in common with other tenants shall be so used as to be kept clear and unobstructed.

18. **Property on Premises is Responsibility of Lessee:** All property which may be upon the Premises during the term of this Lease or any extension thereof shall be at and upon the sole risk and responsibility of Lessee.

19. **Destruction of Premises:** If the Premises should be destroyed or damaged by fire or other casualty covered by Lessor's policy of fire and extended coverage insurance, Lessor shall, with due diligence, make repairs or restoration at its expense to the extent of the insurance proceeds actually received, but only if such insurance proceeds are adequate in amount to make such restoration; provided, however, that should damage to the extent of fifty percent (50%) or more of the value thereof occur, then Lessor may at its option cancel this Lease instead of making the necessary repairs or restoration; and, provided further, that if the Building or Premises are damaged to such an extent that repairs or restoration cannot be effected within one hundred twenty (120) days, either party shall have the right to cancel this Lease by giving the other party notice in writing within thirty (30) days from the date such damage occurred. In the event no such notice is given, Lessor shall proceed with due diligence to complete the restoration of the Premises. In the event of partial destruction or damage whereby Lessee shall be deprived of the use or occupancy of only a portion of said Premises, then rent shall be equitably apportioned according to the area of the Premises which is usable by Lessee until such time as the Premises shall be repaired or restored. Lessor shall commence the repair and reconstruction of the Premises promptly after it receives the proceeds of insurance in connection with such partial loss. If the destruction or damage be of such extent that the Premises are entirely untenable, then the rent shall cease until the Premises are restored or repaired. Lessor shall have no obligation to repair or replace any fixtures or leasehold improvements installed by Lessee.

20. **Access to Premises:** Lessor shall have free access to the Premises at all reasonable times for the purpose of examining the same or to make any alterations or repairs to the Premises and/or Building that Lessor may deem necessary. This right of access in no way obligates Lessor to make any alterations or repairs to the Premises.

21. **Vacation of Premises:** Lessee shall deliver up and surrender to Lessor possession of the Premises upon the expiration of the Lease, or its termination in any way, in as good a condition and repair as the Premises were at the commencement of said term (ordinary wear and decay excepted) and deliver the keys to the Lessor or Lessor's agent. All business signs or symbols placed on the Premises by Lessee shall be removed by Lessee prior to re-delivery of the Premises.

22. **Memorandum of Lease:** This Lease shall not be recorded, but a memorandum of lease describing the property herein demised, giving the term of and referring to this Lease, may be recorded by either party.

23. **Notices:** The agent for Lessor for purposes of this Lease, including but not limited to receipt of rent payments, approval of alterations, signage and notices, shall be the

Commissioner of the Department of General Services, or his designee, Department of General Services, Government Center, 200 East Main Street, Lexington, Kentucky 40507. Any notice or consent required to be given by or on behalf of either party upon the other shall be in writing and shall be given by delivering or mailing such notice or consent by registered or certified mail, return receipt requested or by express mail, to the other party at the address stated above as to Lessor, or at the Premises or the address stated on page 1 as to Lessee. Changes in agent or address may also, from time to time, be specified in writing and delivered by the parties in the same manner.

24. **Waiver:** No waiver or any condition of legal right or remedy shall be implied by the failure of Lessor or Lessee to declare a forfeiture, or for any other reason, and no waiver of condition or covenant shall be valid unless in writing signed by party so waiving. The waiver of a breach by Lessor or Lessee of any condition shall not be claimed or pleaded to excuse a future breach of the same condition or covenant or any other condition or covenant.

25. **Eminent Domain:** In the event the Premises or any part thereof shall at any time after the execution of this Lease be taken for public or quasi-public use, or condemned under eminent domain, the Lessee shall not be entitled to claim, or have paid to the Lessee, any compensation or damages whatsoever for or on account of any loss, injury, damage or taking of any right, interest or estate of the Lessee, and Lessee hereby relinquishes to Lessor any rights to any such damages. The Lessor shall be entitled to claim and have paid to it for the use and benefit of the Lessor all compensation or damages for or on account of or arising out of such taking or condemnation without deduction from the amount thereof for or on account of any right, title, interest or estate of the Lessee in or to said property.

Should all of the Premises be taken by eminent domain, then this Lease shall be deemed terminated, and the Lessee shall be entitled to no damages or any consideration by reason of such taking.

Lessor shall provide Lessee with reasonable notice of the initiation of any claim or proceeding against Lessor under this paragraph. Such notice shall be given within thirty (30) days of Lessor receiving notice of such claim or proceeding.

26. **Lease Inures to Benefit of Assignees:** This Lease, or any of the covenants, provisions and conditions herein contained, as the case may be, shall inure to the benefit of and be binding upon heirs, personal representatives, successors and assigns respectively of the parties hereto.

27. **Quiet Enjoyment:** Lessor hereby covenants and agrees that if Lessee shall perform all the covenants and agreements herein stipulated to be performed on Lessee's part, Lessee shall at all times during the term of this Lease have peaceable and quiet enjoyment and possession of the Premises without hindrance from Lessor or any person or persons lawfully claiming the Premises.

## 28. Force Majeure

(a) **Definition:** "Force majeure" shall mean any event or condition, not existing as of the date of signature of the Agreement and not reasonably within the control of either party, whether or not reasonably foreseeable, which prevents in whole or in material part use of the Premises as a restaurant/café or which renders such use of the Premises so difficult or costly as to be commercially unreasonable. Without limiting the foregoing, the following shall constitute events or conditions of force majeure: acts of state or governmental action, orders, legislation, regulations, restrictions, priorities, or rationing, riots, disturbance, war (declared or undeclared), strikes, lockouts, slow-downs, prolonged shortage of energy supplies, interruption of transportation, embargo, epidemics, fire, flood, hurricane, typhoon, earthquake, lighting and explosion.

(b) **Notice:** Upon giving (3) days written notice to the other party, a party affected by an event of force majeure shall be released without any liability on its part from the performance of its obligations under this Agreement, except for the obligation to pay any accrued amounts due and owing hereunder, but only to the extent and only for the period that its performance of such obligations is prevented by the event of force majeure. Such notice shall include a description of the nature of the event of force majeure, and its cause and possible consequences. The party claiming force majeure shall promptly notify the other party of the termination of such event.

(c) **Confirmation:** The party invoking force majeure shall provide to the other party confirmation of the existence of the circumstances constituting force majeure. Such evidence may consist of a statement or certificate of an appropriate governmental department or agency where available, or a statement describing in detail the facts claimed to constitute force majeure.

(d) **Suspension of Performance:** During the period that the performance by one of the parties of its obligations under this Agreement has been suspended by reason of an event of force majeure, the other party may likewise suspend the performance of all or part of its obligations hereunder to the extent that such suspension is commercially reasonable.

(e) **Termination:** Should the period of force majeure continue for more than three (3) consecutive months, either party may terminate this Agreement without liability to the other party, except for payments due to such date, upon giving written notice to the other party.

29. **Subordination, Attornment and Mortgagee Protection:** Lessee agrees that this Lease shall be subject and subordinate to any and all Mortgages now or hereafter in existence against the Building, so long as the holder of such Mortgage or Mortgages agrees in writing that as long as Lessee is not in default under this Lease that the holder of such Mortgage and their successors and assigns will not interfere with Lessee's use and occupancy of the Premises. If any Lender initiates foreclosure proceedings, Lessee agrees, upon written request of any such Lender or any purchaser at foreclosure sale, as the case may be, to attorn and pay rent to such party and to execute and deliver any instruments necessary or appropriate to evidence or effectuate such attornment and non-disturbance. Nothing contained in the foregoing shall affect

any prior rights of any Lender with respect to the proceeds of any condemnation or eminent domain proceeding (or deed or other instrument in lieu thereof) or of any fire or casualty insurance policies affecting the Premises, or impose upon any Lender any liability for (i) the erection or completion or any alterations or improvements to the Premises, (ii) any damage or destruction to the Building or to the Premises by fire or other casualty, any repairs, or restorations, (iii) any default by Lessor under Lease (occurring prior to any date upon which such Lender shall have become the Lessor), or any credits, offsets or claims against Lessor or against the revenues generated by use or rental of the Premises as a result of any acts or omissions of Lessor (committed or omitted prior to such date).

“Mortgage” shall mean all mortgages, deeds of trust, and other such encumbrances now, heretofore or hereafter placed upon the Building, or any part thereof, and all renewals, modifications, consolidations, replacements or extensions thereof, and all indebtedness now or hereafter secured thereby and all interest thereon.

“Lender” shall mean the holder of any Mortgage at the time in question whether or not such holder was a Lender to Lessor or otherwise acquired the Mortgage.

**30. Default by Lessee:** If any installment of rent, or any portion thereof, shall remain unpaid for a period of ten (10) days after due or if Lessee should default in the observance or performance of any other terms and covenants contained herein and have failed diligently to pursue correction of such other default after receiving thirty (30) days written notice from Lessor specifying such other default (it is clearly understood that no notice is required to be given to Lessee for default in the payment of rent), then the Lessor shall have the following remedies:

(a) Lessor will be entitled to a late fee penalty of five percent (5%) of the overdue rent;

(b) Lessor may sue to collect any and all sums which may accrue to Lessor by virtue of the provisions of this Lease or for any and all damages that may accrue by virtue of the breach of this Lease, or both, including but not limited to the acceleration of and collection of rent for the balance of the term after either the termination of this Lease by Lessor or re-entry by Lessor without terminating this Lease;

(c) Lessor may sue to restrain by injunction any violation or threatened violation of the covenants, conditions or provisions of this Lease;

(d) Lessor may, without further notice to Lessee, terminate this Lease, re-enter the Premises and remove all persons and property therefrom, with or without process of law. If this Lease shall be terminated before its expiration by reason of Lessee's default, and Lessor elects to exercise the remedies specified above, Lessor shall be entitled to accelerate the payment of rent for the balance of the term, and Lessee shall pay same in full within five (5) days of written notice by Lessor to Lessee. In such event, Lessor shall make a reasonable effort to relet the Premises to an acceptable tenant and any rents received under the new lease shall be refunded to Lessee if already paid by Lessee or applied toward the satisfaction of the Lessee's liability therefor. If Lessee shall abandon or vacate the Premises before the expiration of the term of this Lease, the

Premises may be relet by Lessor (but Lessor shall not be obligated to do so) for such rent and upon such terms as Lessor may deem fit, but such reletting shall not relieve Lessee from Lessee's obligation to pay the rent for the balance of the term; provided, however, any rent received under the new lease shall be applied towards the satisfaction of said obligation to pay rent.

(e) Lessor may, without declaring this Lease terminated, reenter the Premises and occupy the whole or any part thereof and remove all persons therefrom and collect any unpaid rentals or other charges, which have become payable, or which may thereafter become payable. Even though Lessor may have so reentered the Premises, Lessor may thereafter elect to terminate this Lease and all of the rights of Lessee in or to the Premises. Should Lessor so reenter the Premises, Lessor shall not be deemed to have terminated this Lease, the liability of Lessee to pay any rent thereafter accruing, or Lessee's liability for damages under any provisions of the Lease, by any such reentry or by any action to obtain possession of the Premises, unless Lessor has notified Lessee in writing that it has so elected to terminate this Lease. Lessee further covenants and agrees that the service by Lessor of any notice pursuant to any unlawful detainer or similar statute and the surrender of possession pursuant to such notice shall not (unless Lessor elects to the contrary at the time or at any time subsequent to the serving of such notice and such election is evidenced by a written notice to Lessee) be deemed a termination of this Lease or the liability of Lessee to pay any rent hereafter accruing or Lessee's liability for damages under any provision of the Lease.

(f) Lessor may, if it so elects, pursue any other remedies provided by law for breach of this Lease or any of its terms, covenants, conditions or stipulations. No right or remedy herein conferred upon or reserved to Lessor is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or equity or by statute.

31. **Default by Lessor:** If Lessor shall default in the observance or performance of any terms or covenants herein contained (other than as a result of failure by Lessee to pay rent) and shall have failed diligently to pursue correction of such default after receiving thirty (30) days written notice specifying such default, then Lessee may cancel this Lease and have all remedies to which it is entitled at law or equity.

32. **Hazardous Waste:** Lessee shall not use or permit the use of the Premises for the generation, storage, treatment, use, transportation or disposal of any chemical, material, or substance which is regulated as toxic or hazardous or exposure to which is prohibited, limited, or regulated by any federal, state, regional, local or other governmental authority or which, even if not so regulated, may or could pose a hazard to the health and safety of the other tenants and occupants of the Building or adjacent property. If any such chemical, material or substance is used upon the Premises in the ordinary course of business, Lessee may not use such chemical, material or substance in a hazardous manner. In the event of any use in violation of this provision, Lessee will remove, or cause to be removed, such material at its own expense and will indemnify Lessor for any loss or expense, including reasonable attorneys' fees, suffered as a result of the violation. Lessee's liability for such indemnification shall survive any cancellation or termination of this Lease or transfer of Lessor's interest in the Building.

33. **Rules and Regulations:** Lessor shall have the right during the term of this Lease and any renewals to implement non-discriminatory rules and regulations governing the use of the Premises, Common Areas and the Building. Such rules and regulations will from time to time be delivered to Lessee in writing, and Lessee agrees to comply with same as announced.

34. **Interpretation:** If any clause, sentence, paragraph or part of this Lease shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Lease, but be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered, and in all other respects said Lease shall continue in full force and effect.

35. **Entire Agreement:** This Lease contains the entire agreement between the parties and any executory agreement hereinafter made shall be ineffective to change, modify or discharge this Lease, in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought.

36. **Interpretation as Partnership Prohibited:** It is understood and agreed that nothing herein contained shall be construed in any way to constitute a partnership between Lessor and Lessee.

37. **Non-Discrimination:**

(a) Lessee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or disability.

(b) Lessee will state in all solicitations or advertisements for employees placed by or on behalf of Lessee that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, sex, age, national origin or disability.

38. **Security Deposit:** A security deposit in the sum of One Thousand Nine Hundred Dollars and No Cents (\$1,900.00) shall be paid by Lessee upon execution of this Lease. Upon termination of this Lease, the security deposit will be returned to Lessee, less any amount required to repair any damages to the Premises. In no event, however, shall Lessee's liability for damages to the Premises be construed to be limited to the amount of the security deposit, nor shall Lessee have the right to require that any portion of the security deposit be applied toward rent payments.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year first above written.



STATE OF CALIFORNIA )  
 )  
COUNTY OF Sonoma )

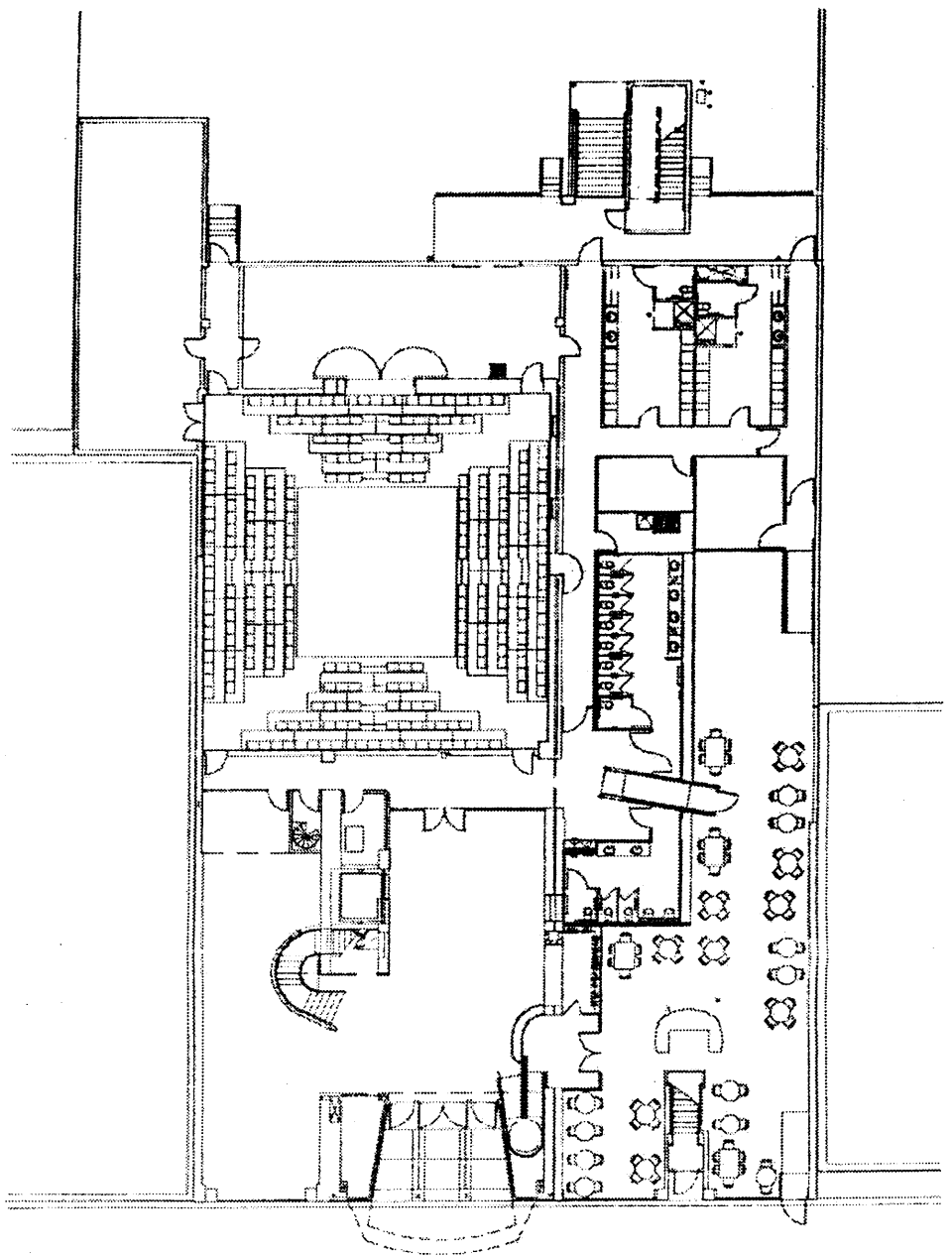
The foregoing Lease was subscribed, sworn to and acknowledged before me by James M. Happ, as Member of ALFALFA, LLC, a Kentucky limited liability company, Lessee, on this the 22 day of April, 2004.

My Commission Expires:  
Nov. 17, 2006

Laurie Skidmore  
NOTARY PUBLIC







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FIRST FLOOR PLAN