

**CITY OF WASILLA
RESOLUTION SERIAL NO. 08-16**

A RESOLUTION OF THE WASILLA CITY COUNCIL AUTHORIZING THE MAYOR TO EXECUTE A THREE-YEAR LEASE WITH ACTION PRO SHOP FOR SPACE AND OPERATION OF A HOCKEY/SOCCER RETAIL SHOP WITHIN THE MULTI-USE SPORTS COMPLEX.


WHEREAS, Action Pro Shop, a tenant at the Multi-Use Sports Complex for the last three years, has again requested to lease space at the Multi-Use Sports Complex for FY2009 and FY2010; and

WHEREAS, Action Pro Shop operates a retail facility that sells hockey and soccer paraphernalia, as well as, hot beverages and snacks; and

WHEREAS, Wasilla Municipal Code 5.08.115 allows the Mayor, with the approval of the Council by resolution, to award a lease of space in a building owned by the City for the provision of goods or services, on either a for-profit or nonprofit basis, that support or supplement the public uses or functions that are located in the building.

NOW THEREFORE BE IT RESOLVED, by the Wasilla City Council, that we authorize the Mayor to execute a three-year contract with Action Pro Shop for space and operation of a hockey/soccer retail shop within the Multi-Use Sports Complex.

ADOPTED by the Wasilla City Council on June 9, 2008.



DIANNE M. KELLER, Mayor

ATTEST:



KRISTIE SMITHERS, MMC
City Clerk

[SEAL]



**CITY OF WASILLA
LEGISLATION STAFF REPORT**

RE: RESOLUTION SERIAL NO. 08-16

A RESOLUTION OF THE WASILLA CITY COUNCIL AUTHORIZING THE MAYOR TO EXECUTE A THREE-YEAR LEASE WITH ACTION PRO SHOP FOR SPACE AND OPERATION OF A HOCKEY/SOCCER RETAIL SHOP WITHIN THE MULTI-USE SPORTS COMPLEX.

Agenda of: June 9, 2008

Date: May 27, 2008

Originator: Purchasing/Contracting Officer

Route to:	Department	Signature/Date
	Police Chief Youth Court, Dispatch, Code Compliance	
X	Culture and Recreation Services Director Library, Museum, Sports Complex	<i>Steve Calk</i>
	Public Works & Recreation Facility Maintenance Director	
X	Finance, Risk Management & MIS Director Purchasing	<i>Cheryl McCain CFO</i>
X	Deputy Administrator Planning, Economic Development, Human Resources	<i>Margaret J. Good</i>
X	City Clerk	<i>Romina</i>

REVIEWED BY MAYOR DIANNE M. KELLER: _____

FISCAL IMPACT: yes or no Funds Available yes no

Account name/number: N/A

Attachments: Lease and Facility Use Agreement with Action Pro Shop

SUMMARY STATEMENT: Action Pro Shop, a tenant at the MUSC for the last three years, has once requested to lease space at the Multi-Use Sports Complex for FY2009 and FY2010. Action Pro Shop operates a retail facility that sells hockey and soccer paraphernalia as well as hot beverages and snacks. Action Pro Shop not only provides a service to MUSC users but also generates funds for the city in the form of a monthly lease payment for the retail space as well as sales tax revenues.

Administration and the Action Pro Shop owners have reviewed the previous contract and agree it would be in the best interest of all parties to renew the same contract for one additional three-year period.

In accordance with Wasilla Municipal Code 5.08.115, administration requests Council to authorize the Mayor to enter into a lease agreement with Action Pro Shop for leasing space (for retail purposes only) in the Multi-Use Sports Complex.

LEASE AGREEMENT

LEASE AGREEMENT ("Lease") made as of the 1st day of July 2008 by and between the CITY OF WASILLA, an Alaska municipal corporation ("Landlord"), and CRYSTAL LUTZ d/b/a ACTION PRO SHOP ("Tenant").

W I T N E S S E T H:

In consideration of the mutual covenants herein, the parties agree as follows:

1. DEFINITIONS AND ATTACHMENTS.

1.1 Certain Defined Terms. As used herein, the term:

(a) "Complex" means the Wasilla Multi-Use Sports Complex located at 1001 South Mack Drive, Wasilla, Alaska, as the same may be altered, reduced, expanded or replaced from time to time.

(b) "Default Rate" means an annual rate of interest equal to the lesser of (i) the maximum rate of interest for which Tenant may lawfully contract in Alaska, or (ii) ten and one-half percent (10.5%).

(c) "Permitted Use" means the sale at retail of sports equipment and supplies, rental of sports equipment, sale of refreshments, and repair and maintenance of sports equipment (including without limitation skate sharpening) at the Complex.

(d) "Premises" means approximately 575 square feet of finished space suitable for a retail store and approximately 200 square feet of unfinished space suitable for storage within the Complex, as marked on the floor plan attached hereto as Exhibit "A."

(e) "Tenant Trade Name" means ACTION PRO SHOP.

(f) "Term" means the term of this Lease, as further defined in Section 3.1.

1.2 Additional Defined Terms. The following additional terms are defined in the Sections of this Lease noted below:

<u>Term</u>	<u>Section</u>
"Casualty"	12.1
"Event of Default"	15.1
"Gross Sales"	5.2
"Rent"	5.1

1.3 Attachments. The following documents are attached hereto, and such documents, as well as all drawings and documents prepared pursuant thereto, shall be deemed to be a part hereof:

Exhibit "A"	Floor Plan of the Premises
Exhibit "B"	Hours of Operation

2. PREMISES. Landlord hereby leases the Premises to Tenant, and Tenant hereby rents the Premises from Landlord. Landlord shall deliver possession of the Premises to Tenant on the date hereof, and Tenant accepts the Premises as they exist on that date.

3. TERM.

3.1 Commencement and Termination. The Term of this Lease commences on July 1, 2008 (the "Commencement Date"), and this Lease shall terminate on June 30, 2011 or at the end of any extension or renewal thereof, without notice from either Landlord or Tenant. If Tenant fails to surrender the Premises at the end of the Term or any renewal thereof, in addition to any other remedy which Landlord may have, Tenant shall indemnify Landlord against all claims and demands by a succeeding tenant, arising from Tenant's failure to surrender the Premises at the end of the Term.

3.2 Holding Over. If Tenant is in possession of the Premises after the end of the Term of this Lease, in the absence of any agreement extending the Term, the tenancy under this Lease shall become one from month to month, terminable by either party on thirty (30) days' prior written notice, at a monthly rental equal to one hundred fifty percent (150%) of the average monthly Rent payable during the preceding twelve (12) months.

3.3 Extension of Term. Landlord may, in its discretion, offer to extend the Term for up to two additional three (3) year periods. Landlord shall give Tenant written notice of an offer to extend the Term at least ninety (90) days before the expiration of the current Term. Tenant may accept an offer to extend the Term by giving Landlord written notice of acceptance not later than thirty (30) days after the date of Landlord's notice of the offer to extend. In the event that Tenant accepts Landlord's offer to extend the Term, all of the terms and conditions of the Lease, including the rent, shall remain in full force and effect during the extended Term.

4. USE.

4.1 Prompt Occupancy and Use. Tenant shall occupy the Premises upon the Commencement Date for the purposes of limited retail operations and installation of trade fixtures. Tenant shall commence full business operations on or before sixty (60) days from the Commencement Date, and shall thereafter continuously use the Premises for the Permitted Use and for no other purpose whatsoever.

4.2 Tenant's Trade Name. Unless otherwise approved by Landlord, Tenant shall conduct business in the Premises only under Tenant's Trade Name.

4.3 Tenant's Business Hours. Tenant shall cause its business to be conducted and operated in good faith and in such manner as shall assure the transaction of a maximum volume of business in and at the Premises. Tenant covenants and agrees to remain open for business continuously during the hours provided in Exhibit "B".

5. RENT AND SECURITY.

5.1 Rent. Tenant shall pay Rent for the Premises as follows. Rent shall be determined and payable in monthly installments on or before the fifteenth (15th) day following the close of each full calendar month during the Term, in an amount equal to twelve percent (12%) of Gross Sales for the preceding calendar month. Payments shall be made at the City of Wasilla Finance Counter – payment will not be accepted at any other location.

5.2 "Gross Sales" Defined. "Gross Sales" means the actual sales prices or rentals of all goods, wares and merchandise sold, leased, licensed or delivered and the actual charges for all services performed by Tenant or by any subtenant, licensee or concessionaire in, at, from, or arising out of the use of, the Premises, whether for wholesale, retail, cash, credit, or trade-ins or otherwise, without reserve or deduction for inability or failure to collect. Gross Sales shall include, without limitation, sales and services (a) where the orders therefor originate in, at, from, or arise out of the use of the Premises, whether delivery or performance is made from the Premises or from some other place, (b) made or performed by mail, telephone, or telegraph orders, (c) made or performed by means of mechanical or other vending devices in the Premises, (d) which Tenant or any subtenant, licensee, concessionaire, or other person in the normal and customary course of its business would credit or attribute to its operations at the Premises or any part thereof. No tax based on income or profits shall be deducted from Gross Sales.

The following shall not be included in Gross Sales: (i) cash or credit refunds to customers on transactions (not to exceed the actual selling price of the item for which a credit or refund is allowed) otherwise included in Gross Sales; (ii) sales of trade fixtures, machinery and equipment after use thereof in the conduct of Tenant's business; (iii) amounts collected and paid

by Tenant to any government for any sales or excise tax; and (iv) the amount of any discount on sales to employees of Tenant.

5.3. Statements of Gross Sales. Within fifteen (15) days after the close of each calendar month of the Term, Tenant shall deliver to Landlord with the monthly payment, a written report signed by Tenant or by an authorized officer or agent of Tenant, showing the Gross Sales made in the preceding calendar month; which shall conform to and be in accordance with generally accepted accounting principles and in accordance with Section 5.2.

5.4 Tenant's Records. Tenant covenants and agrees that the business upon the Premises shall be operated so that a duplicate sales slip, invoice or non-resettable cash register receipt, serially numbered, or such other device for recording sales as Landlord approves, shall be issued with each sale or transaction, whether for cash, credit or exchange.

For the purpose of permitting verification by Landlord of any amounts due as Rent, Tenant will keep and preserve for at least three (3) years a general ledger, required receipts and disbursement journals and such sales records and other supporting documentation together with original or duplicate books and records which shall disclose in detail all information required to permit Landlord to verify Tenant's Gross Sales and which shall conform to and be in accordance with generally accepted accounting principles. At any time or from time to time after twenty-four (24) hours advance notice to Tenant, Landlord, its agents and accountants, shall have the right during business hours to make any examination or audit of such books and records. If such audit shall disclose a liability for Rent for any period in excess of the Rent theretofore paid by Tenant for such period, Tenant shall promptly pay such liability. In addition, if such audit shall disclose that Tenant has either underreported Gross Sales by five percent (5%) or more during any twelve (12) month period or that Tenant has underpaid by three percent (3%) or more any Rent payable by Tenant during any twelve (12) month period, then, in addition to such underreporting or underpayment being an Event of Default hereunder, Tenant shall promptly pay the cost of audit, and interest at the Default Rate on all additional Rent then payable, accruing from the date such additional Rent was due and payable. If such audit shall disclose that Tenant's records, in Landlord's determination, are inadequate to reflect accurately Tenant's Gross Sales, Landlord shall have the right to retain a consultant to prepare and establish a proper recording system in which Tenant can determine Gross Sales, using books and records in a form prescribed by such consultant and Tenant shall pay to Landlord the costs, consultant's fees and any other charges relating thereto, in addition to Rent based upon Gross Sales as determined by said consultant.

5.5 Payment of Rent. Tenant shall pay all Rent when due and payable, without any setoff, deduction or prior demand therefor whatsoever. Any Rent which is not paid within seven (7) days after the same is due shall bear interest at the Default Rate from the first day due until paid. Rent and statements required of Tenant shall be paid and delivered to the *Finance counter located in City Hall* at 290 E. Herning Avenue, Wasilla, Alaska 99654 between the hours of 8:00

a.m. and 5:00 p.m. Monday through Friday. Any payment by Tenant or acceptance by Landlord of a lesser amount than shall be due from Tenant to Landlord shall be treated as a payment on account.

5.6 Taxes. Tenant shall pay to the appropriate taxing authority any and all sales, excise and other taxes levied, imposed or assessed upon the Rent payable hereunder. Tenant shall also be solely responsible for and pay within the time provided by law all taxes imposed on its inventory, furniture, trade fixtures, apparatus, equipment and any other of Tenant's personal or other property.

5.7 Security Deposit. Tenant shall deposit with Landlord the sum of five hundred dollars (\$500) as security for Tenant's faithful performance of its obligations under this Lease. If Tenant is in default of any of its obligations under this Lease, Landlord may apply the security deposit to cure the default and/or as reimbursement for any and all damage sustained by Landlord as a result of Tenant's default. At Landlord's request, Tenant shall immediately pay to Landlord the sum necessary to replenish the security deposit to the original amount. If Tenant is not in default at the expiration or termination of this Lease, Landlord shall return the security deposit to Tenant, without interest. Landlord's obligation to Tenant is that of a debtor and not a trustee.

6 IMPROVEMENTS.

6.1 Tenant's Improvements. Tenant agrees, at its sole cost and expense, to install the furniture, trade fixtures, apparatus and equipment that it requires to conduct its business in the Premises, using new and quality materials and equipment. Tenant agrees to commence installation of furniture, trade fixtures, apparatus and equipment at the Premises promptly upon the Commencement Date. All such installation must be completed within sixty (60) days after the Commencement Date.

6.2 Mechanic's Liens. Tenant shall pay promptly all persons furnishing labor or materials with respect to any work performed by Tenant or its contractor on or about the Premises, and shall obtain and deliver to Landlord releases or waivers of liens from all parties doing work in the Premises and an affidavit from Tenant stating that all bills have been paid with regard to such work and that there are no outstanding obligations owed with respect to any such work done in the Premises. In the event any mechanic's or other lien shall at any time be filed against the Premises by reason of work, labor, services or materials performed or furnished, or alleged to have been performed or furnished, to Tenant or to anyone holding the Premises through or under Tenant, Tenant shall forthwith cause the same to be discharged of record or bonded to the satisfaction of Landlord. If Tenant shall fail to cause such lien forthwith to be so discharged or bonded after being notified of the filing thereof, then, in addition to any other right or remedy of Landlord, Landlord may bond or discharge the same by paying the amount claimed to be due, and the amount so paid by Landlord including reasonable attorney's fees incurred by Landlord either defending against such lien or in procuring the discharge of such lien, together

with interest thereon at the Default Rate, shall be due and payable by Tenant to Landlord upon demand.

6.3 Tenant's Trade Fixtures. All trade fixtures and apparatus owned by Tenant and installed in the Premises shall remain the property of Tenant and shall be removable at any time, including upon the expiration of the Term; provided Tenant shall not at such time be in default of any terms or covenants of this Lease; and provided further that Tenant shall repair any damage to the Premises caused by the removal of said trade fixtures and apparatus and shall restore the Premises to substantially the same condition as existed prior to the installation of said trade fixtures and apparatus.

7. OPERATIONS.

7.1 Operations by Tenant. In regard to the use and occupancy of the Premises, Tenant will at its expense: (a) maintain the Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; (b) keep any garbage, trash, rubbish or other refuse in industry standard containers within the interior of the Premises until removed; (c) have such garbage, trash, rubbish and refuse removed on a daily basis; (d) keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the Premises; (e) comply with all laws, ordinances, rules and regulations of governmental authorities and all recommendations of Landlord's fire insurance rating organization now or hereafter in effect; (f) comply with and observe all rules and regulations established by Landlord from time to time that are not inconsistent with the terms hereof; (g) maintain sufficient and seasonal inventory and have sufficient number of personnel to maximize sales volume in the Premises; and (h) conduct its business in all respects in a dignified manner in accordance with high standards of store operation.

In regard to the use and occupancy of the Premises, Tenant will not: (i) place or maintain any merchandise, trash, refuse or other articles in any vestibule or entry of the Premises, on the walkways or corridors adjacent thereto or elsewhere on the exterior of the Premises; nor obstruct any driveway, corridor, walkway, parking area, lobby or any other area within the Complex; (j) use or permit the use of any objectionable advertising medium within the Complex, such as, without limitation, loudspeakers, public address systems, sound amplifiers or reception of radio or television broadcasts, which is in any manner audible or visible outside of the Premises; (k) permit undue accumulations of garbage, trash, rubbish or other refuse within or without the Premises; (l) cause or permit objectionable odors to emanate or to be dispelled from the Premises; (m) solicit business in any area of the Complex outside the Premises without Landlord's consent, which shall not be unreasonably withheld; (n) distribute handbills or other advertising matter in any area of the Complex outside the Premises; (o) permit the parking of vehicles so as to interfere with the use of any driveway, corridor, walkway, parking area, or loading area; (p) receive or ship articles of any kind outside the designated loading areas for the Premises; (q) use any area outside the Premises for the sale or display of any merchandise or for

any other business, occupation or undertaking; (r) conduct or permit to be conducted any auction, fire, going out of business, bankruptcy, or other similar type sale in or connected with the Premises (but this provision shall not restrict the absolute freedom of Tenant in determining its own selling prices, nor shall it preclude the conduct of periodic seasonal, promotional or clearance sales); (s) use or permit the use of any portion of the Premises for any unlawful purpose or for any activity of a type which is not generally considered appropriate for a facility such as the Complex conducted in accordance with good and generally accepted standards of operation; or (t) place a load upon any floor which exceeds the floor load which the floor was designed to carry.

7.2 Signs and Advertising. Tenant will not place or suffer to be placed or maintained on the exterior of the Premises any sign, advertising matter or any other thing of any kind, and will not place or maintain any decoration, letter or advertising matter on the glass of any window or door of the Premises without first obtaining Landlord's prior written approval. Tenant will, at its sole cost and expense, maintain such sign, decoration, lettering, advertising matter or other thing as may be permitted hereunder in good condition and repair at all times. Under no circumstances shall Tenant be permitted to place hand-lettered advertising on the interior or exterior of the Premises or any glass of any window or door of the Premises.

7.3 Painting and Displays by Tenant. Tenant will not paint or decorate any part of the exterior of the Premises, or any part of the interior visible from the exterior thereof, without first obtaining Landlord's written approval. All articles, and the arrangement, style, color and general appearance thereof, in the interior of the Premises including, without limitation, window displays, advertising matter, signs, merchandise and store fixtures, shall be in keeping with the character and standards of the improvements within the Complex, as determined by Landlord. Landlord reserves the right to require Tenant to correct any non-conformity.

8. REPAIRS AND ALTERATIONS.

8.1 Repairs To Be Made By Landlord. Landlord, at its expense, shall maintain and keep in good repair, and make or cause to be made repairs to, the exterior walls, structural columns and structural floor which collectively enclose the Premises (including all doors, door frames, storefronts, windows and glass), together with all electrical, plumbing and other mechanical installations therein; provided Tenant shall give Landlord notice of the necessity for such repairs. Notwithstanding the foregoing, if the necessity for such repairs shall have arisen from or shall have been caused by the negligence or intentional act of Tenant, its agents, concessionaires, officers, employees, licensees, invitees or contractors, Landlord may make or cause the same to be made, but shall not be obligated to do so, and Tenant agrees to pay to Landlord promptly upon Landlord's demand, the cost of such repairs, if made, with interest thereon at the Default Rate until paid. In the event Landlord elects not to repair damage caused by the negligence or intentional act of Tenant, its agents, concessionaires, officers, employees,

licensees, invitees or contractors, Landlord may require Tenant to make such repairs at Tenant's sole cost and expense.

8.2 Repairs To Be Made By Tenant. All repairs to the Premises or any installations, equipment or facilities therein, other than those repairs required to be made by Landlord pursuant to Section 8.1 or Section 12.1, shall be made by Tenant at its expense. Without limiting the generality of the foregoing, Tenant will keep the interior of the Premises (other than items to be repaired by Landlord pursuant to Section 8.1), in good order and repair and will make all replacements from time to time required thereto at its expense; and will surrender the Premises at the expiration of the Term or at such other time as it may vacate the Premises in as good condition as when received, excepting depreciation caused by ordinary wear and tear, damage by Casualty (other than such damage by Casualty which is caused by the negligence or intentional act of Tenant, its agents, concessionaires, officers, employees, contractors, licensees or invitees, and which is not wholly covered by Landlord's hazard insurance policy), unavoidable accident or Act of God.

8.3 Damage to Premises. Tenant will repair promptly at its expense any damage to the Premises, and, upon demand, shall reimburse Landlord for the cost of the repair of any damage elsewhere in the Complex, caused by or arising from the installation or removal of property in or from the Premises, regardless of fault or by whom such damage shall be caused (unless caused by Landlord, its agents, employees or contractors). If Tenant shall fail to commence such repairs within five (5) days after notice to do so from Landlord, Landlord may make or cause the same to be made and Tenant agrees to pay to Landlord promptly upon Landlord's demand the cost thereof with interest thereon at the Default Rate until paid.

8.4 Alterations by Tenant. Tenant will not make any alterations, renovations, improvements or other installations in, on or to the Premises or any part thereof unless and until Tenant shall have obtained Landlord's approval thereof. If such approval is granted, Tenant shall cause the work to be performed, at its expense, promptly, efficiently, competently and in a good and workmanlike manner by duly qualified or licensed persons or entities, using first grade materials, without interference with or disruption to the operations of the Complex. All such work shall comply with all applicable governmental codes, rules, regulations and ordinances.

8.5 Changes and Additions to Complex. Landlord reserves the right at any time and from time to time (a) to make or permit changes or revisions in its plan for the Complex including additions to, subtractions from, rearrangements of, alterations of, modifications of or supplements to the building areas, walkways, parking areas, driveways or other areas, (b) to construct other buildings or improvements on the Complex and to make alterations thereof or additions thereto, and (c) to make or permit changes or revisions in the Complex, including additions thereto, and to convey portions of the Complex to others for the purpose of constructing thereon other buildings or improvements, including additions thereto and alterations thereof.

9. MANAGEMENT OF COMPLEX.

9.1 Management and Operation of Complex. Landlord will operate and maintain the Complex in a manner deemed by Landlord to be reasonable and appropriate and in the best interests of the Complex. Landlord will have the right (i) to establish, modify and enforce reasonable rules and regulations with respect to the Complex; (ii) to enter into, modify and terminate easements and other agreements pertaining to the use and maintenance of the parking areas and other parts of the Complex; (iii) to enforce parking charges; (iv) to close temporarily any or all portions of the Complex; (v) to discourage non-customer parking; and (vi) to do and perform such other acts in and to said areas and improvements as, in the exercise of good business judgment, Landlord shall determine to be advisable.

9.2 Employee Parking. Tenant's employees shall comply with Landlord's parking rules and regulations. Parking shall be available to employees on a first-come, first-served basis in common with other visitors to the Complex. Tenant shall notify its employees in writing of the provisions of this Section.

10. UTILITIES.

10.1 Water, Electricity, Telephone and Sanitary Sewer. Landlord will provide at points in or near the Premises the facilities necessary to enable Tenant to obtain for the Premises water, electricity, telephone and sanitary sewer service. Tenant shall not at any time overburden or exceed the capacity of the mains, feeders, ducts, conduits, or other facilities by which such utilities are supplied to, distributed in or serve the Premises. If Tenant desires to install any equipment which shall require additional utility facilities or utility facilities of a greater capacity than the facilities provided by Landlord, such installation shall be subject to Landlord's prior written approval of Tenant's plans and specifications therefor. If Landlord approves such installation and if Landlord provides such additional facilities to accommodate Tenant's installation, Tenant agrees to pay Landlord, on demand, the cost for providing such additional utility facilities or utility facilities of greater capacity.

Landlord shall pay all charges for water, sewer, and electric service to the Premises. Tenant shall pay all charges for all other utility services to the Premises, including without limitation telephone service.

10.2 Discontinuances and Interruptions of Utility Service. Landlord shall not be liable to Tenant in damages or otherwise (i) if any utility shall become unavailable from any public utility company, public authority or any other person or entity supplying or distributing such utility, or (ii) for any interruption in any utility service (including without limitation any heating, ventilation or air-conditioning) caused by the making of any necessary repairs or improvements

or by any cause beyond Landlord's reasonable control, and the same shall not constitute a termination of this Lease or an eviction of Tenant.

10.3 Solid Waste Disposal. Tenant may deposit non-hazardous solid waste produced from its operations on the Premises in the dumpster that Landlord maintains for the Complex, to the extent that there is space available in the dumpster for that purpose. Tenant shall notify Landlord before depositing any quantity of solid waste in the dumpster that exceeds the amount ordinarily produced from Tenant's operations on the Premises.

11. INDEMNITY AND INSURANCE.

11.1 Indemnity by Tenant. Tenant shall indemnify, hold harmless and defend Landlord from and against any and all claims, actions, damages, liability and expense, including without limitation attorney's and other professional fees, in connection with death or injury to persons and damage to property arising from or out of the occupancy or use by Tenant of the Premises or any part thereof or any other part of the Complex, occasioned wholly or in part by any act or omission of Tenant, its officers, agents, contractors, employees or invitees; however, this provision shall not apply to any claim to the extent the claim arises from the negligence or intentional act of Landlord or Landlord's officers, agents, contractors, or employees.

11.2 Tenant's Insurance. At all times after the execution of this Lease, Tenant will carry and maintain, at its expense the following non-deductible insurance coverage:

(a) worker's compensation as required by law covering all employees of Tenant who work at the Premises;

(b) commercial general liability, including without limitation insurance against assumed or contractual liability under this Lease, with respect to the Premises, to afford protection with limits of liability not less than \$1,000,000 combined single limit bodily injury and property damage, \$1,000,000 personal injury, and \$2,000,000 aggregate; and

(c) business auto liability for all owned, hired and non-owned vehicles with a minimum limit of \$1,000,000 combined single limit bodily injury and property damage.

11.3 Policy Requirements. Tenant shall provide Landlord with two (2) certificates of insurance and/or copies of each policy acceptable to the City for the coverages listed herein promptly upon commencement of Tenant's obligation to procure the same. The company or companies writing any insurance which Tenant is required to carry and maintain as well as the form of such insurance shall at all times be subject to Landlord's approval, and any such company or companies shall be licensed to do business in the State of Alaska and shall be rated no less than A-7 by AM Best rating service. Commercial general liability and business automobile insurance policies shall name Landlord as additional insured and shall also contain a

provision by which the insurer agrees that such policy shall not be cancelled except after thirty (30) days' written notice to Landlord. If Tenant shall fail to perform any of its obligations under Sections 11.2 or 11.3, Landlord may perform the same and the cost of same shall be payable by Tenant upon Landlord's demand.

11.4 Increase in Insurance Premiums. Tenant will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will violate Landlord's policies of hazard or liability insurance or which will prevent Landlord from procuring such policies in companies acceptable to Landlord. If anything done, omitted to be done or suffered by Tenant to be kept in, upon or about the Premises shall cause the rate of fire or other insurance on the Premises or on other property of Landlord or of others within the Complex to be increased beyond the minimum rate from time to time applicable to the Premises or to any such property for the use or uses made thereof, Tenant will pay the amount of any such increase upon Landlord demonstrating that such increase was caused, in whole or in part, by Tenant's activities on the Premises.

11.5 Waiver of Right of Recovery. Neither Landlord nor Tenant shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or other tangible property or liability for personal injury or death, or losses under worker's compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence or intentional act of such party, its agents or employees.

12. DAMAGE AND DESTRUCTION.

12.1 Landlord's Obligation to Repair and Reconstruct. If the Premises shall be damaged by fire, the elements, accident or other casualty (any of such causes being referred to herein as a "Casualty"), but the Premises are not thereby rendered wholly or partially untenantable, Landlord shall promptly cause such damage to be repaired and there shall be no abatement of Rent. If, as the result of Casualty, the Premises shall be rendered wholly or partially untenantable, then, subject to the provisions of Section 12.2, Landlord shall cause such damage to be repaired and, provided such damage is not caused by the negligence or intentional act of Tenant, its agents, concessionaires, officers, employees, contractors, licensees or invitees, all Rent shall be abated proportionately as to the portion of the Premises rendered untenantable during the period of such untenantability. All such repairs shall be made at the expense of Landlord, subject to Tenant's responsibilities set forth herein. Landlord shall not be liable for interruption to Tenant's business or for damage to or replacement or repair of Tenant's personal property (including without limitation inventory, trade fixtures, floor coverings, furniture and other property removable by Tenant under the provisions of this Lease), all of which replacement or repair shall be undertaken and completed by Tenant promptly.

12.2 Landlord's Option to Terminate Lease. If the Premises are (a) rendered wholly untenable, or (b) damaged as a result of any cause which is not covered by Landlord's insurance or (c) damaged or destroyed in whole or in part during the last year of the Term, or if the Complex is damaged to the extent of fifty percent (50%) or more of its floor area, then, in any of such events, Landlord may elect to terminate this Lease by giving to Tenant notice of such election within ninety (90) days after the occurrence of such event. If such notice is given, the rights and obligations of the parties shall cease as of the date of such notice, and Rent shall be adjusted as of the date of such termination.

12.3 Insurance Proceeds. If Landlord does not elect to terminate this Lease pursuant to Section 12.2, Landlord shall disburse and apply any insurance proceeds received by Landlord to the restoration and rebuilding of the Complex in accordance with Section 12.1. All insurance proceeds payable with respect to the Premises (excluding proceeds payable to Tenant pursuant to Section 11.2) shall belong to and shall be payable to Landlord.

13. CONDEMNATION.

13.1 Effect of Taking. If the whole or any part of the Premises shall be taken under the power of eminent domain, this Lease shall terminate as to the part so taken on the date Tenant is required to yield possession thereof to the condemning authority. Landlord shall make such repairs and alterations as may be necessary in order to restore the part not taken to useful condition. If the aforementioned taking renders the remainder of the Premises unsuitable for the Permitted Use, either party may terminate this Lease as of the date when Tenant is required to yield possession by giving notice to that effect within thirty (30) days after such date. If twenty percent (20%) or more of the Complex is taken as aforesaid, then Landlord may elect to terminate this Lease as of the date on which possession thereof is required to be yielded to the condemning authority, by giving notice of such election within ninety (90) days after such date. If any notice of termination is given pursuant to this Section, this Lease and the rights and obligations of the parties hereunder shall cease as of the date of such notice, and Rent shall be adjusted as of the date of such termination.

13.2 Condemnation Awards. All compensation awarded for any taking of the Premises or the Complex or any interest in either shall belong to and be the property of Landlord, Tenant hereby assigning to Landlord all rights with respect thereto; provided, however, nothing contained herein shall prevent Tenant from applying for reimbursement from the condemning authority (if permitted by law) for moving expenses, or the expense of removal of Tenant's trade fixtures, or loss of Tenant's business good will, but if and only if such action shall not reduce the amount of the award or other compensation otherwise recoverable from the condemning authority by Landlord.

14. ASSIGNMENTS AND SUBLETTING.

14.1 Landlord's Consent Required. Tenant will not assign this Lease, in whole or in part, nor sublet all or any part of the Premises, nor license concessions therein, nor pledge or secure by mortgage or other instruments this Lease, without first obtaining the written consent of Landlord, which consent will not be unreasonably withheld. This prohibition includes, without limitation, (i) any subletting or assignment which would otherwise occur by operation of law, merger, consolidation, reorganization, transfer or other change of Tenant's corporate or proprietary structure; (ii) an assignment or subletting to or by a receiver or trustee in any Federal or state bankruptcy, insolvency, or other proceedings; or (iii) the sale, assignment or transfer of all or substantially all of the assets of Tenant, with or without specific assignment of this Lease. Consent by Landlord to any assignment or subletting shall not constitute a waiver of the requirement for such consent to any subsequent assignment or subletting.

14.2 Acceptance of Rent from Transferee. The acceptance by Landlord of the payment of Rent following any assignment or other transfer prohibited by this Article shall not be deemed to be a consent by Landlord to any such assignment or other transfer nor shall the same be deemed to be a waiver of any right or remedy of Landlord hereunder.

15. DEFAULT.

15.1 "Event of Default" Defined. Any one or more of the following events shall constitute an "Event of Default":

(a) The sale of Tenant's interest in the Premises under attachment, execution or similar legal process; or if Tenant is adjudicated as bankrupt or insolvent under any state bankruptcy or insolvency law or an order for relief is entered against Tenant under the federal Bankruptcy Code and such adjudication or order is not vacated within ten (10) days;

(b) The commencement of a case under any chapter of the federal Bankruptcy Code by or against Tenant or any guarantor of Tenant's obligations hereunder, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant or any guarantor as bankrupt or insolvent, or the reorganization of Tenant or any such guarantor, or an arrangement by Tenant or any guarantor with its creditors, unless the petition is filed or case commenced by a party other than Tenant or any such guarantor and is withdrawn or dismissed within thirty (30) days after the date of its filing;

(c) The admission in writing by Tenant or any guarantor of Tenant's obligations hereunder of its inability to pay its debts when due;

(d) The appointment of a receiver or trustee for the business or property of Tenant or any guarantor of Tenant's obligations hereunder, unless such appointment shall be vacated within ten (10) days of its entry;

(e) The making by Tenant or any guarantor of Tenant's obligations hereunder of an assignment for the benefit of its creditors, or if in any other manner Tenant's interest in this Lease shall pass to another by operation of law;

(f) The failure of Tenant to pay any Rent or other sum of money within seven (7) days after the same is due hereunder;

(g) Default by Tenant in the performance or observance of any covenant or agreement of this Lease (other than a default involving the payment of money), which default is not cured within ten (10) days after the giving of notice thereof by Landlord, unless such default is of such nature that it cannot be cured within such ten (10) day period, in which case no Event of Default shall occur so long as Tenant shall commence the curing of the default within such ten (10) day period and shall thereafter diligently prosecute the curing of same; provided, however, if Tenant shall default in the performance of any such covenant or agreement of this Lease three (3) or more times in any twelve (12) month period, that notwithstanding such defaults have each been cured by Tenant, any further similar default shall be deemed an Event of Default without the ability to cure;

(h) The vacating or abandonment of the Premises by Tenant at any time during the Term of this Lease;

(i) The underpayment of Rent by Tenant in any twelve (12) month period in an amount in excess of three percent (3%) of the Rent payable during such period, unless Tenant can show that said underpayment resulted from a good faith error on its part; or

(j) The occurrence of any other event described as constituting an "Event of Default" elsewhere in this Lease.

15.2 Remedies. Upon the occurrence and continuance of an Event of Default, Landlord, without notice to Tenant in any instance (except where expressly provided for below or required by law) may do any one or more of the following:

(a) With or without judicial process, enter the Premises and take possession of any and all goods, inventory, equipment, fixtures and all other personal property of Tenant situated in the Premises without liability for trespass or conversion, and may sell all or any part thereof at public or private sale. Tenant agrees that five (5) days' prior notice of any public or private sale shall constitute reasonable notice. The proceeds of any such sale shall be applied, first, to the payment of all costs and expenses of conducting the sale or caring for or storing said

property, including all attorneys' fees; second, toward the payment of any indebtedness, including without limitation indebtedness for Rent, which may be or may become due from Tenant to Landlord; and third, to pay the Tenant, on demand in writing, any surplus remaining after all indebtedness of Tenant to Landlord has been fully paid.

(b) Perform, on behalf and at the expense of Tenant, any obligation of Tenant under this Lease which Tenant has failed to perform and of which Landlord shall have given Tenant notice, the cost of which performance by Landlord, together with interest thereon at the Default Rate from the date of such expenditure, shall be payable by Tenant to Landlord upon demand.

(c) Elect to terminate this Lease and the tenancy created hereby by giving notice of such election to Tenant, and may reenter the Premises, without the necessity of legal proceedings, and may remove Tenant and all other persons (if Tenant is still in possession) and property from the Premises, and may store such property in a public warehouse or elsewhere at the cost of and for the account of Tenant without resort to legal process and without Landlord being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby.

(d) Exercise any other legal or equitable right or remedy which it may have.

Notwithstanding the provisions of clause (b) above and regardless of whether an Event of Default shall have occurred, Landlord may exercise the remedy described in clause (b) without any notice to Tenant if Landlord, in its good faith judgment, believes it would be injured by failure to take rapid action or if the unperformed obligation of Tenant constitutes an emergency.

Any costs and expenses incurred by Landlord (including without limitation attorneys' fees) in enforcing any of its rights or remedies under this Lease shall be repaid to Landlord by Tenant upon demand.

15.3 Damages. If Landlord terminates this Lease pursuant to Section 15.2, Tenant nevertheless shall remain liable for any Rent and damages which may be due or sustained by Landlord and all reasonable costs, fees and expenses, including without limitation attorney's fees, costs and expenses incurred by Landlord in pursuit of its remedies hereunder, or in renting the Premises to others from time to time.

16. POSSESSION AND ATTORNMENT.

16.1 Peaceful and Quiet Use and Possession. Landlord hereby warrants that it and no other person has the right to lease the Premises hereby demised. Provided Tenant is not in default of this Lease, Tenant shall have peaceful and quiet use and possession of the Premises without hindrance on the part of Landlord, and Landlord shall warrant and defend Tenant in such

peaceful and quiet use and possession against the claims of all persons claiming by, through, or under Landlord.

16.2 Attornment. If any person shall succeed to all or part of Landlord's interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease, or otherwise, and if so requested or required by such successor in interest, Tenant shall attorn to such successor in interest and shall execute such agreement in confirmation of such attornment as such successor in interest shall reasonably request.

17. NOTICES. Any notice, request, demand, approval or consent given or required to be given under this Lease shall be in writing and shall be addressed as follows:

To Landlord: City of Wasilla
Attn: Mayor
290 East Herning Avenue
Wasilla, Alaska 99654

To Tenant: Chrystal Lutz
2841 S. Teeland Street
Wasilla, AK 99654

Either party may, at any time, change its notice address for the above purposes by sending a notice to the other party stating the change and setting forth the new address.

18. MISCELLANEOUS.

18.1 Inspections and Access by Landlord. Tenant will permit Landlord, its agents, employees and contractors to enter all parts of the Premises during Tenant's business hours, upon 24 hours' notice, except in case of emergency, to inspect the same and to enforce or carry out any provision of this Lease, including, without limitation, any access necessary for the making of any repairs which are Landlord's obligation hereunder; provided, however, that, in an emergency situation, such access shall be at any time upon Landlord's oral request.

18.2 Remedies Cumulative. No reference to any specific right or remedy shall preclude Landlord from exercising any other right or from having any other remedy or from maintaining any action to which it may otherwise be entitled at law or in equity. No failure by Landlord to insist upon the strict performance of any agreement, term, covenant or condition hereof, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach, agreement, term, covenant or condition. No waiver by Landlord of any breach by Tenant under this Lease or of any breach by any other tenant under any other lease of any portion of the Complex shall affect or alter this Lease in any way whatsoever.

18.3 Successors and Assigns. This Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Landlord, its successors and assigns, and shall be binding upon Tenant, its successors and assigns and shall inure to the benefit of Tenant and only such assigns of Tenant to whom the assignment of this Lease by Tenant has been consented to by Landlord.

18.4 Compliance with Laws and Regulations. Tenant, at its sole cost and expense, shall comply with and shall cause the Premises to comply with all federal, state, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances affecting the Premises or any part thereof, or the use thereof, except those which require the making of any repairs or modifications that are the obligation of Landlord under this Lease, whether or not any such statutes, laws, rules, orders, regulations or ordinances which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same.

18.5 Captions and Headings. The Article and Section captions and headings are for convenience of reference only and in no way shall be used to construe or modify the provisions set forth in this Lease.

18.6 Broker's Commissions. Each of the parties represents and warrants that there are no claims for brokerage commissions or finders' fees in connection with the execution of this Lease, and agrees to indemnify the other against, and hold it harmless from, all liability arising from any such claim including, without limitation, the cost of counsel fees in connection therewith.

18.7 No Discrimination. It is intended that the Complex shall be developed so that all prospective tenants and users thereof, and all customers, employees, licensees and invitees of all tenants shall have the opportunity to obtain all the goods, services, accommodations, advantages, facilities and privileges of the Complex without discrimination because of race, creed, color, sex, age, national origin or ancestry. To that end, Tenant shall not discriminate in the conduct and operation of its business in the Premises against any person or group of persons because of the race, creed, color, sex, age, national origin or ancestry of such person or group of persons.

18.8 No Joint Venture. Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed. The provisions of this Lease in regard to the payment by Tenant and the acceptance by Landlord of a percentage of Gross Sales is a reservation for rent for the use of the Premises.

18.9 No Modification. The parties intend this writing to be a final expression of their agreement and as a complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the parties having been incorporated herein. This

Lease can be modified only by a writing signed by the party against whom the modification is enforceable.

18.10 Severability. If any term or provision, or any portion thereof, of this Lease, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

18.11 Third Party Beneficiary. Nothing contained in this Lease shall be construed so as to confer upon any other party the rights of a third party beneficiary.

18.12 Applicable Law. This Lease and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the State of Alaska.

IN WITNESS WHEREOF, the parties hereto intending to be legally bound hereby have executed this Lease as of the day and year first above written.

LANDLORD:

CITY OF WASILLA

Dianne M. Keller, Mayor

TENANT:

ACTION PRO SHOP

Chrystal Lutz, Owner

EXHIBIT A
DESCRIPTION OF PREMISES

**EXHIBIT B
HOURS OF OPERATION**

Tenant's hours of operation shall be as follows:

September 1 through March 31:

Monday through Friday	3pm to 8pm
Saturday and Sunday	8am to 8pm

April 1 through August 31:

Hours will be mutually agreed upon and placed in writing between Tenant and Landlord according to the activities and hours of operation of the Complex at least 7 days in advance of any change.

Tenant may extend hours of operation at anytime if Tenant feels the demand for services is required.

Any reduction at any time of the year in the agreed upon hours of operation must be agreed upon in writing by both parties. Any violation of this may result in a fine of \$25 per each day of violation.