FONTANA COMMUNITY SENIOR CENTER BEAUTY SALON LEASE AGREEMENT – Tracking No. MS-304-CS-10

This Fontana Community Senior Center Beauty Salon Lease Agreement ("Lease" or "Agreement") is dated for reference purposes as of February 26, 2010, by and between the City of Fontana, a municipal corporation and general law city (hereinafter referred to as "City" or "Landlord") and Carmen Prieto, a.k.a. Carmen G. Trujillo a sole proprietor, d/b/a Melly's Barber and Beauty (hereinafter referred to as "Tenant"). The Landlord and Tenant are sometimes referred to individually herein as "Party" and collectively as "Parties."

RECITALS

A. Landlord is the owner of that certain real property generally located at 16710 Ceres Avenue in the City of Fontana, County of San Bernardino, State of California, which is commonly known as the Fontana Community Senior Center.

B. Landlord desires to establish hair styling and retail sales service areas at the Fontana Community Senior Center.

C. Tenant is a private company in the business of providing hair styling and retail sales services.

D. Tenant desires to locate hair, nail and retail sales service facilities at the Fontana Community Senior Center to provide services to its customers.

E. Tenant agrees to operate and maintain a hair, nail and retail sales service area at the Fontana Community Senior Center as more specifically described herein.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

TERMS

1. INCORPORATION OF RECITALS. The Parties hereby affirm the facts set forth in the Recitals above. Said Recitals are incorporated herein and made an operative part of this Agreement.

2. LEASED PREMISES. Subject to the following terms and conditions, Landlord leases to Tenant and Tenant leases from Landlord that portion of the Fontana Community Senior Center commonly referred to as the "Beauty Salon." The Beauty Salon is more specifically described and depicted in the attached Exhibit "A", and contains approximately two hundred (200) square feet of net leasable floor area. For purposes of this Lease, the approximate square footage noted herein shall be used as the actual total square footage leased whether or not such square footage actually exists.

2.1 **Improvements.** For the purposes of this Agreement, the term "Improvements" shall include any additions, alterations, attachments, fixtures, improvements, installations or property affixed to the Beauty Salon so that they cannot be removed without material damage to the Beauty Salon. Improvements shall be considered a permanent part of the Beauty Salon, regardless of whether made by Landlord or Tenant. Improvements shall not include furniture, or trade fixtures which can be removed without material damage to the Beauty Salon.

2.1.1 Upon the expiration or earlier termination of this Agreement, Improvements made by Tenant become the property of Landlord and shall remain on the Beauty Salon premises. Landlord shall have the option, however, on the expiration or earlier termination of this Lease, to require that Tenant, at Tenant's sole cost and expense, remove any such Improvements made by Tenant.

3. EFFECTIVE DATE. The term of this Agreement shall commence on May 20, 2010.

4. TERM.

4.1 **Initial Term**. The initial term of this Agreement ("Initial Term") shall commence on the Effective Date and shall terminate on June 30, 2011, unless earlier terminated as provided herein.

4.2 **Extended Term.** Provided that Tenant is not then in default under this Agreement, Tenant shall have the option and right to extend the Initial Term of this Agreement for consecutive periods of one (1) year, commencing on expiration of the Initial Term and ending on June 30th of the following calendar year ("Extended Term(s)"). This Agreement shall automatically be extended for each successive Extended Term unless a Party notifies the other Party in writing of said Party's intention not to extend this Agreement at least sixty (60) days prior to the expiration of the Initial Term or the then applicable Extended Term. The terms and conditions of this Agreement shall apply equally to the Extended Term, if any.

5. HOLDOVER. If Tenant fails to surrender possession of the Beauty Salon at the expiration, or earlier termination of this Agreement, Tenant's continued occupancy of the Beauty Salon shall be considered a month-to-month tenancy subject to all the terms and conditions of this Lease.

6. RENT.

6.1 **Base Rent.** Upon the Effective Date, the monthly rent ("Rent") shall be one hundred seventy five dollars and no cents Dollars ($ 175.00) per month and shall be adjusted annually as provided in Section 6.2. Rent shall be payable to the City of Fontana, Accounts Receivable or such other address provided by Landlord and shall be paid in advance on the first day of each and every calendar month and without demand, deduction, offset, or abatement. Rent for any partial calendar month shall be prorated appropriately.

6.2 **Annual Adjustment.** Rent shall be adjusted annually throughout the Initial Term and any Extended Term, on the anniversary of the first day of the first full calendar month following the Effective Date by an amount equal to (i) the increase in the Consumer Price Index-All Urban Consumers ("CPI") for the Los Angeles-Orange-Riverside County (1982-84=100) during the prior twelve month period, or (ii) three percent (3%), whichever is greater.

6.3 **Late Payment Charges.** Tenant acknowledges that in the event Tenant fails to pay Rent within ten (10) business days of when due, such failure will cause Landlord to incur costs not contemplated in this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing, personnel and accounting costs. Accordingly, if any such payment is not received by Landlord when due, Tenant shall pay Landlord a late payment charge equal to ten percent (10%) of the overdue payment as well as interest on the outstanding amount due that shall accrue at the rate of ten percent (10%) per annum. In no event shall the late charge exceed the maximum allowable by law. Tenant agrees that this late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of Tenant's late payment. Landlord's acceptance of such late charge shall in no event constitute a waiver by Landlord of Tenant's default with respect to the overdue payment, nor prevent Landlord from exercising any of the other rights or remedies granted to Landlord under this Agreement, at law, or in equity.

7. <u>USE OF PREMISES</u>

7.1 During the term of this Agreement (including the Initial Term and any Extended Term), the Beauty Salon shall be used exclusively for the purpose of providing hair, nail and retail sales services ("Services") and for uses normally incident to that purpose. Services are more specifically described in the attached Exhibit "C". Tenant shall not use or permit the Beauty Salon to be used for any other purpose, without the prior written consent of Landlord. Permitted use of the Beauty Salon includes the right to install, maintain, repair, replace and secure equipment necessary for the provision of Services.

7.2 During the term of this Agreement, Tenant shall operate the Beauty Salon in a diligent and business like manner.

7.3 Tenant shall comply with all applicable laws, codes, rules and regulations relating to Tenant's operation and use of the Beauty Salon, including without limitation:

(a) any and all zoning and development permits, plan reviews, and approvals issued by applicable governmental agencies.

(b) any and all health and safety requirements, permits or approvals necessary for operation, including but not limited to ensuring (i) that the design, planning and installation of all improvements, fixtures and equipments meet with required codes and regulations; (ii) that all applications and notifications are filed with

the appropriate government agency; and (iii) that any and all placards, licenses, and permits are secured and displayed as appropriate prior to operation.

7.4 Tenant acknowledges Landlord's need to protect the public's right to the quiet use and enjoyment of the Fontana Community Senior Center. Tenant shall use the Beauty Salon in a manner that does not unreasonably disturb the use and occupancy of the Fontana Community Senior Center. Upon notice from the Landlord, Tenant shall take reasonable steps to mitigate any such disturbance.

8. BEAUTY SALON HOURS AND OPERATIONS.

8.1 **Normal Business Hours**. The Beauty Salon shall be open to the public for business generally at the following times, which times represent Pacific Standard Time and shall be referred to herein, collectively, as the "Normal Business Hours":

a. Monday through Friday, 9:00 a.m. - 4:30 p.m.
b. Saturday and Sunday, Closed
c. Approved Special Events, as defined below.

8.2 **Special Events.** Tenant shall work with Landlord in programming use of the Beauty Salon with special events, including but not limited to, live musical performances, performance art, and fine art displays ("Special Events") and arranging for and facilitating the scheduling of such Special Events, provided that the Party proposing a Special Event shall provide advance written notice of such Special Event to the other Party. Approval of Special Events proposed by Tenant shall be in the Landlord's sole and absolute discretion.

8.2.1 **Additional Access**. Access to the Beauty Salon outside of the Normal Business Hours for Coffee Bar maintenance and operational purposes shall be provided to Tenant and employees of Tenant, and to no other persons, between 8:00 AM and 8:00 PM, Pacific Standard Time. Access to the Beauty Salon outside of the Normal Business Hours or during Special Events shall be subject to change by Landlord upon twenty-four (24) hours notice.

8.2.2 **Change of Normal Business Hours.** Landlord and Tenant may from time to time, agree to change the Normal Business Hours, but in no case shall the Beauty Salon be open for business earlier than 5:00 A.M., or later than 10:00 P.M., Pacific Standard Time.

8.3 **Alcohol**. The handling, sale, or consumption of alcohol within the Beauty Salon is prohibited unless otherwise permitted by the City of Fontana Municipal Code, or City Ordinance or Regulation, and approved in writing by the City.

8.4 **Smoking**. Smoking within the Beauty Salon is prohibited.

8.5 **Music.** Music may be played in the Beauty Salon in compliance with Landlord approved sound levels and in accordance with the following restrictions:

8.5.1 Permissible music shall include only radio-edited music that contains no profanity.

8.5.2 No music that contains a Parental Advisory rating may be played in the Beauty Salon.

8.5.3 Landlord reserves the right to approve the content of any music played.

8.5.4 The Landlord reserves the right to require that any music being played is discontinued, or may be discontinued by Landlord at any time without prior notice.

8.5.5 Any denial by Landlord of music content or music play lists shall be made on a viewpoint neutral basis, and shall be reasonable in light of maintaining the Fontana Community Senior Center for its intended purpose.

8.5.6 Tenant shall comply with all copyright laws and shall, prior to playing music on the Beauty Salon premises during the Normal Business Hours of the Beauty Salon, obtain any and all music licensing rights as may be required by law.

8.6 **Parking.** A marked loading and unloading zone will be at the back of the facility (north side of the building) that the Tenant may use for loading and unloading only. Parking for Tenant's employees, patrons and deliveries shall also be available in the public parking areas, in accordance with the provisions and limitations of any applicable government code sections.

9. IMPERMISSIBLE USES.

9.1 **Hazards.** Tenant shall not commit or permit the commission of any acts on the Beauty Salon premises, nor use or permit the use of the Beauty Salon premises in any manner that will increase the existing rates for, or cause the cancellation of, any insurance policy insuring the Beauty Salon or the Fontana Community Senior Center. Tenant shall, at its own cost and expense, comply with any and all requirements of Landlord's insurance carriers necessary for the continued maintenance, at reasonable rates, of Landlord's insurance policies covering the Fontana Community Senior Center.

9.2 **Waste or Nuisance.** Tenant shall not commit or permit the commission by others of any waste on the Beauty Salon premises. Tenant shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined in Civil Code Section 3479 on the Beauty Salon premises. Tenant shall not use or permit the use of the Beauty Salon for any unlawful purpose.

10. COMPLIANCE WITH LAWS. Throughout the term of this Agreement, Tenant shall at its own cost and expense comply with all statutes, ordinances, regulations, and requirements, of all governmental entities, both federal and state and county or municipal, relating to Tenant's use, operation and occupancy of the Beauty Salon, including without limitation Section 3700 of the California Labor Code which requires

every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with that Code.

11. UTILITIES.

11.1 **Utility Service Costs.** Landlord shall furnish, at its sole cost and expense, subject to Subsection 11.2 herein, the services described below to the Beauty Salon on an access and override basis.

(a) Electricity for normal lighting and equipment.

(b) Heat and air conditioning as required in Landlord's sole and reasonable judgment for the comfortable use and occupation of the Beauty Salon during the Normal Business Hours, as defined in Section 8.1.

(c) Water in quantities reasonably required by Tenant.

(d) Gas in quantities reasonably required by Tenant.

(e) Refuse disposal in quantities reasonably required by Tenant.

(f) Building smoke detection, security alarm, including a security monitoring camera, and lighting reasonably required for safe operation of the Beauty Salon.

11.2 Landlord shall not be liable for, and Tenant shall not be entitled to, any reduction of Rent by reason of Landlord's failure to furnish any of the foregoing when such failure is caused by accident, breakage, repairs, strikes, lockouts or other labor disturbances or labor disputes of any character, or by any other cause, similar or dissimilar, beyond the reasonable control of Landlord. Landlord shall not be liable under any circumstances for the loss of or injury to property, however occurring, through or in connection with or incidental to failure to furnish any of the foregoing, except to the extent such loss or injury is directly caused by Landlord.

11.3 Tenant will not, without written consent of Landlord, use any apparatus or device in the Beauty Salon which will in any way increase the amount of utilities normally furnished or supplied for a hair, nail and retail sales service facility. Tenant shall not connect any apparatus or device to a utility location/outlet located outside of the Beauty Salon, unless required for the provision of entertainment services during approved Special Events and as mutually agreed upon by Landlord and Tenant.

11.4 Landlord estimates that the cost of Tenant's required utility use shall not exceed one hundred percent (100%) of the monthly Rent ("Estimated Utility Costs"). If Tenant's utility usage shall exceed the Estimated Utility Costs, Landlord may, in its sole and reasonable discretion and after consultation with Tenant:

(a) cause a meter(s) to be installed in the Beauty Salon, so as to measure Tenant's utility usage. The cost of any such meter(s) and of installation, maintenance and repair thereof shall be paid for by Tenant and Tenant agrees to pay to Landlord promptly upon demand therefore by Landlord, for all such utilities consumed as shown by said meter(s), at the rate charged for such services by the local public utility furnishing the same, plus any additional expense incurred in keeping account of the utilities so consumed;

(b) bill Tenant for all costs in excess of the Estimated Utility Costs.

(c) at Tenant's request, and at Tenant's sole cost and expense, Tenant may pay for the utility company or an electrical engineer, approved by Landlord, to provide an estimated allocation of costs in excess of the Estimated Utility Costs.

12. TAXES.

12.1 **Personal Property Taxes.** Tenant covenants and agrees to pay, before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all taxes (including any possessory interest taxes which may be created hereby or imposed pursuant to law), assessments, and other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, which shall during the term of this Lease be laid, assessed, levied or imposed upon or become due and payable with respect to any furniture, trade fixtures, appliances, and other personal property placed by Tenant in, on, or about the Beauty Salon, including, without limitation, any shelves, counters, vaults, vault doors, wall safes, partitions, fixtures, machinery, equipment, television, radio antenna, and communication equipment brought onto the Beauty Salon by Tenant.

12.2 **Real Property Taxes**. Tenant covenants and agrees to pay, before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all taxes (including any possessory interest taxes which may be created hereby or imposed pursuant to law), assessments, and other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, which shall during the term of this Lease be laid, assessed, levied or imposed upon or become due and payable with respect to the Beauty Salon imposed by any governmental entity for any reason whatsoever.

13. CONDITION OF PREMISES. Tenant accepts the Beauty Salon, as well as any Improvements located on the Beauty Salon premises, in an "as is" condition without warranty, express or implied, as to the condition or usability of the Beauty Salon, except as may be expressly set forth in this Agreement. Tenant further agrees with and represents to Landlord that Tenant shall inspect the Beauty Salon prior to taking possession, and that the Beauty Salon is being leased by Tenant as a result of its own inspection and investigation and not as a result of any representations made by Landlord or any agent of Landlord except those expressly set forth in this Lease.

14. MAINTENANCE OF PREMISES.

14.1 **Landlord Obligations**. Landlord shall maintain the Structural Elements of the Fontana Community Senior Center, including the Beauty Salon, in good condition and repair. "Structural Elements" include the roof, exterior walls, structural support and foundation. Structural Elements shall not include show window glass.

14.1.1 Landlord may, for the purpose of maintaining the Structural Elements, erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed. Landlord shall not block the entrance to the Beauty Salon during Normal Business Hours, except in the case of an emergency, and shall not unreasonably interfere with operation of the Beauty Salon. Tenant hereby waives any claim for damages, for any injury or inconvenience to or interference with Tenant's business, or for any loss of occupancy or quiet enjoyment of the Beauty Salon, and any other loss occasioned thereby, provided that Landlord make a reasonable effort to avoid any such injury, inconvenience or interference.

14.1.2 Landlord shall have the right to use any and all means which Landlord may deem proper to open any doors or otherwise obtain access to the Beauty Salon in an emergency, without liability to Tenant, except for any failure to exercise due care for Tenant's property, and any entry to the Beauty Salon obtained by Landlord by any of said means or otherwise shall not under any circumstances be construed or deemed to be forcible or unlawful entry into a detainer of the Beauty Salon or an eviction of Tenant from the Beauty Salon or any portion thereof.

14.2 **Tenant's Obligations**. Tenant shall operate, maintain, and repair at no cost or expense to Landlord, the Beauty Salon throughout the Initial Term and any Extended Term of this Agreement. All Improvements and any items and equipment provided by the City for operation of the Beauty Salon, as specified in Exhibit "B", shall be maintained in good and workable order and repair and in as safe and clean a condition as they were when received by Tenant, or as when they were installed by Tenant, reasonable wear and tear excepted.

14.2.1 Required maintenance includes, but is not limited to providing clean and sanitary custodial/janitorial services and removal of graffiti and safety hazards within twenty-four (24) hours of receiving written or verbal notification from Landlord.

14.2.2 Tenant shall make any repairs to the Beauty Salon and to any Improvements, items and equipment provided by the City for operation of the Beauty Salon, as specified in Exhibit "B", caused by or incident to Tenant's use of the Beauty Salon or implementation of this Agreement at its sole cost, expense and liability. Maintenance and repairs shall be made promptly to protect public safety.

14.2.3 Tenant shall be responsible for the repair of any damage to the Fontana Community Senior Center caused by Tenant or its contractors at its sole cost, expense and liability. All such work is to be performed in accordance with the standards approved by Landlord.

14.2.4 The janitorial closet as depicted in Exhibit "A", are made available for the use of the Tenant and its employees and are the maintenance responsibility of the Tenant.

14.2.5 Tenant shall perform all non-safety and non-graffiti repairs within thirty (30) days of notification to Tenant by Landlord. Failure by Tenant to perform non-safety or non-graffiti repairs within thirty (30) days of notification to Tenant by Landlord, Landlord may make any such repairs at Tenant's expense. Tenant shall promptly reimburse Landlord for any such repairs.

14.2.6 Tenant shall provide site security during all construction and maintenance activities.

14.3 **Maintenance of Plate Glass.** Tenant shall be solely responsible for the cost and expense of maintenance, repair or replacement of plate glass in any Beauty Salon window, unless such window is damaged or broken by Landlord or by an employee or agent of Landlord. Should Tenant fail to repair or replace any glass broken in a Beauty Salon show window, Landlord may replace or repair the broken window, and Tenant shall promptly reimburse Landlord for the cost of the repair, replacement.

15. ALTERATIONS AND LIENS.

15.1 **Alterations**. Tenant shall not make or allow to be made any alterations to the Beauty Salon, including interior design and color selections, without the prior written consent of Landlord, which consent shall not be unreasonably withheld.

15.1.1 In the event that Landlord consents to Tenant's requested alterations, additions or improvements to the Beauty Salon, the same shall be made by Tenant at Tenant's sole cost and expense.

15.2 **Liens.** Tenant shall keep the Beauty Salon free and clear from any and all liens, claims, and demands for work performed, materials furnished, or operations conducted on the Beauty Salon premises at the instance or request of Tenant. Any construction of alterations, additions or improvements shall be completed in compliance with all laws and governmental requirements, including but not limited to the payment of Prevailing Wages.

16. ENTRY BY LANDLORD**.** Landlord or Landlord's agents, representatives, or employees shall have the right, at any and all reasonable times during Normal Business Hours and upon twenty-four (24) hours prior notice to Tenant, except as expressly provided herein, to enter the Beauty Salon for the purpose of inspecting the Beauty Salon to determine whether Tenant is complying with the terms of this Lease, for the purpose of doing other lawful acts that may be necessary to protect Landlord's interest in the Beauty Salon, or for the purpose of performing Landlord's duties under this Lease, as Landlord may deem necessary or desirable. Tenant shall not be entitled for any abatement in rent upon such entry by Landlord.

17. SURRENDER OF PREMISES. Upon the expiration or earlier termination of this Agreement, Tenant shall promptly vacate the Beauty Salon and deliver the Beauty Salon, including all Improvements thereto and all items and equipment provided by the City for operation of the Beauty Salon, as specified in Exhibit "B", to Landlord in as good condition as the Beauty Salon existed on, as applicable: (i.) the Effective Date of this Agreement; or (ii.) on the date that such Improvements were made or installed, excluding reasonable wear and tear, and repairs required to be made by Landlord under this Lease.

18. INDEMNITY

18.1 **Tenant's Obligations**. Tenant agrees to defend, indemnify, and hold Landlord, its directors, officials, officers, employees, agents, or volunteers, and each of them harmless from and against any all liability to third parties resulting from Tenant's occupation and use of the Beauty Salon, specifically including, without limitation, any claim, liability (including, without limitation attorney's fees costs and expenses incurred in defending against such claims), loss, or damage (including, without limit, all consequential damages) arising by reason of:

(a) The death or injury of any person or persons, or by reason of the damage to or destruction of any property, including property owned by Tenant or any person who is an employee or agent of Tenant, and caused or allegedly caused by either the condition of the Beauty Salon, or some act or omission of Tenant or of some agent, contractor, employee, servant, customer, or concessionaire of Tenant on the Beauty Salon premises;

(b) Any work performed on the Beauty Salon premises or materials furnished to the Beauty Salon at the instance or request of Tenant or any agent or employee of Tenant; and

(c) Tenant's failure to perform any provision of this Agreement.

18.2 **Landlord's Obligations**. Landlord agrees to defend, indemnify, and hold Tenant, its directors, employees, agents, and each of them harmless from and against any and all liability to third parties resulting from Landlord's occupation and use of the Fontana Community Senior Center, excluding the Beauty Salon, or from Landlord's maintenance or failure to maintain the Structural Elements of the Fontana community Senior Center, including the Beauty Salon. This obligation to defend, indemnify and hold harmless specifically includes, without limitation, any claim, liability (including, without limitation attorney's fees costs and expenses incurred in defending against such claims), loss, or damage (including, without limit, all consequential damages) arising by reason of:

(a) The death or injury of any person or persons, or by reason of the damage to or destruction of any property, including property owned by Landlord or any person who is an employee or agent of Landlord, and caused or allegedly caused by either the condition of the Fontana Community Senior Center, excluding the Beauty

Salon, or the Structural Elements of the Beauty Salon, or some act or omission of Landlord or of some agent, contractor, employee, or patron of Landlord on the Fontana Community Senior Center premises, including the Beauty Salon;

(b) Any work performed on the Beauty Salon premises or materials furnished to the Beauty Salon by Landlord or its employees or agents; and

(c) Landlord's failure to perform any provision of this Agreement.

19. INSURANCE.

19.1 **Tenant's Insurance**. At all times throughout the Initial Term and any Extended Term of this Agreement, Tenant shall, at its own cost and expense, provide the following insurance coverages:

19.1.1 Fire and casualty coverage insurance covering the Beauty Salon and all Improvements either now or hereafter located on the Beauty Salon premises, against loss or damage by fire or other risks or perils, including vandalism and malicious mischief, in an amount not less than one hundred percent (100%) of the full replacement cost of the Beauty Salon and Improvements.

19.1.2 Comprehensive public liability insurance against claims for personal injury, death, or property damage occurring in connection with the use and occupancy of the Beauty Salon and Improvements thereon by Tenant, and providing coverage with minimum limits of liability of not less than One Million and No/100 Dollars ($1,000,000.00) for bodily injury or death in any one occurrence, Two Million and No/100 Dollars ($2,000,000.00) in the aggregate per policy year, and One Million and No/100 Dollars ($1,000,000.00) for property damage. Tenant's policy shall name the Landlord as an additional insured.

19.1.3 Such other insurance as Landlord may reasonably require from time to time in such amounts and against such insurable risks as may be commonly maintained for Lease Property similarly situated and containing comparable improvements.

19.1.4 Policies. All policies required to be maintained by Tenant pursuant to this Section 19 shall be effected under enforceable policies issued by insurers licensed to do business in the State of California. All policies shall contain language to the effect that: (a) Landlord to receive written notification of not less than ten (10) days prior to any cancellation or modification of Tenant's insurance coverage, and shall provide that Landlord's interest shall not be invalidated by any acts, omissions or neglect of anyone other than Landlord; (b) the insurer waives the right of subrogation against Landlord and against Landlord's agents and representatives; (c) the policies are primary and noncontributing with any insurance that may be carried by Landlord.

In the event Tenant fails to timely pay any premiums with respect to its insurance, Landlord shall have the right, but not the obligation, to pay the premiums and

obtain the insurance, and any amounts paid by Landlord therefor shall be deemed additional rent payable by Tenant upon demand. Tenant shall cause the insurer(s) to furnish to Landlord certificate(s) evidencing any insurance required to be maintained by Tenant hereunder. Nothing contained in this Section 19 shall prohibit Tenant from carrying deductibles or self-insured retentions on any policies of insurance as deemed appropriate by Tenant.

19.2 **Landlord's Insurance**. Landlord is self-insured with coverage in amounts at least equal to the amounts provided herein. The Landlord shall provide evidence of such insurance as reasonably requested by Tenant.

20. SIGNS AND TRADE FIXTURES

20.1 **Installation and Removal of Trade Fixtures**. During the term of this Agreement, Tenant may, at Tenant's sole cost and expense, install and affix in, to, or on the Beauty Salon any items, herein called "trade fixtures," for use in Tenant's trade or business that Tenant may, in Tenant's sole discretion, deem advisable. Any and all trade fixtures that can be removed without structural damage to the Beauty Salon shall remain the property of the Tenant and may be removed by Tenant at any time before the expiration or earlier termination of this lease, subject to Section 20.3 herein, provided Tenant repairs any damage caused by the removal.

20.1.1 Landlord waives any lien rights it may have concerning the Beauty Salon for property that is deemed Tenant's personal property.

20.2 **Unremoved Trade Fixtures.** Any trade fixtures described in this Section that are not removed from the Beauty Salon by Tenant within thirty (30) days after the expiration or earlier termination regardless of cause, of this Agreement shall be deemed abandoned by Tenant and shall automatically become the property of Landlord as owner of the real property to which they are affixed.

20.3 **Right of First Refusal.** The Parties agree that upon the expiration or earlier termination of this Agreement, the Landlord shall have the first right of refusal to purchase Tenant's removable trade fixtures. The purchase price offered to Landlord shall be based on the IRS deduction schedule.

20.4 **Signs.** Tenant shall not place any signage, logos, or graphics on the interior or exterior of the Beauty Salon, or the Fontana Community Senior Center, except as may be approved in writing by the Landlord, or as may be required by law.

21. DAMAGE AND DESTRUCTION

21.1 **Tenant's Options**. If the Beauty Salon, or Tenant's improvements located therein, are materially destroyed or damaged, by other than an act of Tenant, so as, in Tenant's commercially reasonable judgment, to materially and adversely impair Tenant's effective use of the Beauty Salon, Tenant may elect to terminate this Agreement as of the date of the damage or destruction by notifying Landlord no more than forty-five (45) days following the date of such damage or destruction. If Tenant elects to terminate

this Agreement pursuant to this Section, all rights and obligations of the parties that do not survive the termination of this Agreement shall cease as of the date Landlord receives Tenant's termination notice. If Tenant chooses not to terminate this Agreement, Rent shall be reduced or abated in proportion to the actual reduction or abatement of use of Beauty Salon for a period until such damage can be repaired by Tenant, not to exceed six (6) months, unless Tenant and Landlord determine in good faith that the Beauty Salon cannot be rebuilt in a commercially reasonable manner. In the event of damage or destruction to the Fontana Community Senior Center that prevents Tenant from operating Beauty Salon, Landlord shall abate the rent in its entirety until such a time as the damage can be corrected and the Tenant can return to normal operations, pursuant to the provisions of this Agreement. Landlord reserves the right to audit Tenant's reduction or abatement request.

21.2 **Landlord's Options.** In the event that the Beauty Salon and/or the Fontana Community Senior Center are materially and adversely damaged or destroyed, or Improvements thereto are determined by applicable law to be unsafe, Landlord shall have the right to terminate this Agreement upon written notice to Tenant, provided that Landlord shall give such notice within forty-five (45) days of the date of such damage or destruction or determination as to safety. If Landlord elects to terminate this Agreement pursuant to this Section, all rights and obligations of the parties that do not survive the termination of this Agreement shall cease as of the date of Beauty Salon's receipt of Landlord's termination notice. In no event shall Landlord be obligated to repair any casualty or other damage or destruction to the improvements located in the Beauty Salon and/or the Fontana Community Senior Center, whether or not covered by Landlord's insurance, if any.

21.3 **Insurance Proceeds**. If either Party exercises its right to terminate, Tenant may utilize insurance proceeds, if any, of the insurance required to be carried by Tenant pursuant to this Agreement, to satisfy liens expressly approved, in writing, by the Landlord. The Landlord shall be entitled to any and all remaining insurance proceeds.

22. EMINENT DOMAIN

22.1 In the event that the whole or substantial part of the Property shall be acquired or condemned by eminent domain for a public or quasi-public use or purpose, this Agreement shall terminate. The date of termination pursuant to the exercise of eminent domain authority by a governmental entity shall be the date on which title vests in said governmental entity.

22.2 An award for condemnation, if any, shall be paid first to the Tenant so that the Tenant may satisfy any other liens for which the Tenant obtained the express written consent of the Landlord to incur. The Landlord shall be entitled to the remainder of any condemnation award.

23. DEFAULT AND RIGHT OF REENTRY

23.1 **Events of Default.** Each of the following occurrences shall be an event of default hereunder:

23.1.1 If default shall be made by Tenant in any of the covenants, agreements, conditions or undertakings herein to be kept, observed and performed by Tenant and Tenant shall not have commenced to cure such default within thirty (30) calendar days after notice thereof in writing to Tenant.

23.1.2 If Tenant shall voluntarily file any petition, or have an involuntary petition filed on its behalf, under any chapter or section of the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing, or shall file an answer admitting insolvency or inability to pay its debts; provided however, that Tenant shall not remain in default if Tenant shall continue to pay all Rent and Additional Charges and comply with all other terms and conditions of the Agreement.

23.1.3 If a trustee or receiver shall be appointed for Tenant or for a major portion of its property or for any portion of the Beauty Salon.

23.1.4 If any court shall have taken jurisdiction of a major portion of the property of Tenant or any potion of the Beauty Salon in any involuntary proceeding for dissolution, liquidation or winding up of Tenant and such jurisdiction shall not be relinquished or vacated within sixty (60) calendar days.

23.1.5 If Tenant shall make an assignment for the benefit of its creditors.

23.2 **Right of Reentry.** Upon the occurrence of any default that is not cured within the applicable cure period, and at any time after the expiration of the applicable cure period, Landlord shall have the right, at its election, to reenter the Beauty Salon, or any part thereof, either with process of law, and to expel, remove and put out Tenant, using such force as may be necessary in so doing, and again to possess the Beauty Salon and enjoy the same as in their former estate and to take full possession of and control over the Beauty Salon and to have, hold and enjoy the same and to receive all rental income of and from the same. No reentry by Landlord shall be deemed an acceptance of a surrender of this Agreement, nor shall it absolve or discharge Tenant from any liability under this Agreement. Upon such reentry, all rights of Tenant to possess the Beauty Salon shall cease and terminate.

24. TERMINATION. This Agreement may be terminated, without further liability on the part of the party terminating the Agreement, with sixty (60) days prior written notice (or upon such notice as otherwise expressly provided below) as follows:

24.1 By either party upon a default of any covenant, condition or term herein by the other party, which default is not cured within thirty (30) days of receipt of written notice of default, provided that the grace period for any monetary default is only ten (10) days from receipt of notice. No default will be deemed to exist if the party alleged to be

in default has commenced to cure such default within such period and provided that such efforts are brought to completion with reasonable diligence; or

24.2 By Tenant after the Effective Date for any reason or for no reason, provided Tenant delivers written notice of early termination to Landlord no later than sixty (60) days prior to termination; or

24.3 By Landlord, upon sixty (60) days' written notice to Tenant, in the event Landlord causes interference with the Landlord's operation and maintenance of the Fontana Community Senior Center, provided, however, that Landlord has first given Tenant written notice of such interference and Tenant is unable to correct or cease such interference within thirty (30) days of written notice of such interference.

24.4 By either party in the event that any certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities should be finally rejected or any Governmental Approval issued to Tenant is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority, by either party, upon ten (10) days' notice, should Landlord fail to complete construction of the Beauty Salon or adjacent portions of the Fontana Community Senior Center within sixty (60) days of the date first referenced in this Agreement.

24.5 **Rights Upon Termination**. Upon termination neither party shall have any further rights, obligations or liabilities to the other except: (i) with respect to provisions of this Agreement that by their sense and context survive termination; (ii) with respect to the rights and remedies of the parties relating to the period prior to termination; and (iii) upon notice to Tenant within ten (10) days of Landlord's receipt of a notice terminating the Agreement, Landlord may require that Tenant remove all construction caused by Tenant which has not been completed and restore the Beauty Salon within sixty (60) days of the termination notice, to the condition (to the extent such change in condition was caused by Tenant) existing prior to the full execution of this Agreement, wear and tear, and casualty excepted.

25. ASSIGNMENT. Tenant shall not encumber, transfer or assign this Agreement or any interest in this Agreement or sublet the Premises or any portion thereof without first obtaining the written consent of Landlord. Any attempted transfer, encumbrance, assignment or subletting, including any involuntary transfers or assignments by operation of law, without such written consent shall be void and confer no rights upon any third person. No such transfer, assignment or subletting shall relieve Tenant of its liability for the full performance of all of the terms, agreements, covenants and conditions of this Agreement.

25.1 **Financing Arrangements.** Notwithstanding Section 15.2, upon Landlord's consent and written approval, Tenant may enter into an approved financing arrangement for the purchase of trade fixtures necessary for operation of the Beauty Salon, and for approved Improvements to the Beauty Salon. Any encumbrance shall be, at all times, subordinate to the ownership rights of the Landlord.

26. SAFETY AND ENVIRONMENTAL PROTECTION.

26.1 In carrying out its work, Tenant shall at all times, exercise all necessary precautions for the safety and environmental protection of the Beauty Salon, and be in compliance with all federal, state and local statutory and regulatory requirements including State of California, Division of Industrial Relations (Cal/OSHA) regulations, Cal/EPA, US/EPA and the U.S. Department of Transportation including the Omnibus Transportation Employee Testing Act (as applicable).

26.2 Tenant shall not use or allow anyone else to use the Beauty Salon to generate, manufacture, refine, transport, treat, store, handle, recycle, release or dispose of any hazardous material, other than as reasonably necessary for the operation of the Tenant's activities as contemplated under this Agreement. The term "hazardous material" means any hazardous substance, material or waste, including but not limited to those listed in 49 CFR 172.101 (U.S. Department of Transportation), the Cal/EPA Chemical Lists of lists or petroleum products and their derivatives. However, this shall not apply to the use of petroleum products and related substances incidental to operation of motorized equipment and vehicles whose operation in the Beauty Salon is contemplated by this Agreement.

26.3 Tenant shall immediately notify the Landlord in writing upon becoming aware of any release of hazardous material, violation of any environmental law or actions brought by third parties against the Tenant alleging environmental damage.

26.4 Landlord represents, warrants and agrees (1) that neither Landlord nor, to Landlord's actual knowledge (without Landlord having researched the matter), any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any hazardous material on, under, about or within the Beauty Salon in violation of any law or regulation, and (2) that Landlord has not, and will not permit any third party to use, generate, store or dispose of any hazardous material on, under, about or within the Fontana Community Senior Center in violation of any law or regulation.

26.5 Landlord and Tenant each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or Agreement contained in this section. This section shall survive the termination of this Agreement.

27. Notices. Any notice, demand or payment required to be given herein, or change of the address provided in this Section 27, shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective parties set forth below:

Landlord:
City of Fontana
8353 Sierra Avenue
Fontana, CA 92335
Attention: City Manager

Tenant:
Carmen Prieto aka: Carmen G. Trujillo
d/b/a Melly's Barber and Beauty
8646 Wheeler Avenue
Fontana, CA 92335
Attention: Carmen G. Trujillo

Landlord or Tenant may from time to time designate any other address for this purpose by written notice to the other party.

28. MISCELLANEOUS PROVISIONS.

28.1 **Nondiscrimination.** Tenant herein covenants by and for itself and its assigns, and all persons claiming under or through Tenant, that this Lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the subleasing, transferring, use, occupancy, tenure, or enjoyment of the Beauty Salon nor shall the Tenant, itself, or any person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation.

28.2 **Attorney's Fees**. In the event legal action by either party is brought to enforce any term hereof or in the recovery of damages for any breach hereof, or to determine any rights of the parties under this Agreement, the prevailing party in such actions may recover reasonable attorneys' fees.

28.2.1 When any provision of this Agreement entitles either party to receive costs or expenses from the other for a breach of any term herein, the terms costs and expenses shall include reasonable attorney's fees incurred, notwithstanding any reference or lack of reference to attorney's fees. When any article or provision of this Agreement provides that a party will hold an indemnitee harmless from claims, such shall pay all such indemnitee's reasonable attorney's fees incurred in investigating and defending such claims.

28.3 **Prevailing Wages.** Tenant has been advised of California Labor Code section 1770 et seq. Tenant has also been advised of the Attorney General Opinion (No. 86 803) and California Senate Bill 975.

28.3.1 It shall be the sole responsibility of Tenant to determine whether to pay prevailing wages for any or all work required by this Agreement. Tenant shall be liable if it violates applicable law.

28.4 As a further material part of this Agreement, Tenant shall be liable to Landlord, its officials, officers, employees, consultants and agents from any and all claims, liability, loss, costs, damages, expenses, fines and penalties, of whatever type or nature, including all costs of defense and attorneys' fees, arising from any failure of the Tenant or Tenant's contractors to comply with the prevailing wage laws of the State of California.

28.5 **Relationship**. Nothing contained in this Lease shall be deemed or construed by the Parties or by any third Person to create the relationship of principal and agent, or of partnership or joint venture, or of any association between Landlord and Tenant, and none of the provisions contained in this Lease or any acts of the Parties shall be deemed to create any relationship other than lessor and lessee between Landlord and Tenant, nor shall this Lease be construed, except as expressly provided, to authorize either to act as agent for the other.

28.6 **Entire Agreement**. This Agreement constitutes the entire Agreement and understanding between the parties, and supersedes all offers, negotiations and other Agreements concerning the subject matter contained herein. Any amendments to this Agreement must be in writing and executed by both parties.

28.7 **Severability.** If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

28.8 **Successors and Assigns**. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties. Any reference to the "Landlord" or "Tenant" shall be deemed to refer to any authorized agent of such referenced party.

28.9 **Applicable Law.** This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Bernardino, State of California.

28.10 **Cooperation, Further Acts.** In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold its approval or consent.

28.11 **Waiver or Modification**. No waiver by a Party hereto at any time of any of the terms, conditions, or covenants of this Agreement shall constitute a waiver at any time thereafter of the same or any other term, condition, or covenant of this Agreement.

28.12 **Exhibits.** All Exhibits attached hereto are material parts of this Agreement and are hereby incorporated herein by reference.

28.13 **Counterparts.** This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

28.14 **Authority.** Each party to this Agreement represents and warrants that it has all requisite power and authority to conduct its business and to sign, deliver and perform the Agreement. Each party warrants that the individual who has signed this Agreement has the legal power, right and authority to make and enter into this Agreement and bind each respective party.

28.15 **Time.** Time is of the essence in this Agreement and every provision hereof.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE
TO
FONTANA COMMUNITY SENIOR CENTER BEAUTY SALON LEASE AGREEMENT

LANDLORD: **CITY OF FONTANA** By: _____ Kenneth R. Hunt City Manager		**TENANT:** **Carmen Prieto aka: Carmen G. Trujillo, a sole proprietor, d/b/a MELLY'S BARBER AND BEAUTY.** By: _____
Attest: By: _____ City Clerk		
Approved as to form: _____ Best Best & Krieger LLP City Attorney		
By: _____ Garth Nelson, Department Head		
By: _____ Annette Henckel, Risk Management		

IN COMPLIANCE WITH PURCHASING AND CONTRACT ADMINISTRATION POLICIES/PROCEDURES		
_____, Manager Business Services Division		_____, Lisa Strong, Director of Management Services

EXHIBIT "A"

DESCRIPTION AND DEPICTION OF THE COFFEE BAR

[Map attached on following page]

On the second floor, directly adjacent to the to the arts and crafts room and north of the billiards room of this extraordinary new facility is a designated space for the **Beauty Salon**. Specifically, this space will provide an opportunity for patrons of the Senior Center to receive services for hair and nails.

(The area encompassing the Coffee Bar is circled in red on the map attached below)

Exhibit A

EXHIBIT "B"

DESCRIPTION OF IMPROVEMENTS, ITEMS AND EQUIPMENT PROVIDED BY CITY FOR OPERATION OF THE COFFEE BAR

ITEM 1 Stylist Chair (Qty. 2)

ITEM 2 Shampoo Chair

ITEM 3 Hair Drying Chair

ITEM 4 Salon Dryer

ITEM 5 Nail Table

ITEM 6 Manicure Chair with Arms (Qty. 2)

ITEM 7 Fatigue Mats (Qty. 2)

ITEM 8 Salon Pedicure Cart

Exhibit B

EXHIBIT "C"

SERVICES

The intention of the City of Fontana is to obtain qualified, knowledgeable vendor to operate the **Beauty Salon**. Qualified vendors must have a current cosmetology license and be in good standing with the California Department of Consumer Affairs and the Board of Barbering and Cosmetology. In addition the vendor shall demonstrate the ability to create an atmosphere that compliments the programming offered within the facility. Hours of operation will vary depending on vendor, but the **Beauty Salon** must be operated at least two days a week for a minimum of 4 hours a day during Fontana Community Senior Center's normal business hours. Vendor may operate more days and for longer hours, but must operate during Fontana Community Senior Center's normal business hours. Proposed operating hours of the Fontana Community Senior Center are Monday through Thursday 7 a.m. to 8:00 p.m.; Friday 7 a.m. to 6 p.m.; Saturday 8 a.m. to 3 p.m. and closed on Sundays. Please note that the hours of operation may change.

The ideal vendor will demonstrate the ability to provide all certifications/licenses necessary, deliver a service satisfaction guarantee and submit an operations plan on the proposed use of the **Beauty Salon**.