

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
AT AKRON**

IN RE:)	CASE NO. 07-51261
)	(Jointly Administered with Case Nos.
)	07-51262 and 07-51263)
EVERGREEN HOMES, LLC, <i>et al.</i>)	
)	CHAPTER 11
Debtors.)	
)	BANKRUPTCY JUDGE:
)	MARILYN SHEA-STONUM
_____)	
)	
EVERGREEN INVESTMENT)	
CORPORATION)	
)	
_____)	

**MOTION OF DEBTOR FOR AN ORDER APPROVING A LEASE
FOR 1110 BRITAIN ROAD, AKRON, OHIO**

The Motion of Evergreen Investment Corporation, Debtor and Debtor-in-Possession, by and through counsel, respectfully represents:

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. Section 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. 157(b). Venue is proper before this Court pursuant to 28 U.S.C. Sections 1408 and 1409.

2. That on April 29, 2007, the Debtor filed a Voluntary Petition for Relief Under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The Debtor continues to operate its business and manage its property as a Debtor-in-Possession pursuant to Section 1107(a) and 1108 of the Bankruptcy Code.

3. That Debtor/Debtor-in-Possession desires, in the best interest of the estate, to resolve

disputes involving the lease for space at 1110 Brittain Road, Akron, Ohio and to enter into a short term lease for said property with Brittain Entertainment, LLC. A copy of the proposed lease, which would commence as of January 1, 2008 for a period of six months, is annexed hereto and incorporated herein by reference.

4. That the Debtor/Debtor-in-Possession has, in conjunction with the Official Committee of Unsecured Creditors, filed a motion to resolve disputes with Daniel J. Ringer (Evergreen Investment Corporation, Document No. 278). If approved, this motion will place the real property, located at 1110 Brittain Road, in the name of Evergreen Investment Corporation subject to the claims of the current tenant, Brittain Entertainment, LLC. The proposed short term lease will resolve possible tenant claims.

WHEREFORE, the Debtor/Debtor-in-Possession requests that the Court authorize the Debtor/Debtor-in-Possession to enter into and execute the six month lease agreement with Brittain Entertainment, LLC and for such other relief as is appropriate.

Respectfully submitted,

/s/ Howard E. Mentzer
Howard E. Mentzer (0020324)
MENTZER and MYGRANT ltd
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Akron, OH 44308
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COUNSEL FOR DEBTOR AND
DEBTOR IN POSSESSION

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2008, a copy of the Motion of Debtor For an Order Approving a Lease For 1110 Brittain Road, Akron, Ohio was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt and all parties requesting service.

Electronic service to:

Michael A. Steel, Esq.
Counsel for the Official Committee
of Unsecured Creditors
11 S. Forge Street
Akron, OH 44304

Maria Giannirakis
Office of the United States Trustee
Howard M. Metzenbaum U.S. Courthouse
201 Superior Avenue, Suite 441
Cleveland, OH 44114

/s/ Howard E. Mentzer
Howard E. Mentzer (0020324)

FILED

2008 Feb 02 PM 08:20

CLERK U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
AKRON

LEASE AGREEMENT

between EVERGREEN INVESTMENT, Corp.

and BRITAIN ENTERTAINMENT (d.b.a. STRIPPED)

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LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into as of this ____th day of January, 2008 by and between Evergreen Investment, Corp, 611 W. Market Street, Akron, Ohio 44303 ("Landlord"), and Brittain Entertainment, LLC (d. b. a. Stripped), 1110 Brittain Road, Akron Ohio 44303 (collectively "Tenant").

The parties hereto agree as follows:

Section 1. Description of Premises.

For the rent and upon the agreements contained in this Lease, Landlord hereby leases to Tenant and Tenant rents from Landlord, the building (commonly known as 1110 Brittain Road, Akron, Ohio 44303) ("the Premises") and other improvements in the building (the "Building").

Section 2. Term.

- (a) The initial term of this Lease shall be Six (6) months, effective as of January 1, 2008.
- (b) Landlord does not grant to Tenant any options to extend this Lease. The Landlord will negotiate in good faith to enter into an extension, which shall commence upon the expiration of the initial term of this Lease.

Section 3. Base Rent.

- (a) Tenant shall pay to Landlord at Landlord's office as set forth above, or at such other place as Landlord may from time to time designate in writing, the sum of \$3,000 per month in advance, on or before the first day of each calendar month, during the term hereof. If the term commences on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, then monthly base rent will be appropriately prorated by Landlord for such month.
- (b) In the event that any rent provided for herein is not paid to and received by Landlord by the fifth (5th) day of any month, Tenant shall pay to Landlord a late charge of Seventy Five Dollars (\$75), plus Twenty Dollars (\$20) per day until such rent and all late charges are paid in full. In addition, Tenant shall pay to Landlord the sum of Thirty Dollars (\$30) for any check, which is returned uncollected at any time during the term hereof. In the event that Tenant's checks are returned uncollected more than one time during the term hereof, the remaining payments throughout the term of this Lease shall be paid in cash or by money order or certified check, to be decided by Landlord at its option. Notwithstanding the foregoing, Landlord shall not waive any of its rights hereunder or at law by accepting any late payment pursuant to the terms hereof.

Section 4. Security Deposit.

Tenant shall deposit with Landlord the amount of \$3,000 as security for its performance of the

terms hereof. Provided Tenant has faithfully complied with its obligations hereunder, Landlord shall return the security deposit to Tenant upon the expiration of the Lease term.

Section 5. Use and Occupancy; Adjoining Uses.

Tenant shall use the Premises as a BAR and ENTERTAINMENT ESTABLISHMENT and will conduct only lawful business from the Premises. Tenant shall not use the Premises for personal habitation or any unlawful purpose.

Section 6. Facility Alterations and Improvements.

- (a) Tenant shall not alter, improve, or change the Premises except as provided herein without the prior written consent of Landlord, which consent Landlord shall not unreasonably withhold; provided, however, that the locating and relocating of moveable partitions, telephone, electrical outlets and light fixtures shall not require Landlord's prior consent provided they are completed with materials of equal or better quality than currently existing. Such work shall be done at such time and in such manner so as not to unreasonably interfere with the use and enjoyment of adjoining premises in the Building by other tenants of Landlord.
- (b) Landlord shall have the right to make alterations or additions to the Building and to build adjoining the same, provided that such work does not unreasonably interfere with Tenant's use and enjoyment of the Premises.

Section 7. Maintenance by Landlord.

- (a) Landlord shall maintain and keep in good order and repair the foundation, lateral support, roof, walls, structural parts and all exterior parts of the Premises and Building, except for the door frames, door checks, and windows which are an integral part of the Premises itself, and the Tenant's signs, all of which shall be maintained by Tenant.
- (b) In the event Landlord shall be required to repair, alter, remove, reconstruct, or improve any part of the Premises for whatever reason, the same shall be made by Landlord with reasonable dispatch and with a minimum of interference to Tenant's business.
- (c) Tenant shall give Landlord prompt written notice of any defective condition which Landlord is required to repair by the terms of this Lease and within thirty (30) days thereafter Landlord shall start repairs and continue the same with due diligence until completed. If by reason of emergency, repairs become necessary for the preservation of the Premises or of Tenant's property, Tenant may make such repairs and charge the cost thereof to Landlord; provided, however, that in the event of such emergency, Tenant shall make a reasonable effort to notify Landlord before proceeding with such repairs.

Section 8. Maintenance by Tenant.

- (a) Subject to Landlord's obligations as set forth in Section 7 above, Tenant shall maintain the Premises in as good order and condition as when delivered to it, ordinary wear and tear

excepted.

- (b) Tenant shall keep the interior plumbing, heating, lighting, electrical equipment, and the ventilating and air conditioning equipment in good condition and repair at Tenant's sole expense. Tenant shall repair any glass, including plateglass, if any, exterior or interior windows and doors, and any frames and hardware thereof which may become damaged or broken as a result of Tenant's business, licensees or invitees. All repairs required to be made as a result of Tenant's misuse or neglect of the Premises or of damage to or defacement of the common areas, or any part thereof, by reason of Tenant's tenancy therein shall be made at the expense of Tenant.
- (c) If Tenant erects signs for the exclusive use of Tenant, Tenant shall repair and maintain the same in good appearance at Tenant's expense.
- (d) Tenant is responsible for maintaining the general appearance of the parking lot and common areas. Such maintenance shall include snow removal, landscaping services and picking up paper and refuse from the property. All applicable expenses for these services, paid for by Landlord, will be billed to Tenant when incurred. Payment by Tenant is required within fifteen days of billing thereof.
- (e) Tenant's trash containers shall be placed in the back of the Building.
- (f) Tenant shall maintain adequate exterminating services of the Premises, at its own expense.

Section 9. Compliance with Codes.

All repairs, alterations, additions, or improvements made to the Premises by Landlord or Tenant shall comply with all applicable building codes.

Section 10. Leasehold Improvements, Trade Fixtures and Surrender of Premises.

- (a) If Tenant replaces locks, tumblers or keys, the existing locks, tumblers and keys shall be immediately returned to Landlord. At that time, a key to all new entrance door locks shall be provided to the Landlord to ensure entrance to perform required repairs.
- (b) No substantial (i.e., costing in excess of \$500) interior alterations, additions, improvements or repairs shall be made by Tenant without the prior written approval of Landlord, which approval shall not be unreasonably withheld. No exterior alterations, additions or improvements shall be made by Tenant without the prior written approval of Landlord.
- (c) At the end of the Lease term, Tenant will promptly quit and surrender the Premises broom and/or vacuum-clean, in good order and repair, ordinary wear and tear excepted. If Tenant is not then in default, Tenant may remove from the Premises any trade fixtures, equipment and movable furniture placed in the Premises by Tenant, whether or not such trade fixtures or equipment are fastened to the Building; provided however, Tenant will not remove any trade fixtures or equipment without Landlord's prior written consent if such fixtures or equipment

are used in the operation of the Building, or if the removal of such fixtures or equipment will result in impairing the structural integrity of the Building. Tenant will fully repair any damage occasioned by the removal of any trade fixtures, equipment, furniture, alterations, additions and improvements. All trade fixtures, equipment, furniture, inventory, effects, alterations, additions, and improvements remaining on the Premises after the end of the Lease term will be deemed conclusively to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord without written notice to Tenant or any other person and without obligation to account therefor. Tenant will pay Landlord for all expenses incurred in connection with the removal of such property, including but not limited to the cost of repairing any damage to the Building or Premises caused by the removal of such property. Tenant's obligation to observe and perform this covenant will survive the expiration or other termination of this Lease.

Section 11. Tenant's Sign.

Tenant may install its customary and usual display and/or pole-type signs on or adjacent to the Premises, subject to all applicable zoning ordinances and restrictive covenants. All signs located on or about the Premises shall be in good taste so as not to detract from the general appearance of the Premises or Building.

Section 12. Utility Equipment and Service.

Tenant shall pay all charges for utility services including heat, air conditioning and electricity used in the Premises by Tenant. For those utility services that are not separately metered, a pro-rata apportionment will be made to equitably allocate the costs of such utilities. Any and all billings for such utility services that are not separately metered will be paid by Tenant to Landlord within fifteen days of the billing thereof.

Section 13. Parking.

The parking lot is for the exclusive use of the Building's Tenants and their customers.

Section 14. Mechanic's Liens.

Tenant will pay or cause to be paid all costs and charges for work (a) done by Tenant or caused to be done by Tenant in or to the Premises, and (b) for all materials furnished for or in connection with such work. If any lien, at any time, is filed against the Premises or any part of the Premises or Building, Tenant will cause such lien to be discharged of record within 10 days after the filing of such lien, except that if Tenant desires to contest such lien it will furnish Landlord, within such 10-day period, security reasonably satisfactory to Landlord of at least 150% of the amount of the claim, plus estimated costs and interest, and comply with such statutory procedures as may be available to release the lien. If a final judgment establishing the validity or existence of a lien for any amount is entered, Tenant will immediately pay and satisfy the same. If Tenant fails to pay any charge for which a mechanics' lien has been filed, and has not given Landlord security as described above, or has not complied with such statutory procedures as may be available to release the lien, Landlord may, at its option, pay such charge and related costs and interest, and the amount so paid, together with reasonable attorneys' fees incurred in

connection therewith, will be immediately due from Tenant to Landlord as additional rent hereunder. Nothing contained in this Lease will be deemed the consent or agreement of Landlord to subject Landlord's interest in the Building or the Premises to liability under any mechanics' or other lien law. If Tenant receives written notice that a lien has been or is about to be filed against the Premises or the Building, or that any action affecting title to the Premises or the Building has been commenced on account of work done by or for or materials furnished to or for Tenant, it will immediately give Landlord written notice thereof. Landlord will have the right to post notices of non-responsibility or similar written notices on the Premises in order to protect the Premises and Building against any such liens.

Section 15. Access by Landlord.

- (a) Landlord, at reasonable times and frequency, shall have the right to enter the Premises to examine the same, to show to prospective purchasers, mortgagees, or lessees and to make such repairs, alterations, improvements or additions required hereunder without the same constituting an eviction of Tenant in whole or in part. Rent shall not abate while any repairs, alterations, improvements, or additions are being made, provided that Landlord shall proceed expeditiously with the same and without unreasonable interference or interruption to Tenant's use of the Premises.
- (b) If Tenant shall not have exercised its right to extend the term of this Lease within the required time, Landlord may post a reasonable and customary sign on the Premises advertising the property for lease or sale, but no sign shall be posted in any doorway of the Premises.

Section 16. Payment of Property Taxes.

- (a) Tenant shall promptly pay when due all real property taxes and special assessments lawfully levied against the Premises.
- (b) Landlord and Tenant shall respectively pay promptly all personal property taxes lawfully levied against personal property of any kind owned by each of them upon or about the Premises.

Section 17. Personal Injury and Property Damage Insurance.

- (a) Tenant shall indemnify Landlord and save it harmless from and against any and all claims, liability, and expense for damages to any person or property in, on, or about the Premises arising out of the negligent acts or omissions of Tenant. Tenant shall, at its expense, procure and keep in full force and effect during the entire period of this Lease "broad form" public liability insurance and property damage insurance, issued by a company licensed to do business in the State of Ohio, with a contractual liability endorsement naming Landlord as an additional named insured in an amount in which the limits of public liability shall be at least \$1,000,000 combined single limit coverage.
- (b) Tenant shall deliver original or copies of original policies (together with copies of the endorsements naming Landlord as an additional named insured) and evidence of the payment of all premiums of such policies to Landlord within 30 days of Tenant's occupancy of the

Premises and from time to time at least thirty (30) days prior to the expiration of the term of each such policy. All liability policies maintained by Tenant will contain a provision that Landlord, although named as an insured, will nevertheless be entitled to recover under such policies for any loss sustained by Landlord as a result of the negligent acts or omissions of Tenant. All such policies maintained by Tenant will provide that they may not be terminated or amended except after thirty (30) days prior written notice to Landlord. All policies maintained by Tenant will be written as primary policies, not contributing with and not supplemental to the coverage that Landlord may carry. In the event Tenant shall fail to obtain such required insurance the Landlord, at its option, may procure the same for the account of the Tenant and the cost thereof shall be immediately reimbursed to the Landlord by the Tenant upon the billing therefor to the Tenant.

- (c) Landlord, its agents and employees make no representation that the limits of liability specified to be carried by Tenant pursuant to this Section 17 are adequate to protect Tenant. If Tenant believes that any of such insurance coverage is inadequate, Tenant will obtain, at Tenant's sole expense, such additional insurance coverage as Tenant deems adequate.
- (d) Landlord shall carry fire and extended coverage insurance on the Building in an amount equal to at least eighty percent (80%) of the replacement value thereof and such insurance coverage shall be adjusted annually to such ratio. Said insurance shall insure against such hazards as are included in a standard extended coverage endorsement. Such insurance coverage by Landlord shall exclude Tenant's merchandise, trade fixtures, furnishings, equipment, inventory and all other personal property of Tenant.

Section 18. Damage to Premises.

- (a) If the Premises or the portion of the Building necessary for Tenant's occupancy is damaged or destroyed during the term of this Lease by any casualty insurable under standard fire and extended coverage insurance policies, Landlord will repair or rebuild the Premises to substantially the condition in which the Premises were immediately prior to such destruction.
- (b) Landlord's obligation under this Section 18 will not exceed the lesser of (i) with respect to the Premises, the scope of building-standard improvements installed by Landlord in the original construction of the Premises, or (ii) the extent of proceeds received by Landlord from any insurance policy maintained by Landlord.
- (c) The monthly base rent will be abated proportionately during any period in which, by reason of any damage or destruction not occasioned by the negligence or willful misconduct of Tenant or Tenant's employees or invitees, there is a substantial interference with the operation of the business of Tenant. Such abatement will be proportionate to the measure of business in the Premises that Tenant may be required to discontinue. The abatement will continue for the period commencing with such destruction or damage and ending with the completion by the Landlord of such work, repair or reconstruction as Landlord is obligated to do.
- (d) If the Premises, or the portion of the Building necessary for Tenant's occupancy, is damaged or destroyed (i) to the extent of ten percent (10%) or more of the then-replacement value of

the Premises or the Building, (ii) in the last year of the term of this Lease, (iii) by a cause or casualty other than those covered by fire and extended coverage insurance, or (iv) to the extent that it would take, in Landlord's opinion, in excess of ninety (90) days to complete the requisite repairs, then Landlord may either terminate this Lease or elect to repair or restore the damage or destruction. If this Lease is not terminated pursuant to the preceding sentence, this Lease will remain in full force and effect. Landlord and Tenant waive the provisions of any law that would dictate automatic termination or grant either of them an option to terminate in the event of damage or destruction. Landlord's election to terminate under this paragraph will be exercised by written notice to Tenant given within sixty (60) days after the damage or destruction. Such notice will set forth the effective date of the termination of this Lease.

- (e) Upon the completion of any such work, repair, or restoration by Landlord, Tenant will repair and restore all other parts of the Premises including, without limitation, non-building-standard leasehold improvements and all trade fixtures, equipment, furnishings, signs and other improvements originally installed by Tenant, within 60 days of Landlord's completion.
- (f) During any period of reconstruction or repair of the Premises, Tenant will continue the operation of its business in the Premises to the extent reasonably practicable.
- (g) Landlord and Tenant hereby release and discharge each other and any employee or representative of each from any liability whatsoever arising from loss, damage, or injury caused by fire or other casualty for which insurance is required to be carried hereunder by the injured party at the time of such loss, damage or injury to the extent of any recovery by the injured party under such insurance, provided such insurance permits a waiver of liability and subrogation rights.

Section 19. Eminent Domain.

If the whole or any part of the Premises or Building, or more than 25% of any parking area which is part of the Building, shall be taken by or conveyed to any public authority under the power of eminent domain or by private purchase in lieu thereof, Tenant may terminate this Lease forthwith as of the date possession of such property shall be delivered to such condemnor or purchaser and any rent paid in advance, as of such delivery date, shall be refunded to Tenant pro rata. In the event Tenant shall not exercise such option, Landlord shall immediately make all necessary repairs and improvements to the Premises and Building and common areas to restore the same to a complete architectural unit. Tenant shall have the alternative right to continue the possession of any part of the Premises not taken under the power of eminent domain, under the same terms and conditions hereof, provided that the rent reserved herein shall be reduced in direct proportion to the part of the Premises so taken by eminent domain. Both Landlord and Tenant shall be entitled to proceeds arising from condemnation or the threat thereof, in accordance with their respective interests in the Premises, and nothing contained herein shall be deemed or construed to prevent Landlord or Tenant from enforcing and prosecuting a claim for the value of their respective interests in a condemnation proceeding brought against either under a power of eminent domain.

Section 20. Indemnification.

- (a) Tenant will neither hold nor attempt to hold Landlord or its employees or agents liable for, and Tenant will indemnify and hold harmless Landlord, its employees, and agents from and against, any and all demands, claims, causes of action, fines, penalties, damages (including consequential damages), liabilities, judgments, and expenses (including without limitation attorneys' fees) incurred in connection with or arising from:
- (i) the use or occupancy or manner of use or occupancy of the Premises by Tenant or any person claiming under Tenant;
 - (ii) any activity, work, or thing done, permitted, or suffered by Tenant in or about the Premises or the Building;
 - (iii) any acts, omissions, or nonperformance by Tenant or any person claiming under Tenant or the employees, agents, contractors, invitees, or visitors of Tenant or any such person;
 - (iv) any breach, violation, or nonperformance by Tenant or any person claiming under Tenant or the employees, agents, contractors, invitees, or visitors of Tenant or any such person of any term, covenant, or provision of this Lease or any law, or any ordinance or governmental requirement of any kind;
 - (v) except for loss of use of all or any portion of the Premises or Tenant's property located within the Premises that is proximately caused by or results proximately from the gross negligence of Landlord, any injury or damage to any person, property, or business of Tenant or its employees, agents, contractors, invitees, visitors, or any other person entering upon the Premises or the Building under the express or implied invitation of Tenant.
- (b) If any action or proceeding is brought against Landlord or its agents or employees by reason of any such claim, Tenant, upon notice from Landlord, will defend the same at Tenant's expense with counsel reasonably satisfactory to Landlord.
- (c) Tenant, as a material part of the consideration to Landlord for this Lease, by this paragraph, waives and releases all claims against Landlord, its employees, and agents with respect to all matters for which Landlord has disclaimed liability pursuant to the provisions of this Lease. Tenant agrees that Landlord, its agents, and its employees will not be liable for any loss, injury, death, or damage (including consequential damages) to persons, property, or Tenant's business occasioned by theft; act of God; public enemy; injunction; riot; strike; insurrection; war; court order; requisition; order of governmental body or authority; fire; explosion; falling objects; steam; water, rain or snow; leak or flow of water, rain or snow from or into any part of the Building from the roof, street, subsurface, or from any other place, or by dampness, or from the breakage, leakage, obstruction, or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures of the Building; or from construction, repair, or alteration of any other premises in the Building or the Premises; or from any acts or omissions of any other Tenant, occupant, or visitor of the Building; or from any other cause beyond Landlord's control.

Section 21. Warranties and Representations by Landlord.

In addition to any other warranties and representations by Landlord contained herein, Landlord expressly warrants and represents to Tenant that the Premises are properly zoned and improved to permit the use thereof by Tenant for its purposes stated in this Lease.

Section 22. Quiet Enjoyment by Tenant.

Landlord covenants that if Tenant performs all the terms, conditions, and covenants of this Lease to be performed by Tenant, Tenant shall peaceably and quietly hold and enjoy the premises for Tenant's purposes for the term hereof without hindrance or interruption.

Section 23. Assignment and Subleasing by Tenant.

Anything contained in this Lease to the contrary notwithstanding, Tenant shall not have the right to assign, transfer, hypothecate, or mortgage this Lease, or sublease the Premises or any part thereof, without the prior written consent of Landlord and full reimbursement of out-of-pocket expenses of Landlord by Tenant.

Section 24. Default of Tenant.

Section 24.01 Events of Default. If any one or more of the following events (herein called "events of default") shall happen:

- (a) Default shall be made in the due and punctual payment of any installment of base rent, additional rent or other charges payable under this Lease or any part thereof, when and as the same shall become due and payable, and such default shall continue for a period of three (3) days after notice from Landlord to Tenant specifying the items in default; or
- (b) Default shall be made by Tenant in the performance or compliance with the agreements, terms, covenants or conditions in this Lease provided for a period of fifteen (15) days after notice from Landlord to Tenant specifying the items in default, or in the case of a default or a contingency that cannot with due diligence, in good faith, be cured within said fifteen (15) day period, then if Tenant fails to proceed within said fifteen (15) day period to cure the same and thereafter to prosecute continuously the curing of such default with due diligence, in good faith [it being intended in connection with a default not susceptible of being cured with due diligence within said fifteen (15) day period that the time of Tenant within which to cure the same shall be extended for such period as may be necessary to complete the same with all due diligence]; or
- (c) Tenant or any franchisor or licensor of Tenant, or any guarantor of this Lease, shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or future federal, state, or other bankruptcy or insolvency statutes or laws, or shall seek or consent to or acquiesce in the appointment of any bankruptcy or insolvency trustee, receiver or liquidator of Tenant or such franchisor, licensor or guarantor or of all or any substantial part of their respective properties

or of the Premises; or

- (d) Tenant or any franchisor, or licensor of Tenant, or any guarantor of this Lease, shall make an assignment for the benefit of creditors of all or any substantial part of their respective properties or of the Premises, or if any trustee, receiver or liquidator for Tenant or any franchisor or licensor of Tenant, or such guarantor, shall be appointed in any action, suit or proceeding, or if the leasehold estate hereby created shall be taken in execution or by other process of law, or if Tenant shall vacate or abandon the Premises;

then and in any such event Landlord at any time thereafter may give notice to Tenant specifying such event of default or events of default and stating that this Lease and the term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least three (3) days after the giving of such notice, and upon the date specified in such notice this Lease and the term hereby demised and all rights of Tenant under this Lease, including any renewal privileges whether or not exercised, shall expire and terminate, and Tenant shall remain liable as hereinafter provided.

Section 24.02 Re-Entry. Upon any such breach, expiration or termination of this Lease Tenant shall quit and peacefully surrender the Premises to Landlord, and Landlord upon or at any such breach, expiration or termination may, without further notice, enter upon and re-enter the Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise and may dispossess Tenant and remove Tenant and all other persons and property from the Premises and may have, hold and enjoy the Premises and the right to receive all rental income of and from the same. Any and all property so removed may be handled, removed, stored or otherwise disposed of by Landlord at the risk and expense of Tenant. In no event shall Landlord be responsible for the preservation or safekeeping thereof. Tenant shall pay to Landlord, upon demand in writing, any and all expenses incurred by such removal and all storage charges incurred with respect to such property. If any property shall remain in the Premises or in the possession or under the control of Landlord and shall not be retaken by Tenant within a period of five (5) days after the expiration or earlier termination of this Lease, said property shall conclusively be deemed to have been forever abandoned by Tenant. No such re-entry or taking of possession of the Premises by summary proceedings or otherwise shall be construed as an election by Landlord to terminate the term of this Lease unless a written notice of such intention shall be given to Tenant.

Section 24.03 Right to Relet. If this Lease shall be terminated pursuant to this Section 24, or by summary proceedings or otherwise, or if the Premises or any part thereof shall be abandoned by Tenant, or shall become vacant during the term hereof, or in any case where Landlord has recovered possession of the Premises by reason of Tenant's default, Landlord may in its own name, but as agent for Tenant if this Lease has not been terminated or, if the Lease be terminated, in its own behalf, relet the Premises or any part thereof, or the Premises with additional premises for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Lease) as Landlord, in its sole discretion, may determine and may collect and receive the rents therefor; provided however, Landlord may refuse to relet the Premises, or any part thereof, if Landlord, in its sole discretion, is not satisfied with a proposed tenant's financial condition, creditworthiness, business reputation or business, or the proposed tenant or product mix of the Building that would result from any lease to such proposed tenant. Landlord shall in no way be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due upon such reletting.

Section 24.04 Measure of Damages in Event of Default.

- (a) No expiration or termination of this Lease, or summary proceedings, abandonment or vacancy, shall relieve Tenant of its liability and obligations under this Lease, whether or not the Premises shall be relet. In any such event Tenant shall pay Landlord the base rent, additional rent and all other charges required to be paid by Tenant up to the time of such event. Thereafter:
- (i) Tenant, until the end of the term of this Lease, or what would have been the end of such term in the absence of any such event, shall be liable to Landlord as damages for Tenant's default the equivalent of the amount of the base rent, additional rent and the other charges which would be payable under this Lease by Tenant if this Lease were still in effect, less the net proceeds of any reletting effected pursuant to the provisions of Section 24.03 hereof, after deducting all of Landlord's expenses in connection with such reletting including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, legal expenses, reasonable attorneys' fees, alterations and redecorating costs, and expenses of preparation of such reletting;
- (ii) Tenant shall pay such current damages (herein called "deficiency") to Landlord monthly on the days on which the monthly installments of base rent would have been payable under this Lease if this Lease were still in effect, and Landlord shall be entitled to recover from Tenant each monthly deficiency as the same shall arise; and
- (iii) At any time after the expiration or termination of this Lease or abandonment or vacating of the Premises by Tenant, in lieu of collecting any further monthly deficiencies as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, as damages, in addition to the damages provided in Subsection 24.04(d) hereof, damages computed in the manner set forth in Subsection 24.04(b) hereof, less any such monthly deficiencies previously recovered from Tenant.
- (b) In case of any breach of this Lease mentioned in Subsection (c) or (d) of Section 24.01, Landlord shall immediately and ipso facto, without notice or other action by Landlord, become entitled to recover from Tenant, as damages for such breach, in addition to any damages becoming due under Subsection 24.04(d), an amount equal to the amount by which the base rent, additional rent and other charges reserved in this Lease from the date of such breach to the date of the expiration of the original term demised exceeds the then fair and reasonable rental value of the Premises for the same period. Said damages shall become due and payable to Landlord immediately upon such breach of this Lease and without regard to whether this Lease is terminated or not, and if this Lease is terminated without regard to the manner in which it is terminated. In the computation of such damages, the difference between any installments of rent thereafter becoming due and the fair and reasonable rental value of the Premises for the period for which such installment was payable shall be discounted to the date of such breach at the rate of not more than four percent (4%) per annum.
- (c) If the Premises or any part thereof are relet by Landlord for the unexpired term of this Lease,

or any part thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such reletting shall prima facie be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting. Nothing herein contained shall limit or prejudice the right of Landlord to prove and obtain, as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be provided, whether or not such amount is greater, equal to, or less than the amount of the difference referred to above.

- (d) If this Lease is terminated by summary proceedings or otherwise, or if the Premises are abandoned or become vacant, and whether or not the Premises are relet, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, in addition to any other damages becoming due hereunder, the following: an amount equal to all costs and expenses, if any, including reasonable attorneys' fees, incurred by Landlord in recovering possession of the Premises, and all reasonable costs and charges for the care of the Premises while vacant, which damages shall be due and payable by Tenant to Landlord at such time or times as such expenses are incurred by Landlord. All such sums payable by Tenant to Landlord under this Lease, if not paid when due, shall accrue interest at eighteen percent (18%) from the due date until paid, said interest to be additional rent under this Lease and shall be paid to Landlord by Tenant upon demand. Tenant's liability for breach of any covenant of this Lease shall survive the termination of this Lease.
- (e) Notwithstanding anything herein stated to the contrary, if Tenant defaults in any monetary obligation hereunder more than two (2) times in any twelve (12) month period, regardless of whether or not such prior monetary defaults were remedied by Tenant or waived by Landlord, then such new default shall be deemed, at the option of Landlord, "noncurable" in which event Tenant shall have no right to cure same and Landlord may exercise any right available to Landlord hereunder, at law or in equity.

Section 24.05 Remedies. Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 25. Exercise of Rights and Notice.

The exercise of any right, privilege, duty or obligation of any party hereto, or the giving of any notice permitted or required hereunder, shall be in writing and mailed by certified mail to the other party unless a specific provision of this Lease provides otherwise. Such mailing or the mailing of any other notice required or permitted under this Lease shall be to the addresses provided above, or such future changed address of which notice has been given to the other party in writing in accordance with the above provisions.

Section 26. Miscellaneous.

- (a) **No Offer.** This Lease is submitted to Tenant on the understanding that it will not be considered an offer and will not bind Landlord in any way until (a) Tenant has duly executed and delivered duplicate originals to Landlord and (b) Landlord has executed and delivered one of such originals to Tenant.
- (b) **Joint and Several Liability.** If Tenant is composed of more than one signatory to this Lease, each signatory will be jointly and severally liable with each other signatory for payment and performance according to the terms of this Lease.
- (c) **No Construction Against Drafting Party.** Landlord and Tenant acknowledge that each of them and their counsel have had an opportunity to review this Lease and that this Lease will not be construed against Landlord merely because Landlord's counsel has prepared it.
- (d) **Time of the Essence.** Time is of the essence of each and every provision of this Lease.
- (e) **No Recordation.** Tenant shall not record this Lease without the prior written consent of Landlord, however, upon the request of either party hereto, the other party shall join the execution of a memorandum or "short form" of this Lease for the purpose of recordation in such form as required for recordation. Tenant's recordation of this Lease or any memorandum or short form of it, without prior written consent of Landlord, will be void and a default under this Lease.
- (f) **No Waiver.** The waiver by Landlord of any agreement, condition, or provision contained in this Lease will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition, or provision contained in this Lease, nor will any custom or practice that may grow between the parties in the administration of the terms of this Lease. The subsequent acceptance of rent by Landlord will not be deemed to be a waiver of any preceding breach by Tenant of any agreement, condition, or provision of this Lease, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.
- (g) **Limitation on Recourse.** Tenant specifically agrees to look solely to Landlord's interest in the Building for the recovery of any judgments from Landlord, it being agreed that Landlord (and its venturers, partners, and their shareholders, venturers, and partners, and all of their officers, directors, agents and employees) will never be personally liable for any such judgments.
- (h) **Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Ohio. If any provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.
- (i) **Holding Over.** Tenant will have no right to remain in possession of all or any part of the Premises after the expiration of the term hereof. If Tenant remains in possession of all or any

part of the Premises after the expiration of the term of the Lease, with or without the express or implied consent of Landlord: (a) such tenancy will be deemed to be a periodic tenancy from month-to-month only; (b) such tenancy will not constitute a renewal or extension of this Lease for any further term; and (c) such tenancy may be terminated by Landlord upon the earlier of thirty (30) days prior written notice or the earliest date permitted by law. In such event, monthly base rent will be increased to an amount equal to one hundred fifty percent (150%) of the monthly base rent payable during the last month of the term of this Lease, and any other sums due under this Lease will be payable in the amount and at the times specified in this Lease. Such month-to-month tenancy will be subject to every other term, condition, and covenant contained in this Lease.

- (j) Force Majeure. Neither party hereto shall be required to perform any term, condition, or covenant of this Lease during such time performance, after the exercise of due diligence to perform, is delayed or prevented by acts of God, civil riots, organized labor disputes, or governmental restrictions. Neither party shall be excused from performing any term, condition, or covenant of this Lease because of any act or omission of such party.
- (k) Captions. The captions of the various sections of this Lease are for convenience only and do not define, limit, describe or construe the contents of such sections.
- (l) Brokers. Landlord and Tenant respectively represent and warrant to each other that neither of them has consulted or negotiated with any broker or finder with regard to the Premises.
- (m) Binding Effect. The terms, conditions, and covenants contained in this Lease will bind and inure to the benefit of and be binding upon the parties hereto, their respective heirs, administrators, executors, representatives, successors and permitted assigns.

Section 27. Entire Agreement.

This Lease shall constitute the entire agreement of the parties hereto and any prior agreement between the parties relating to the Premises, either written or oral, is merged herein and shall be of no separate force or effect and this Lease shall only be changed, modified, or discharged by an agreement in writing signed by both parties.

IN WITNESS WHEREOF, Landlord and Tenant have signed and sealed this Lease as of the day and year first above written.

In the presence of:

EVERGREEN INVESTMENT, Corp

By: _____

Signature

Title: _____

Print Name

Print Name

Signature

Print Name

Signature

Print Name

Signature

Print Name

**BRITAIN ENTERTAINMENT, LLC
(d. b. a. "STRIPPED")**

By: _____

Title: _____

Print Name