

**Town of Kearny
And
TNS LLC
Redevelopment Development &
Leaseback Agreement**

This Agreement ("Agreement") is entered into this 23 day of December, 2004 by and between the TOWN OF KEARNY, ARIZONA, an Arizona municipal corporation (the "Town" or "Lessor") and TNS, LLC, an Arizona Limited Liability Company ("TNS" or "Lessee").

RECITALS

WHEREAS, TNS has the contractual right to purchase approximately 12,500 gross square feet acres of real property located within the Kearny Town Center Redevelopment Area and Single Central Business District of the Town (hereinafter the "Government Property"). The Government Property is depicted and more particularly described in Exhibit A attached hereto; and

WHEREAS, TNS intends to develop the site as a retail store (hereinafter the "Store") and will provide related improvements to the site, as generally depicted in the site plan attached to this agreement as Exhibit B (hereinafter the "Site Plan"); and

WHEREAS, the Town will have no responsibility to construct the Store or any other structure on the Property; and

WHEREAS, the Store will be a "Government Property Improvement" pursuant to Arizona Revised Statutes Annotated (hereinafter "A.R.S.") § 42-6201; and

WHEREAS, the Store will be exempt from the government property lease excise tax required to be levied pursuant to A.R.S. § 42-6202 in accordance with the exception provided in A.R.S. § 42-6208(4); and

WHEREAS, TNS and the Town wish to enter into this economic development agreement to provide for the development of the Property; and

WHEREAS, on 12/20/2004, the Town Council approved and authorized the execution and delivery of this Agreement; and

WHEREAS, A.R.S. § 9-500.05 authorizes the Town to enter into a development agreement with a landowner or any other person having an interest in real property located within the Town to facilitate development of the property by providing for, among other things, the conditions, terms, restrictions and requirements for public infrastructure and the financing of public infrastructure; and

WHEREAS, in approving this Agreement, the Town Council finds that all activities relating to the development of the Property are economic development activities within the meaning of A.R.S. § 9-500.11(C); that all abatement of rental payments and the government property lease excise tax by the Town pursuant to the Agreement constitute the appropriation and expenditure of public monies for and in connection with economic development activities, including but not limited to the creation retail shopping and revitalization in its Kearny Town Center Redevelopment Area; and that it is appropriate to provide TNS with the benefits in this Agreement as an inducement to TNS to lease the Property from the Town and to construct and operate a one-of-a kind Family Dollar / or TNS Store on the Property in the Town; and

WHEREAS, the Town Council further finds that development of the Property will substantially increase economic development activity in the Town by: 1) increasing sales tax revenue; 2) creating and retaining jobs; 3) encouraging the development of property in the vicinity of the TNS Store for retail purposes; 4) redirecting the public's retail expenditures to businesses located within the Town's corporate limits; and positive recognition which enhances the economic welfare of the Town.

WHEREAS, the Town has additionally declared the Government Property to be a slum or blighted area in accordance with Title 36, Chapter 12, Article 3; and

WHEREAS, the Store will have a gross building space of approximately 8,035 square feet (see Exhibit B, attached hereto and incorporated by reference herein (the "Site Plan")); and

NOW THEREFORE, in consideration of the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Term. The term of this Agreement shall be for twenty (20) years. The effective date of the Agreement shall be the date on which the last representative of the parties' signed this Agreement ("Effective Date").

2. The Store Construction:

(a) TNS shall build an approximately 8,035 square foot sized building on the Government Property at its sole expense subject to all applicable laws and regulations.

(c) The Town, without monetary expenditures, will assist TNS in obtaining all permits and approvals which are issued by any third party public or quasi-public entity and which are necessary for the development, construction and operation of the Store. The Town's responsibility only includes facilitation between TNS and third parties, not the hiring of counsel.

(d) TNS shall pay all costs and fees associated with the Property design, engineering, permitting, acquisition, construction, financing and installation of all improvements.

7. Town Representations: The Town acknowledges that TNS is acquiring the Property, entering into this Agreement, and expending considerable sums in design and engineering fees and construction associated with the Store in reliance on the provisions of this Agreement. The Town acknowledges that TNS shall continue to expend considerable sums with respect to the same in reliance on the provisions of this Agreement. The Town represents, the Property is located within the municipal limits of the Town. The Town is a duly organized, validly existing municipal corporation in the State of Arizona. The individuals executing this Agreement have all necessary authority to enter into this Agreement and to bind the Town.

Aside from what has already been disclosed to TNS, the Town is not aware of any litigation, referendum, investigation, initiative or proceeding pending or, to the knowledge of the Town, contemplated against the Town, the Government Property, this Agreement, the zoning of the Government Property, or the levy or collection of any Town Privilege Tax (collectively, "Actions", and each individually an "Action") which would impair or adversely affect the Town's ability to perform its obligations under this Agreement or under any instrument or document related hereto or which would impair or adversely affect TNS's ability to construct the Store on the Property.

8. TNS' Representations: TNS represents, that all of TNS's representations, are true in all material respects as of the date of this Agreement. TNS is a duly organized, validly existing limited liability company organized under the laws of the State of Arizona, and is authorized to conduct business in the State of Arizona. The transactions contemplated by this Agreement, the execution of this Agreement and TNS' performance hereunder have been duly authorized by all requisite action of TNS' board of directors and no other approval or consent is required for this Agreement to be binding upon TNS. TNS further represents that after conveyance of the Property to the Town and lease back by the Town to TNS, TNS may not mortgage, pledge or hypothecate the Town's leasehold interest in the Property; and as security for loans or other obligations with respect to the Store, TNS may only mortgage, pledge or hypothecate its leasehold interest in the Property and the Store. TNS further agrees to have valid insurance at all times which limits are set forth in the attached Lease Agreement over the course of the Agreement.

9. Town Ownership: The Property and Store shall be subject to A.R.S. § 42-6201, *et seq.* TNS shall quit-claim the Property to Town.

10. Excise Tax: Pursuant to A.R.S. § 42-6207, the Town shall, after issuance of the Certificate of Occupancy, abate the excise tax for the period of time allowable thereunder. Once applicable and unless otherwise exempted, Town shall levy and shall collect from TNS an excise or "possessory interest" tax in the amount as authorized under A.R.S. § 42-6203. Pursuant to A.R.S. § 42-6206, TNS acknowledges that failure to pay the tax after being duly noticed and after an opportunity to cure has been afforded shall be considered a default of this Agreement and could result in divesting TNS and only mortgagee or lien claimants secured by TNS' lease held interest of any interest in or right of occupancy of the Store.

11. Government Property. In consideration of the rents and covenants contained herein, the Town hereby leases to TNS, and TNS hereby leases from the Town the Government Property. Neither the term Government Property nor Government Property Improvement shall include business fixtures or other personal property owned by any subtenant of TNS.

12. Rent. TNS agrees to pay the Town as rent for the Government Property during years one (1) through eight (8) of the Term hereof an annual rental of \$12,000 payable in twelve equal monthly installment starting with the first of the month following the issuance of the certificate of occupancy, and hereafter on the anniversary of the Effective Date, until the start of the eighth year of the Agreement Term. The Town shall refund this rent on the anniversary of the Effective Date each year if the subtenant of TNS has paid Town transaction privilege taxes on at least \$600,000 in retail sales occurring at the Government Property during that year of the Term.

13. Tax Abatement: Town and TNS acknowledge and agree that (i) the Government Property and the Government Improvements to be constructed pursuant to the Development Agreement, are within the Kearny Town Center Redevelopment Area which Town has determined by Resolution No. 02-499, approved by the Kearny Town Council on 12th day of November, 2002, pursuant to Title 36, Chapter 12, Article 3 of the Arizona Revised Statutes, to be a slum and/or blighted area and also in need of incentives to encourage private investments in the construction of new improvements, and (ii) the Government Improvements constructed on the Government Property pursuant to this Agreement will result in an increase in property value of at least one hundred percent (100%). Accordingly, as a Government Lessor, the Town hereby abates TNS's obligation for the Government Property Lease Excise Tax pursuant to A.R.S. §42-1962 for the period commencing on the CO Date for the Government Improvements. Pursuant to its authority as a Government Lessor, the Town hereby waives the requirement that TNS apply for the tax abatement provided by A.R.S. §42-6208.

14. Granting and Preserving Tax Treatment: The Town agrees to take the necessary action for TNS's interest in the Government Property and Government Improvements to qualify for exemption from real property taxation and to take any action required of it to cause (i) an abatement, pursuant to A.R.S. §42-6208, of the government property lease excise tax as it relates to the Government Property and Government Improvements so that the period of abatement will run for eight (8) years from the date of the issuance of the certificate of occupancy by the Town as to the Government Improvements; and (ii) the Government Improvements to be taxed as "government property improvement" in accordance with A.R.S. §42-6201 following the expiration of said eight (8) year abatement period through the end of the Term (items (i) and (ii) are collectively hereinafter referred to as "Contemplated Tax Treatment"). To the extent other taxes are lawfully assessed against the Store or any part thereof, TNS shall pay such taxes. For example, TNS or a subtenant may be taxed for store fixtures or other personal property that are not real property fixtures. After the issuance of a certificate of occupancy as to the Government Improvement, the Town will defend any challenge against the Town, whether administrative, judicial or otherwise, by any person or entity, to the taxation in such manner of any such government property improvement under A.R.S. §42-6201, *et seq.* The Town agrees that it will take no action that would result in the Store no longer receiving the Contemplated Tax Treatment but Parties agree that the Town cannot guarantee that

Arizona State Legislature may change the laws such that the Contemplated Tax Treatment is not possible.

15. Improvements. TNS agrees to construct the Store on the Government Property and to keep the Government Property and all improvements thereto in good condition and repair for the Agreement Term and any extensions thereof. TNS may, at its option and at its sole cost and expense, remove any of its fixtures, equipment or other personal property from the Government Property prior to the expiration of the Agreement Term or termination of this Agreement.

16. Utilities. TNS agrees to pay any and all utility deposits, charges and hook up fees incurred in connection with the Government Property during the Agreement Term, including but not limited to all charges associated with electric, gas, water, sewer, cable, telephone and garbage collection.

17. Maintenance. TNS shall maintain the Government Property, the Store and any of TNS' property thereon in a neat, clean, weed-free, litter-free and in good condition at all times during the term hereof.

18. Inspection. Town reserves the right to enter the Store upon reasonable notice to TNS (except in case of an emergency, in which case no notice would be required) to inspect the Store or the performance by TNS of the terms and conditions of this Agreement.

19. Personal Property. TNS agrees to pay when due any and all personal property taxes and any other taxes, charges or assessments of every kind and character which may be levied, charged or assessed against any property of TNS placed upon the Government Property and the Store during the term hereof. The Town and TNS understand that the current exemption from real property taxes or the government property lease excise tax may be changed or removed at any time by an action of the Legislature of the State of Arizona. Both parties further acknowledge that Article IX, Section 1 of the Arizona Constitution states as follows: "The power of taxation shall never be surrendered, suspended or contracted away". Thus, no representations are made by either party that the benefits to be derived by the Town and TNS through the conveyance of the Government Property to the Town and this Agreement to TNS will during the Agreement term, remain free from real and personal property taxes and government property lease excise taxes.

20. Condition of Government Property. TNS acknowledges that it has had an opportunity to inspect and satisfy itself as to the condition of the Government Property, and that it is leasing the Government Property from the Town "as-is", and that the Town has made no representation or warranty of any kind as to the proximity of utilities to the Government Property, the condition of the Government Property or its fitness for TNS' intended use.

21 Use of Government Property. TNS agrees that the Government Property shall only be used for retail store and other related uses incidental thereto. TNS shall comply with any and all applicable federal, state and local laws, ordinances, rules, regulations and orders, as amended from time to time (collectively "Laws") with respect to its use and occupancy of the Government Property, including but not limited to any and all Laws pertaining to health,

the environment and dust control/air quality (collectively "Environmental Laws"), which include, but are not limited to: the Comprehensive Environmental Response, Compensation and Liability Act, as amended; the Resource Conservation and Recovery Act, as amended; and the Federal Insecticide, Fungicide and Rodenticide Act, as amended. TNS agrees that it will not dispose of nor permit or acquiesce in the disposal of any waste regulated pursuant to the Environmental Laws ("Regulated Substances") on, under or around the Government Property. TNS agrees that it shall not keep, store or use on the Government Property any Regulated Substances except quantities that are reasonably necessary for the conduct of TNS' business on the Government property.

22. Exclusive Option to Purchase.

(a) Provided that TNS is not in default of this Agreement and has caused no event to occur or condition to exist which, with the passage of time or giving of notice or both, would constitute a default under this Agreement, after the 20th year of operating the Government Improvement (starting with the date of issuance of the certificate of occupancy ("CO Date"), TNS shall have the option ("Purchase Option") to purchase the Government Property and Government Improvement for the sum of \$1.00 ("Final Purchase Payment"). Parties agree that this Final Purchase Payment is in addition to the balance of the Purchase Price, which is accounted for by the economic development created by this Store and the revitalization, caused by the Government Improvement in the Kearny Town Center Redevelopment Area during the term of the Agreement.

(b) All expenses in connection with conveyance of the Government Property and Government Improvements including, but not limited to, title insurance, recordation and notary fees and all other closing costs, shall be paid by TNS. Possession shall be delivered to TNS concurrently with the conveyance of title by the Town.

23. General Indemnity. TNS agrees to indemnify, protect, defend and hold the Town and its officers, employees and agents harmless from and against any and all claims, damages, liabilities, judgments, costs (including reasonable attorney fees), liens, expenses and penalties, whether now known or unknown, fixed or contingent, liquidated or unliquidated, arising out of or in any way connected to (i) TNS' and TNS' officers, directors, agents, servants, employees, customers, visitors, licensees, concessionaires and invitees use and occupancy of the Government Property and the Store or (ii) any accident or other occurrence, causing or alleged to have caused injury or death to persons or damage to property by reason of condition, maintenance or construction of the Government Property, the Store or any other improvement to the Government Property during the Agreement Term (excepting those constructed by or on behalf of the Town). This section shall survive the expiration or termination of this Agreement.

24. Environmental Indemnity. TNS agrees to indemnify, protect, defend and hold the Town and its officers, employees and agents harmless from and against any and all claims, damages, liabilities, judgments, costs (including reasonable attorney fees), liens, expenses and penalties, whether now known or unknown, fixed or contingent, liquidated or unliquidated, arising out of or in any way connected to any violation or alleged violation of any Environmental Law during the period that TNS has possession of the Government Property. This section shall survive the expiration or termination of this Agreement.

25. Release. TNS forever releases, acquits, and discharges the Town, its officers, employees and agents from any and all claims, damages, liabilities, judgments, costs, expenses, loss of income, losses due to business interruption, loss of services, actions and losses of actions, whether now known or unknown fixed or contingent, liquidated or unliquidated, arising out of, alleged to arise out of or in any way connected with the condition of the Government Property, the Store, or the use of the Government Property or the Store, excepting those arising out of the actions of the Town or its agents, employees or invitees. This section shall survive the expiration or termination of this Agreement.

26. Insurance. TNS shall, at its sole cost and expense, and subject to Town Attorney approval, obtain and maintain in full force and effect throughout the Agreement Term, the following non-contributing primary insurance policies, all of which shall name the Town as an additional insured:

(a) Commercial general liability insurance coverage against any liability to the public arising out of the use or occupancy of the Government Property and the Store with limits of not less than \$2,000,000.00 per occurrence and not less than \$5,000,000.00 annual aggregate, covering bodily injury and property damage liability.

(b) Business auto liability covering owned, non-owned and hired vehicles with limits of not less than \$2,000,000.00 per accident.

(c) Workers' compensation insurance in accordance with applicable Laws.

26. Events of Default. TNS shall be in default if:

(a) TNS fails to perform or observe any obligations under this Agreement and does not cure the failure within ten (10) days after written notice from the Town stating the failure involved.

(b) TNS takes any action constituting an anticipatory breach of this Agreement.

(c) a bankruptcy action is filed, either voluntarily or involuntarily, applicable to TNS, or there exists any other circumstance that indicates TNS's inability to pay its debts as they mature.

(d) TNS' Leasehold interest passes to any other party other than by operation of law without the written consent of the Town.

(e) TNS (after ten (10) days written notice from the Town) fails to fully and properly maintain the Government Property as described herein or uses the Government Property for any use not specifically permitted herein.

(f) the Government Property becomes subject to the government property lease excise tax or any other tax, fee or charge under

which failure to pay such government property lease excise tax or any similar tax fee or charge will constitute a breach of this Lease and return of the Government Property (including the Store) to the Town. TNS acknowledges that if the Government Property and the Store, or either of them, is no longer exempt from the government property lease excise tax, failure to pay such tax after being duly noticed shall be considered an event of default under this Lease that could result in divesting TNS and any mortgagee or lien claimant secured by TNS' interest in this Lease of any interest in, or right to, occupy the Government Property and the Store.

27. Remedies. Upon the occurrence of any Event of Default by TNS, the Town, at its option, may take any one of the following actions, concurrently or separately, without prior notice or demand:

- (a) the Town may take reasonable actions necessary in the Town's sole discretion, to cure any Event of Default by TNS. TNS shall be liable for all of the Town's expenses incurred, with interest at the rate of eighteen percent (18%) per annum until paid, as additional rent, payable on the first of the next succeeding month after demand for payment by the Town to TNS.
- (b) the Town may require specific performance of TNS of any act or payment applicable to any Event of Default, and the Town shall be entitled to affirmative or negative temporary restraining orders or injunctions to obtain the same.
- (c) the Town may terminate this Lease, with the same effect as if the term had expired without TNS' option to renew the Lease being exercised. In such event, TNS shall be liable to the Town for the amount of all unpaid rentals to the date of the termination.
- (d) the Town may exercise any other remedy the Town may have at law or in equity.

The Town may exercise any remedy and in any such exercise shall not be deemed to have waived its right to any other remedy.

28. Assignment and Subletting. TNS may not assign or sublet, in whole or in part, this Lease or any portion of the Government Property without the express written consent of the Town; provided, however, that TNS may sublet the Government Property (including the Store) to others for use solely as retail store within the meaning of A.R.S. § 42-6208.

29. Liens. TNS will not mortgage, pledge or hypothecate the Town's interest in the Government Property or the Store; all loans, mortgages or other obligations of TNS may only be upon TNS' leasehold interest in this Lease, the Government Property and the Store.

30. Notice and Demands. Any notice or demands, which shall be required or

permitted by Law or by any of the provisions of this Lease, shall be in writing. Any such notice or demand shall be deemed effective upon receipt or refusal and addressed as follows:

If to the Town:

Gary Eide, Town Manager
Town of Kearny
Post Office Box 639
Kearny, Arizona 85237

And to :

Steve Cooper, Town Attorney
McCarville Cooper & Vasquez
Post Office Box 15005
Casa Grande, Arizona 85222

If to TNS:

Tom Lechner
TNS, LLC
5671 North Oracle Road, Suite 1103
Tucson, Arizona 85704

31. Waiver. Any waiver by the Town of any default, breach or failure by TNS shall not constitute a waiver of any other default, breach or failure by TNS hereunder. The subsequent acceptance of rent or any other payment or charge hereunder by the Town shall not be deemed to be a waiver of any preceding default or breach by TNS of this Lease, other than failure of TNS to pay the particular rent or other payment or charge so accepted. No covenant, term or condition of this Agreement shall be deemed to have been waived by the Town unless such waiver is set forth in writing.

32. Holdover. If for any reason TNS shall remain in possession of the Government Property beyond the termination or expiration of this Lease, TNS shall be deemed a tenant at sufferance, shall be subject to immediate eviction and removal by the Town and the Town shall be entitled to pursue all remedies at law or in equity with respect to TNS' holdover on the Government Property. The Town and TNS acknowledge and agree that the Town will be severely damaged by any holdover by TNS beyond the termination or expiration of this Lease and that the amount of such damages would be difficult to quantify. The Town and TNS acknowledge and agree that in the event of such a holdover, in addition to the rent due hereunder, TNS shall pay to Town liquidated damages in an amount equal to One Hundred Dollars (\$100.00) per day for each day that TNS remains in possession of the Government Property and Store beyond the termination or expiration of this Lease, which the Town and TNS agree is a reasonable approximation of damages holding over which will be suffered by the

Town as a result of any such holdover.

GENERAL PROVISIONS

1. **Recitals.** The Recitals set forth at the beginning of this Agreement are hereby acknowledged and incorporated herein and the parties hereby confirm the accuracy thereof.

2. **Relationship.** This Agreement shall not be construed as creating a joint venture, partnership, or any other cooperative or joint arrangement between or among the parties, and it shall be construed strictly in accordance with its terms.

3. **Mandatory Signature.** This agreement shall become binding on and enforceable against the Town of Kearny only after acceptance by the Kearny Town Council and execution by the Kearny Mayor whether or not contract negotiations were conducted by the Town Manager or any other agent of the Town of Kearny.

4. **Integration.** This contract, including all incorporated documents, components, attachments, addenda, exhibits, and plans, constitutes the entire agreement between the parties pertaining to the subject matter contained herein. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by both parties.

5. **Equal Treatment of Parties in Interpretation of Agreement.** This Agreement is the result of arms-length negotiations between parties of roughly equivalent bargaining power and expresses the complete, actual, and intended agreement of the parties. This Agreement shall not be construed for or against either party as a result of its participation, or the participation of its counsel, in the preparation and/or drafting of this Agreement or any exhibits hereto.

6. **Construction.** Captions and paragraph headings used in this agreement are for convenience only, are not a part of this agreement, shall not be deemed to limit or alter any provisions of this agreement, and shall not be deemed relevant in construing the agreement. When used herein, the terms "include" or "including" shall mean without limitation by reason of the enumeration. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require. The term "person" shall include an individual, corporation, partnership, trust, estate, or any other entity. If the last day of any time period stated herein shall fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the State of Arizona.

7. **Governmental Powers.** Nothing in this Agreement shall be interpreted or applied to require, restrict, or limit, in any manner whatsoever, any legislative, discretionary or other approvals by the Town related to the Property; nor shall this Agreement impinge in any way upon the Town in carrying out or exercising any of its governmental duties, rights, powers or privileges

8. **Force Majeure.** Notwithstanding any other term, condition or provision hereof to the contrary, in the event any party hereto is precluded from satisfying or fulfilling any duty or obligation imposed upon such party by the terms hereof due to labor strikes, material shortages, war, civil disturbances, weather conditions, natural disasters, acts of god, or other events beyond the control of such party, the time period provided herein for the performance by such party of such duty or obligations shall be extended for a period equal to the delay occasioned by such events.

9. **Additional Acts and Documents.** Each party to this agreement agrees to do all things, take all actions and to make, execute and deliver such other documents and instruments as shall be reasonably requested to carry out the provisions, intent and purpose of this agreement.

10. **Authority to Bind Party.** The individuals executing this Agreement on behalf of each party represent and warrant that they are duly authorized to execute and deliver this Agreement on behalf of their respective parties.

11. **Waiver Not Implied.** No waiver by either party of any portion of this agreement or any breach by either party shall constitute a waiver of any other provision, whether or not similar, or of any subsequent breach of the same or any similar provision. Except as expressly provided in this agreement, no waiver shall be binding unless executed in writing by the party making the waiver. Each party specifically waives notice of default and right to cure said default unless specifically provided for in the Agreement.

12. **Timely Performance.** Time is of the essence for the performance of all conditions and obligations under this Agreement.

13. **Governing Law/Choice of Forum.** This Agreement and the rights, duties, and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Arizona, and any controversy, dispute or litigation shall be brought or commenced only in a court of competent jurisdiction in Pinal County, Arizona (or in the United States District Court for the District of Arizona if, but only if, the appropriate court in Pinal County lacks or declines jurisdiction over such action). The parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this paragraph.

14. **Prevailing Party's Costs.** The parties agree in the event of a breach of this contract, the breaching party will pay the other party's reasonable expenses, including, but not limited to, expert witness fees, and reasonable attorney fees incurred because of the breach, whether a lawsuit is instituted or not.

15. **Severability.** If any provision of this agreement is declared void and unenforceable, such provision shall be deemed severed from this agreement that shall otherwise remain in full force and effect. Further, if any such provision may be reduced and/or narrowed in scope or the like, such provision shall be reduced, narrowed, and/or the like, and so enforced. The same shall apply to any portion of any provision.

16. **Cancellation for Conflict of Interest.** This Agreement is subject to the

cancellation provisions for conflicts of interest pursuant to A.R.S. §38-511.

17. **Additional Acts and Documents.** Each party to this agreement agrees to do all things, take all actions and to make, execute and deliver such other documents and instruments as shall be reasonably requested to carry out the provisions, intent and purpose of this agreement.

IN WITNESS WHEREOF, the parties have executed and delivered this Lease as of the date first set forth above.

TNS, LLC., an Arizona Limited Liability Company

By: Tom Gehring
Its: MANAGING MEMBER

TOWN OF KEARNY, ARIZONA, an Arizona Municipal Corporation

By: Debra Donomies
Its:

ATTEST:

Margaret Gaston
Town Clerk

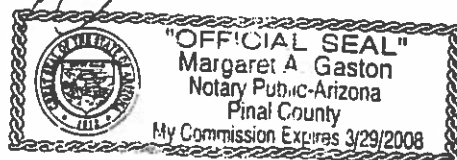
APPROVED AS TO FORM:

Stephen R. Cooper
Town Attorney

STATE OF ARIZONA)
County of PINAL) ss

The foregoing Lease Agreement was acknowledged before me this 21st day of Dec. 2007;

Margaret Gaston
Notary Public



My Commission Expires:

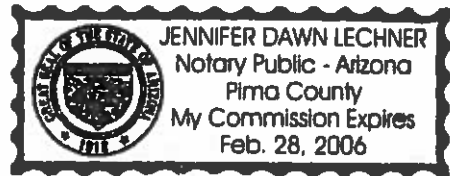
STATE OF Arizona)
County of Pima) ss

The foregoing Lease Agreement was acknowledged before me this 23 day of Dec, 200

Jennifer Dawn Lechner
Notary Public

My Commission Expires:

Feb. 28, 2006





Pinal County Assessor

Choose a destination below
[The County Assessor Website](#)

Assessor - General Parcel Information

[Back To List](#) [New Search](#)

The Parcel Number 301-12-03100 shows the following information for Tax Year: **2005** [Tax Year Change](#)

Parcel Number: 301-12-03100 [\(Taxing Information\)](#)
Section: 27 Township: 04S Range: 14E
Atlas Number: 042-27 Map: [View Parcel Map](#)
Legal Information: [\(What is this?\)](#)
REPLAT OF BLOCKS A B & 20 KEARNY SUBD NO 2: LT 9 BLK A CAB B
SLD 79 29105 SQ

Owner 1: TNS LLC
Owner 2:
Owner 3:
In C/O:

Tax Bill Mailing Address

Address: 5671 N ORACLE RD
City: TUCSON
State: AZ
Zip Code: 85704

Parcel Size: 29105.00 Size Indicator: Sq Ft
Tax Area Code: 0301 (Rates current as of 2004)
Use Code: 1722
Land Legal Class: 0112 - COMERCIAL / PERSONAL
PROPERTY NOT IN OTHER CLASSES
Impr. Legal Class: 0112 - COMERCIAL / PERSONAL
PROPERTY NOT IN OTHER CLASSES
Full Cash Value (FCV): \$75,492.00 [Value Details](#)
Limited Value (LPV): \$75,492.00
Real Property Ratio: 25.00%
Assessed FCV: \$18,873.00
Assessed LPV: \$18,873.00

Documents: 2004-055192
Date of Sale: 7/21/2004
Sale Amount: \$105,000.00

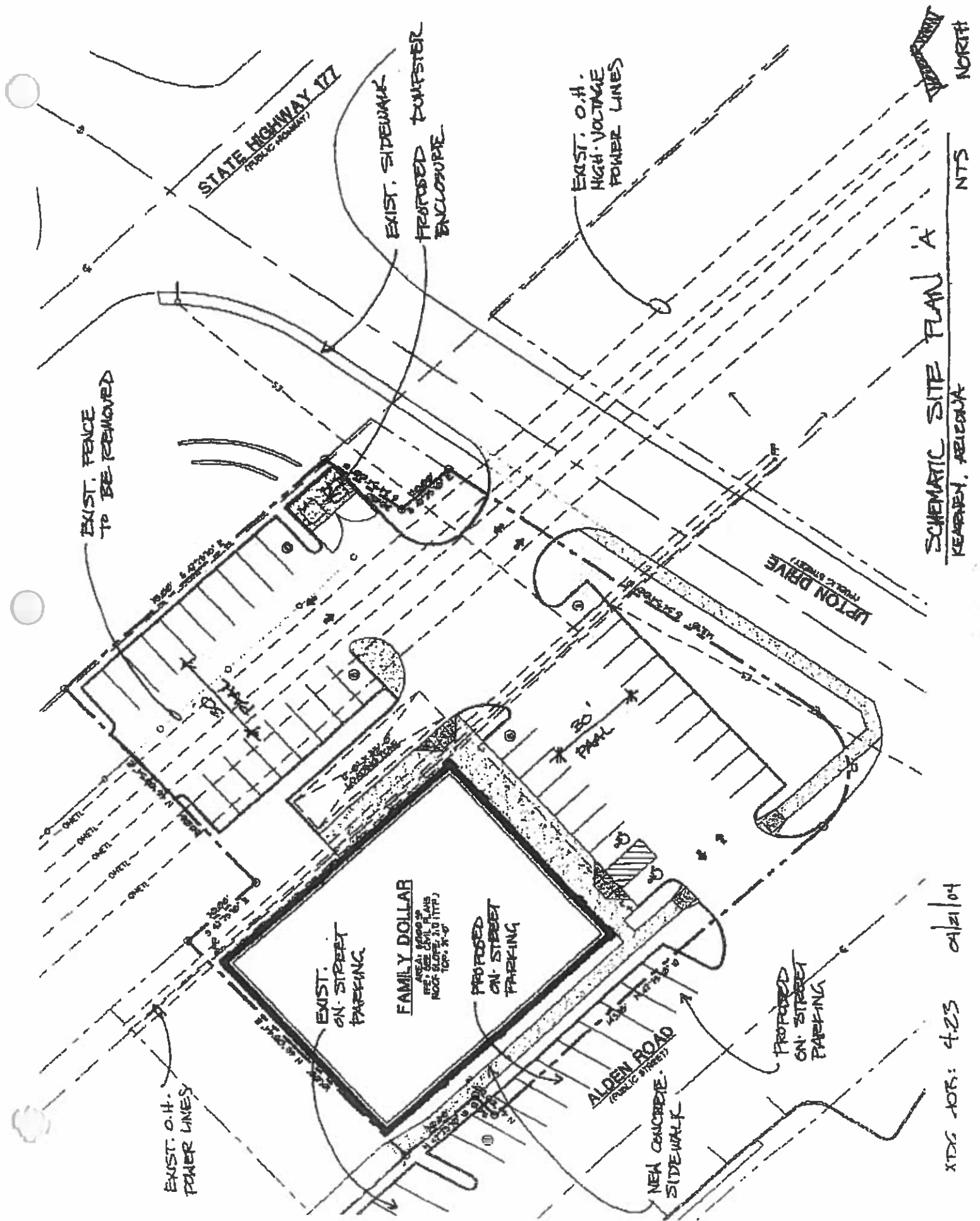
Property Address (Location):
302 W. ALDEN RD. 0001
KEARNY, AZ 85237
[\(View on MapQuest™\)](#)
** Not all areas of Pinal County supported. May return incorrect location.*

Subdivision: KEARNY SUBDIVISION
Unit: Block: A Lot: 9 Phase:
No Personal Property Listed

If you wish to print this page, please set your printer to "LandScape" for best results.

[New Search](#)

[Back To List](#)



Schematic Site Plan 'A'
 KEENEY, ARIZONA
 NTS

XDC JOB: 423 04/21/04

**AMENDMENT TO
LEASE AGREEMENT
BETWEEN
TOWN OF KEARNY
AND**

THIS AMENDMENT TO LEASE AGREEMENT ("Lease") is dated this 21st day of November, 2016 ("Effective Date"), and made by and between the TOWN OF KEARNY, a municipal corporation of the State of Arizona ("Landlord"), and THE CAVANAUGH FAMILY TRUST ("Tenant"). Landlord and Tenant are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties".

RECITALS

A. Landlord is the owner of certain real property legally described and depicted in Exhibit A, attached hereto and incorporated herein by this reference (the "Property").

B. Landlord currently leases to Tenant, and Tenant currently leases from Landlord, the Property for purposes and uses in connection with commercial retail business.

C. The Lease Agreement for the real property was executed on December 23, 2004 and recorded on March 11, 2005 at Fee. 2004-025429 records of Pinal County Recorder.

D. The Lease Agreement was assigned by TNS, L.L.C., an Arizona limited liability company to the Cavanaugh Family Trust on September 12, 2005.

E. The Town of Kearny agreed to the assignment of the Lease from TNS, L.L.C., an Arizona limited liability company to the Cavanaugh Family Trust on September 12, 2005.

F. The parties have discovered that page two (2) of the Lease Agreement (Sections 2, 3, 4, 5 and 6) were missing from the recorded Lease Agreement which creates an ambiguity in the Lease Agreement as to the payment of rental.

G. Landlord is authorized to enter into this Amended Lease pursuant to Arizona Revised Statutes ("A.R.S.") § 9-241 and Tenant is authorized to enter into this Lease pursuant to A.R.S. § 11-201.

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements hereinafter contained, the Parties hereto agree as follows:

AGREEMENT

1. AMENDMENT TO SECTIONS 2,3,4,5 and 6

These Sections are deleted in their entirety.

2. AMENDMENT TO SECTION 12 RENT.

Section 12 is hereby amended to add a new second paragraph to this Section:

After the eighth (8th) year of this Lease term, Tenant shall pay the following rental for the remaining twelve (12) years of the Lease term:

January 1, 2014 through December 31, 2018 the sum of \$1,000.00 dollars per month.

January 1, 2019 through December 31, 2023 the sum of \$1,250.00 dollars per month.

3. AMENDMENT TO SECTION 30 NOTICES AND DEMANDS.

Section 30 is amended in its entirety and replaced with the following Section:

All notices and other communication required or permitted under this Lease shall be in writing and shall be, as determined by the person giving such notice, either hand delivered, mailed by registered or certified mail, return receipt requested, or by facsimile communication to the other Party at the following addresses:

LANDLORD: Town Manager
Town of Kearny
P.O. Box 639
Kearny, AZ 85137
(520) 363-5547

TENANT: The Cavanaugh Family Trust
c/o Accounting Advisors Ltd.
10000 N. 31st Ave, Ste. D301
Phoenix, AZ 85051


Notice shall be deemed delivered at the time of personal delivery, or when mailed to the required party. Any party may change its address by given written notice of a change of address to the other Party in the manner above provided.

The Parties Agree that all other Terms of the Lease Agreement shall remain in force and in effect.

IN WITNESS WHEREOF, the parties hereto, have executed this Lease Agreement as of the day and year set forth below.

"Landlord"


TOWN OF KEARNY, a municipal
corporation of the State of Arizona



Mayor

Dated: November 28, 2016

ATTEST:



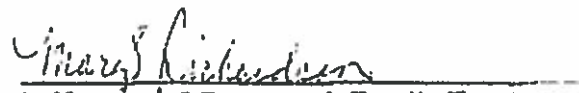
Town Clerk

APPROVED AS TO FORM:


Town Attorney


"Tenant"

THE CAVANAUGH FAMILY TRUST


As Trustee of Cavanaugh Family Trust

Dated: 10/20/2016

ATTEST:


Peggy Caskey, Administrative Assistant