

COLD DARK SHELL LEASE EXHIBIT

EXHIBIT "C"

Leasehold Improvements Work Letter

I. ALL WORK TO BE PERFORMED HEREUNDER SHALL CONFORM TO CODE. CODE SHALL BE DEFINED FOR PURPOSES HEREOF AS ALL FEDERAL, STATE, REGIONAL, COUNTY, MUNICIPAL AND OTHER LOCAL LAWS, STATUTES, REGULATIONS CODES AND ORDINANCES REGULATING OR AFFECTING THE CONSTRUCTION, USE OR OCCUPANCY OF THE PREMISES.

A. Landlord will construct and install the following fixed leasehold improvements in the premises ("LANDLORD'S WORK") at landlord's cost and expense, all work not specified as being LANDLORD'S WORK is TENANT'S WORK:

1. STRUCTURE:

- a) **Rear & Exterior walls:** Landlord to construct rear exterior wall with one (1) 3'-0" x 7'-0" hollow metal door, if required by law, in accordance with all codes for accessible egress.
- b) **Roof:** Landlord shall provide a complete roof system. **TENANT MUST UTILIZE LANDLORD'S CONTRACTOR TO LOCATE ROOF TOP MOUNTED EQUIPMENT ON THE ROOF OR TO PERFORM ANY OTHER WORK WHICH REQUIRES PENETRATIONS TO THE ROOF.** The height of the roof shall be adequate to maintain a maximum 11'-0" high ceiling throughout the demised premises..

2. STOREFRONT(S) AND DOORS: Storefront shall match the exterior of the remainder of the center. Landlord shall provide glass and aluminum store, per all applicable codes, from the Finish Floor to 10'-0" above Finish Floor. Knee walls shall be constructed only if required by grade changes in Finish Floor Elevation. Storefront shall contain a 3'-0" x 7'-0" entry door. Storefront shall be clear glass, and will be insulated with a Low 'E' coating if required by International Energy Code.

3. INTERIOR FINISH:

- a) **Floor:** Landlord shall provide a smooth concrete slab exposed through out the demised premises, ready to accept the Tenant's floor coverings. A 10'-0" slab leave out will be located across the width of the premises in the rear of the space for utility stub out. The Tenant shall be responsible for final tie into the utility stub outs and for placing the balance of the slab in this leave-out upon completion of all underslab utility work.
- b) **Demising Walls:** Landlord shall construct one demising partition, fire rated per all applicable codes with 5/8" fire code sheet rock, 6" x 20 metal studs with a 6" acoustic batt insulation. Tenant will be responsible for paint finish. The wall shall extend to the roof deck. All studs shall be run vertically.

4. UTILITIES:

- a) **Domestic Water:** Landlord shall provide a cold-water stub up into demised premises
- b) **Sanitary Sewer:** Landlord shall provide stub up into demised premises slab leave out.
- c) **Electrical:** Landlord shall provide electrical service to a common utility room or wall at which location the Electric Company will set the Tenant's meter.
- d) **Natural Gas Service:** If gas is available at the site, the Landlord shall provide a manifold located at the perimeter of the building at which location the Gas Company will set the Tenant's meter.

- e) **Telephone Service:** Landlord will bring telephone service to the boundary of the building, but Tenant must provide telephone equipment for the Demised Premises, and all necessary conduits.

5. PARKING AREAS AND WALKS:

- a) **Parking Areas:** Landlord will provide hard surfaced parking areas.
- b) **Walkways:** Landlord will provide walkways surfaced with concrete, stone, brick or other hard material as specified by Landlord.
- c) **Lighting:** Landlord will provide artificial lighting in parking areas and walkways.

6. GENERAL BUILDING REQUIREMENTS:

- a) **Construction Documents:** Landlord shall provide the Tenant with one (1) set of complete Construction Documents showing all improvements; including the demised premises, easements, drives, and parking. Tenant shall provide the Landlord four (4) sets of complete Construction Documents ready for permitting for the finish of the Tenant's Space. These Construction Documents shall clearly indicate the location of all partitions, fixtures, electrical components, mechanical components, restroom(s) required for the finish of the Tenant's Space. These documents shall be furnished for the Landlord's approval at a minimum of 21 days prior to submittal for permits or the initiation of Construction of the Tenant's demised premises and Landlord shall have fifteen (15) days to respond to the Construction Documents. Tenant will return completed/corrected documents prior to permitting or initiation of construction and Landlord will provide Tenant with a letter releasing Tenant to permitting or initiation of construction.
- b) **Permits:** Landlord shall be responsible for securing all necessary governmental approvals and permits to perform its work, it is understood that the Tenant's Construction Documents will not be used to obtain the Landlord's Permit. . The Tenant will obtain a building permit for the Tenant's Work and a Certificate of Occupancy for the Tenant's Shell Space prior to occupancy. Landlord shall supply all of its approvals, plans, drawings, schematics and permits necessary for Tenant to obtain its certificate of occupancy.
- c) **Damages and Non-Compliance:** Landlord will have right to withhold Tenant Improvement Allowance dollars to correct deficiencies or variations in construction from the improvement drawings. Landlord will have the right to withhold Tenant Improvement Allowance dollars to repair damage to adjoining spaces or the building caused by Tenant, its agents, employees, contractor(s) and subcontractors.

B. Limitations and Conditions

- 1. **WORKMANSHIP:** All Work done by the Landlord and the Tenant shall comply with local, state and national codes in effect at the time of the project. All work done by the Landlord and the Tenant shall be executed in a workmanship like manner, using all new materials.
- 2. **DELIVERY OF POSSESSION IN "BROOM CLEAN" CONDITION:** Leased Premises are to be delivered broom clean with labels, stickers, paint and wrapping materials removed from windows and floors so as to require only normal washing and cleaning for opening of business.
- 3. **EXCESS WORK:** Landlord will perform work which is in excess of that required by this **Article I** only after Tenant has deposited an amount equal to Landlord's non-binding estimate of the cost to perform such excess work in the form of cash, money order or cashier's check. Tenant agrees to make such deposit promptly after Landlord delivers such estimate to Tenant (with any delay in Tenant's making such deposit constituting an event of default under this lease, without the requirement of additional notice from Landlord, and causing Tenant's time period for completing Tenant's Work and opening for business to commence as if Tenant's delay had not occurred). All work not specified as being Landlord's Work is Tenant's Work.

II. AFTER RECEIPT OF WRITTEN NOTICE THAT LANDLORD HAS SUBSTANTIALLY COMPLETED LANDLORD'S WORK HEREUNDER, TENANT WILL INSTALL THE FOLLOWING TENANT FINISH IMPROVEMENTS ("TENANT'S WORK") AT TENANT'S SOLE COST AND EXPENSE:

A. DESCRIPTION OF TENANT'S WORK: Tenant's Work includes but is not limited to the following:

1. STOREFRONT: Except as supplied by Landlord in accordance with I.A.2 of this exhibit, Tenant must provide and install all additional storefront, door(s), pulls, and hardware per Landlord's approval and applicable code requirements.

2. INTERIOR FINISH:

- a) **Floor:** Tenant must fill the slab leave out at the rear wall following plumbing installation, which fill must match or exceed existing floor thickness and materials. Tenant must finish concrete surface to agreed specification, flush with existing floors. Tenant is not permitted to penetrate or cut the Landlord-provided slab without first obtaining Landlord's written approval. Tenant must provide and install the floor covering and base.
- b) **Interior of Exterior Walls & Demising Walls:** Tenant is responsible for insulating, taping, bedding, and finishing Interior of Exterior Walls and Demising Walls. Tenant must provide and install display window enclosures and interior finish.
- c) **Interior partitions, including construction, finishing, electrical wiring, and connections within the Demised Premises (except as provided in the Exhibit).**
- d) **Ceilings must be provided and installed by tenant, including but not limited to grids, tiles, and lights.**
- e) **Interior painting.**
- f) **Store fixtures and furnishings.**
- g) **Display window enclosures.**
- h) **Plumbing fixtures within the Demised Premises (except as provided in this exhibit).**
- i) **Insulation (except as provided in this exhibit).**
- j) **Floor covering and 4" vinyl cove base.**

3. UTILITIES:

- a) **Domestic Water:** Tenant must connect to the Landlord-supplied water line in the Demised Premises. If Tenant prepares and sells food for on or off premises consumption or if Landlord designates Tenant as a large consumer of water, Tenant must furnish and install a water meter in a location easily accessible to Landlord within the Demised Premises.
- b) **Sanitary Sewer:** Tenant must tap all sewer service and install all other plumbing work in accordance with all applicable codes. Tenant must install a minimum of one (1) floor drain in each kitchen or toilet area. All cleanouts must be accessible. Grease traps are required for any system or appliance producing grease. If grease traps and associated plumbing have not been installed prior to Landlord's exterior paving, Landlord may install the grease traps and associated plumbing to Tenant's specifications and Tenant will reimburse Landlord for the cost.
- c) **Natural Gas Service:** Tenant shall be responsible for gas distribution to gas fired equipment.
- d) **Electrical Installation:** Tenant must provide and install a copper conductor from the Tenant's meter in the building's common utility room or on the common utility wall to the

demised premises Tenant must provide and install the electric panel primary power disconnect and step-down transformer (if required). Tenant must complete the electrical installation within the Demised Premises in accordance with all applicable codes. Electrical plans submitted to Landlord for approval must have all load requirements detailed and must include complete panel, lighting fixture and equipment schedules. Tenant's electrical drawing submittal must include a tabulation of the electrical load, including quantities and sizes of lamps, appliances, signs, water heaters, HVAC equipment, etc. and kilowatt demand for each installed item. A complete electrical panel schedule is required for each installation. Exposed fluorescent tubes will not be permitted in areas available to the public.

- e) **Telephone System:** Tenant must connect to the local telephone company distribution point outside the building. All telephone equipment panels, outlets, conduit and wiring are Tenant's responsibility.

4. STORE SYSTEMS:

- a) **Heating, Ventilating and Air Conditioning Systems:** Tenant must provide a unit or units adequate to provide at least a 25-degree differential and must firmly secure the roof top units to the Landlord-provided supports. Tenant must hook up unit(s) to power and refrigerant lines provided by Tenant and connected through the Landlord-provided chase to Tenant's electrical panel and Tenant's air handling unit(s) located above the ceiling. Tenant must provide air handling unit(s), ductwork, and distribution and all connections to the Landlord-provided make-up air intake louver(s) at the rear exterior wall. Tenant must provide necessary screening for Tenant's unit per Landlord's specifications and as required by code.
- b) **Fire Alarm System:** Tenant must provide and install smoke detectors, pull station, horn, strobes, and other items as required by code.
- c) **Security System:** If Tenant wishes to have a security system, Tenant is responsible for purchasing and installing it

5. All work undertaken by Tenant shall be at Tenant's expense, and shall not damage the building or any pad thereof. **TENANT MUST UTILIZE LANDLORD'S CONTRACTOR TO LOCATE ROOF TOP MOUNTED EQUIPMENT ON THE ROOF OR TO PERFORM ANY OTHER WORK WHICH REQUIRES PENETRATIONS TO THE ROOF;** or, at Landlord's option, by a bonded roofer approved in advance by Landlord. The work shall be begun only after Landlord has given consent, which consent shall in part be conditioned upon Tenant's plan's to include materials acceptable to Landlord, in order to prevent injury to the roof and to spread the weight of the equipment being installed. Tenant shall also be responsible for obtaining, and paying for, professional inspection of any structural work (including, without limitation, any roof work or concrete work).

6. All work undertaken by Tenant shall be awarded to Landlord's contractor unless, before any construction begins, Tenant chooses and receives Landlord's written approval for another contractor to complete Tenant's work.

B. PRE-CONSTRUCTION DELIVERIES TO LANDLORD: Prior to entering the Premises for the commencement of construction of Tenant's Work, Tenant shall furnish to Landlord (i) originals of all insurance policies or Certificates of Insurance required by this **Exhibit "C"**; and (ii) a copy of any building permit and other required permits, licenses and approvals issued by the proper governmental authorities, **including an Architectural Barriers review by TDLR and a COMCheck Report.**

C. COMMENCEMENT OF CONSTRUCTION OF TENANT'S WORK: Tenant shall, within five (5) days after Landlord's approval under Section 8.1(f) of the Lease of the plans, drawings and specifications for Tenant's Work, commence and diligently proceed to completion the permitting, construction and installation of Tenant's Work. Tenant shall, no later than the expiration of the Tenant Finish Period (as defined in Section 2.1(n) of the Lease), complete the construction and installation of Tenant's Work in accordance with Code and the plans, drawings and specifications approved by Landlord under Section 8.1(f) of the Lease.

D. DELIVERY OF CERTIFICATE OF OCCUPANCY: Within ten (10) days after the expiration of the Tenant Finish Period (as defined in Section 2.1(n) of the Lease), Tenant shall deliver to Landlord all

certificates and approvals with respect to the work performed by Tenant or on Tenant's behalf that may be required by any governmental authorities as a condition for the issuance of an occupancy certificate for the Premises, together with a copy of any occupancy certificate issued by the proper governmental authority for the Premises.

E. CONTRACTOR'S INSURANCE REQUIREMENTS: Tenant shall require its contractor and subcontractors to furnish Landlord originals of insurance policies evidencing liability coverage prior to Tenant's contractor and subcontractors performing any of Tenant's Work in the Premises. Such contractor and subcontractors shall procure and have in full force and effect until the completion of construction the following:

1. Workers Compensation coverage as required by the State of Texas and Employers Liability coverage with a limit of not less than Two Million Dollars (\$2,000,000) per accident and per employee;
2. Commercial General Liability Insurance on an Occurrence form including Products/Completed Operations and Personal Injury coverage with a limit of not less than Two Million Dollars (\$2,000,000) per occurrence;
3. Umbrella or Excess insurance in an amount of not less than Two Million Dollars (\$2,000,000); and
4. Automobile Liability coverage with a limit of not less than Two Million Dollars (\$2,000,000) Combined Single Limit.

All insurance policies hereunder (except Workers Compensation coverage) shall name Landlord, Landlord's property manager and Landlord's designee(s) as additional insureds, and shall be considered primary insurance applying without the contribution of any other insurance which may be available to Landlord, Landlord's property manager or Landlord's designee(s). **TENANT SHALL INDEMNIFY AND HOLD HARMLESS LANDLORD FROM AND AGAINST ALL CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, LAWSUITS, DAMAGES, JUDGMENTS, SETTLEMENTS, COSTS, EXPENSES AND OTHER OBLIGATIONS OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS, INCURRED BY LANDLORD OR LANDLORD'S PROPERTY ARISING OUT OF OR RESULTING FROM ANY AND ALL ACTS OR OMISSIONS OF TENANT, ITS AGENTS, EMPLOYEES, CONTRACTOR AND SUBCONTRACTORS IN THE PERFORMANCE OF TENANT'S WORK UNDER THE LEASE AND THIS EXHIBIT "C".**

F. CONSTRUCTION ACTIVITIES: Tenant and its contractor and subcontractors are limited to performing Tenant's Work within the Premises only. Tenant and its contractor and subcontractors shall each be personally responsible for daily removal from the Shopping Center of all trash, rubbish, debris and surplus materials resulting from construction and installation of Tenant's Work. Tenant is cautioned against permitting trash, rubbish or debris to accumulate within the Premises. Should this occur, Landlord's property manager shall have the right, but not the obligation, to remove and dispose of all trash, rubbish, debris and surplus materials and to charge Tenant for such removal and disposal an amount equal to 150% of Landlord's actual cost thereof, which amount shall be payable by Tenant to Landlord immediately on demand therefor.

G. TEMPORARY UTILITIES: Tenant and its contractor and subcontractors shall at their sole cost and expense (i) arrange for temporary utilities services for Tenant's Work in the Premises; and (ii) pay when due all utility charges incurred in the course of constructing and installing Tenant's Work in the Premises. Landlord may provide temporary electrical service in the Premises at Landlord's discretion. Providing that sufficient electrical capacity is available in the Premises, Tenant and its contractor and subcontractors may avail themselves of this temporary electricity service under the following conditions:

1. Service shall be available only during Landlord's working hours, unless other mutually-satisfactory arrangements are agreed in writing by Landlord and Tenant;
2. Landlord may at its sole election terminate its temporary electrical service at any time;
3. Landlord is not under any circumstances responsible for interruption of electricity;

4. Tenant shall be entitled to one (1) hook-up per 5,000 square feet portion of the Premises;
and

5. If Landlord elects not to provide temporary electrical service to the Premises, Tenant shall at its sole cost and expense make separate arrangements for temporary electrical service in the Premises.

H. POST-CONSTRUCTION DELIVERIES TO LANDLORD: Promptly following Tenant's completion of all of Tenant's Work in the Premises constructed and installed in accordance with Code and the plans, drawings and specifications approved by Landlord under Section 8.1(f) of the Lease, Tenant will execute and deliver to Landlord, or cause to be executed and delivered to Landlord, at Tenant's expense, the following documents:

1. A bill of sale conveying to Landlord title to all of Tenant's Work constructed and installed by Tenant in the Premises;

2. A certified copy of the building permit and other permits, licenses and approvals issued for the construction and installation of Tenant's Work in accordance with Code and the plans, drawings and specifications approved by Landlord under Section 8.1(f) of the Lease;

3. A certified copy of a certificate of occupancy covering the Premises issued by the applicable municipal authority having jurisdiction of the Shopping Center;

4. A certification signed by Tenant, its contractor and its architect that Tenant's Work was constructed and installed in the Premises in strict accordance with Code and the plans, drawings and specifications approved by Landlord under Section 8.1(f) of the Lease;

5. **A POST CONSTRUCTION INSPECTION REPORT, IF APPLICABLE, FROM A REGISTERED ACCESSIBILITY SPECIALIST DEMONSTRATING COMPLIANCE WITH THE TEXAS ACCESSIBILITY STANDARD REQUIREMENTS.**

6. Signed and acknowledged lien waivers, in recordable form reasonably acceptable to Landlord and its legal counsel, from Tenant's contractor and each subcontractor who performed labor or furnished materials for the construction and installation of Tenant's Work; and

7. An Acceptance of Premises Memorandum, in a form acceptable to Landlord, duly executed by Tenant.

IN WITNESS WHEREOF, the parties have duly executed this Leasehold Improvements Work Letter as of the date set forth in the first paragraph of Page 1 of the Lease.

LANDLORD:

By: _____

Name: Harold Bird

Title: President of the G.P.

TENANT:

By: _____

Name: _____

Title: _____