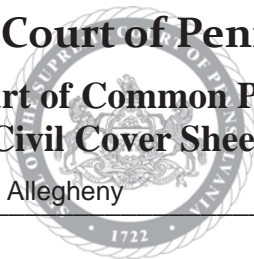


# Supreme Court of Pennsylvania

## Court of Common Pleas Civil Cover Sheet

Allegheny

County



*For Prothonotary Use Only:*

Docket No:

TIME STAMP

*The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.*

SECTION A

### Commencement of Action:

- Complaint
- Writ of Summons
- Petition
- Transfer from Another Jurisdiction
- Declaration of Taking

Lead Plaintiff's Name:  
DIV 501 Grant, LLC

Lead Defendant's Name:  
Downtown Arcade, LLC d/b/a The Union Standard

Are money damages requested?  Yes  No

Dollar Amount Requested:  within arbitration limits  
(check one)  outside arbitration limits

Is this a *Class Action Suit*?  Yes  No

Is this an *MDJ Appeal*?  Yes  No

Name of Plaintiff/Appellant's Attorney: Eric M. Spada

**Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)**

SECTION B

**Nature of the Case:** Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

#### TORT (do not include Mass Tort)

- Intentional
- Malicious Prosecution
- Motor Vehicle
- Nuisance
- Premises Liability
- Product Liability (*does not include mass tort*)
- Slander/Libel/ Defamation
- Other: \_\_\_\_\_

#### CONTRACT (do not include Judgments)

- Buyer Plaintiff
- Debt Collection: Credit Card
- Debt Collection: Other  
\_\_\_\_\_
- Employment Dispute:  
Discrimination  
\_\_\_\_\_
- Employment Dispute: Other  
\_\_\_\_\_
- Other: \_\_\_\_\_

#### CIVIL APPEALS

- Administrative Agencies
- Board of Assessment
- Board of Elections
- Dept. of Transportation
- Statutory Appeal: Other  
\_\_\_\_\_
- Zoning Board
- Other: \_\_\_\_\_

#### MASS TORT

- Asbestos
- Tobacco
- Toxic Tort - DES
- Toxic Tort - Implant
- Toxic Waste
- Other: \_\_\_\_\_

#### REAL PROPERTY

- Ejectment
- Eminent Domain/Condemnation
- Ground Rent
- Landlord/Tenant Dispute
- Mortgage Foreclosure: Residential
- Mortgage Foreclosure: Commercial
- Partition
- Quiet Title
- Other: \_\_\_\_\_

#### MISCELLANEOUS

- Common Law/Statutory Arbitration
- Declaratory Judgment
- Mandamus
- Non-Domestic Relations  
Restraining Order
- Quo Warranto
- Replevin
- Other: \_\_\_\_\_

#### PROFESSIONAL LIABILITY

- Dental
- Legal
- Medical
- Other Professional: \_\_\_\_\_

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA**

DIV 501 GRANT, LLC,

Plaintiff,

v.

DOWNTOWN ARCADE, LLC d/b/a THE  
UNION STANDARD, ROBERT GLIMCHER,  
CHUCK HAMMEL, and DEREK STEVENS,

Defendants.

) CIVIL DIVISION  
)  
) GD  
)  
) **COMPLAINT**  
)  
) Filed on behalf of Plaintiff  
) DIV 501 GRANT, LLC  
)  
) Counsel for this party:  
)  
) Eric M. Spada  
) (Pa Id. No. 311446)  
)  
) Buchanan Ingersoll & Rooney PC  
) Union Trust Building  
) 501 Grant Street, Suite 200  
) Pittsburgh, PA 15219  
) Telephone: (412) 562-8800  
) Fax: (412) 562-1041

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA**

DIV 501 GRANT, LLC, )  
 )  
 Plaintiff, ) CIVIL DIVISION  
 )  
 )  
 v. ) GD  
 )  
 DOWNTOWN ARCADE, LLC d/b/a THE )  
 UNION STANDARD, ROBERT )  
 GLIMCHER, CHUCK HAMMEL, and )  
 DEREK STEVENS, )  
 )  
 Defendants. )

**NOTICE TO DEFEND**

TO THE ABOVE DEFENDANTS:

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ON AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERRAL SERVICE  
ALLEGHENY BAR ASSOCIATION  
11<sup>th</sup> Floor, Koppers Building  
436 Seventh Avenue  
Pittsburgh, PA 15219  
Telephone: (412) 261-5555

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA**

DIV 501 GRANT, LLC, )  
 )  
 Plaintiff, ) CIVIL DIVISION  
 )  
 v. ) GD  
 )  
 DOWNTOWN ARCADE, LLC d/b/a THE )  
 UNION STANDARD, ROBERT )  
 GLIMCHER, CHUCK HAMMEL, and )  
 DEREK STEVENS, )  
 )  
 Defendants. )

**COMPLAINT**

AND NOW, comes Plaintiff DIV 501 Grant, LLC (“Plaintiff” or “Landlord”), by and through its undersigned counsel, Buchanan Ingersoll & Rooney PC, and hereby files this Complaint against Defendants Downtown Arcade, LLC d/b/a The Union Standard (“Tenant”), Robert Glimcher (“Glimcher”), Chuck Hammel (“Hammel”), and Derek Stevens (“Stevens”). Glimcher, Hammel, and Stevens are collectively the “Guarantors;” Guarantors and Tenant are collectively the “Defendants.” In support thereof, Landlord avers as follows:

**I. THE PARTIES**

1. Plaintiff DIV 501 Grant, LLC is a Massachusetts limited liability company with its principal place of business at 125 High Street, 21st Floor, Boston, MA 02110.
2. Defendant Downtown Arcade, LLC d/b/a The Union Standard is a Pennsylvania limited liability company with an office at 294 Crafton Boulevard, Pittsburgh, PA 15205.
3. Defendant Robert Glimcher is a Pennsylvania resident who resides in Allegheny County and who conducts business at BNY Mellon Center, Suite 2000, Pittsburgh, PA 15219.
4. Defendant Chuck Hammel is a Pennsylvania resident who resides in Allegheny County and who conducts business at 15 27th Street, Pittsburgh, PA 15222.

5. Defendant Derek Stevens is a Pennsylvania resident who resides in Allegheny County at 294 Crafton Boulevard, Pittsburgh, PA 15205.

## **II. JURISDICTION AND VENUE**

6. Jurisdiction and venue for this dispute are proper in this Court because, *inter alia*, the real property at issue is located in Allegheny County, Pennsylvania; Tenant leased, used, and possessed real property located in Allegheny County, Pennsylvania; Guarantors guaranteed the obligations of Tenant in Allegheny County, Pennsylvania; Defendants' conduct caused harm, including monetary damages, to Landlord in Allegheny County, Pennsylvania; and events giving rise to this action occurred, *inter alia*, within Allegheny County, Pennsylvania.

## **III. FACTUAL BACKGROUND**

### **The Lease and the Guaranties**

7. On or about March 2, 2016, Landlord and Tenant entered into a written Lease. Upon information and belief, all Defendants are in possession of the Lease. If necessary, Landlord's counsel will provide a copy of the Lease to Defendants upon request.

8. The term of the Lease runs through, at minimum, January 31, 2027.

9. Under the terms of the Lease, Tenant leased certain space (defined in the Lease as the "Premises") within the property located at 501 Grant Street, Pittsburgh, PA 15219, commonly known as the Union Trust Building. *See* Lease at ¶ 1.1.

10. Pursuant to Articles 4 and 5 of the Lease, Tenant agreed to pay, *inter alia*, certain Base Rent, Percentage Rent, Additional Rent, and CAM Charges to Landlord. *See* Lease at Articles 4, 5.

11. In conjunction with the Lease, each of the Guarantors executed a Guaranty in favor of Landlord. The Guaranty executed by Glimcher ("Glimcher Guaranty") is attached

hereto as Exhibit 1. The Guaranty executed by Hammel (“Hammel Guaranty”) is attached hereto as Exhibit 2. The Guaranty executed by Stevens (“Stevens Guaranty”) is attached hereto as Exhibit 3. The Glimcher Guaranty, the Hammel Guaranty, and the Stevens Guaranty are collectively the “Guaranties.”

12. The Guaranties state that the each Guarantor, *inter alia*, “irrevocably and unconditionally guarantees the punctual payment, performance and fulfillment of all of the obligations of Tenant under the Lease and any and all extensions and modifications therefore, including, but not limited to, the obligation to pay Rent thereunder. This is a guaranty of payment and performance and not of collection only.” Guaranties at ¶ 2.

#### **Tenant Failed to Timely Pay Rent**

13. Under the terms of the Lease, Tenant is required to pay rent monthly on or before the first day of each month consisting of, *inter alia*, Base Rent and Additional Rent. *See* Lease at ¶¶ 4.1.1, 4.6, 5.2.

14. Despite due demand and its obligations under the Lease, Tenant has not paid any of the rent due and owing from and after April, 2020.

15. As a result of Tenant’s failure to pay the rent due and owing on April 1, 2020, on April 6, 2020, Landlord sent an initial written notice (“Initial Notice”) to Tenant in which Landlord, *inter alia*, itemized certain Base Rent and Additional Rent which Tenant had failed to pay and, pursuant to the terms of the Lease, demanded payment within five (5) days. A true and correct copy of the April 6, 2020 Initial Default Notice is attached hereto as Exhibit 4.

16. Then, on April 15, 2020, Landlord sent a subsequent written default notice (“Default Notice”) to Tenant in which Landlord, *inter alia*, placed Tenant into default under the

Lease as a result of its failure to cure the defaults set forth in the April 6, 2020 Initial Notice. A true and correct copy of the April 15, 2020 Default Notice is attached hereto as Exhibit 5.

17. Despite the Initial Notice and the Default Notice, Tenant again failed to timely make required Base Rent and Additional Rent payments by May 1, 2020.

18. And despite the Initial Notice and the Default Notice, Tenant again failed to timely make required Base Rent and Additional Rent payments by June 1, 2020.

19. Thus, on June 5, 2020, Landlord sent Tenant a “Notice of Continuing Default” in which Landlord informed Tenant, *inter alia*, that “[a]n Event of Default by Tenant continues to exist under the terms of the Lease.” A true and correct copy of the June 5, 2020 Notice of Continuing Default is attached hereto as Exhibit 6.

20. During at least a portion of the time between March 16, 2020 and June 1, 2020, Tenant was open for take-out business.

21. Nevertheless, despite partially operating and generating some revenue, Tenant failed to pay the rent due on April 1, 2020, May 1, 2020, and June 1, 2020 (the “Default Rents”).

22. Indeed, Tenant never even made a partial payment of the Default Rents.

23. As of the date of the filing of this Complaint, Defendants owe Landlord not less than \$72,045.30 in past due Base Rent and Additional Rent.

24. None of the Defendants have given any indication that they intend to cure the Default Rents.

25. In addition to the at least \$72,045.30 currently due and owing, Defendants will be liable hereunder for any future unpaid amounts which become due and owing and to which Landlord is entitled under the Lease.

**Tenant Announced its Intention to Cease Operations Entirely**

26. Section 7.8 of the Lease expressly requires Tenant to operate every day:

Unless otherwise specified in the Rules and Regulations, the Premises (as well as all doors and entryways thereto) shall be kept open for business at least between the hours of 11:00AM and 12:00AM Monday through Friday, 10:00AM to 12:00AM on Saturdays and between the hours of 10:00AM to 5:00PM on Sundays.

27. Starting on or about May 29, 2020, Tenant was permitted to open for sit-in dining.

28. Nevertheless, rather than open for sit-in dining, in the first week of June of 2020,

Tenant informed Landlord that it intended to cease operations entirely and close permanently.

29. Since informing Tenant of its intention to close permanently, Tenant has not opened or operated the restaurant at all.

30. The Lease does not permit Tenant to cease operations.

**COUNT I - BREACH OF CONTRACT**  
**(PLAINTIFF v. TENANT)**

31. The preceding paragraphs of this Complaint are incorporated herein by reference as if set forth at length.

32. The Lease constitutes a valid and enforceable contract between Landlord and Tenant.

33. Under the terms of the Lease, Tenant owes at least \$35,000.00 to Landlord in Base Rent and Additional Rent. Nevertheless, Tenant has failed to pay the Base Rent and Additional Rent that it owes to Landlord.

34. As a result of the foregoing, Landlord has been damaged in an amount in excess of this Court's arbitration limits.



WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor and against Tenant and grant Plaintiff the following relief:

- a. all damages which Plaintiff has incurred, including lost rent, which are in excess of the arbitration limits of this Court (exclusive of interest and costs);
- b. an award of costs and disbursements Plaintiff has incurred and will incur in the prosecution of this lawsuit;
- c. an award of attorney's fees pursuant to Paragraphs 13.3 and 16.13 of the Lease;
- d. an award of pre-judgment interest and post-judgment interest; and
- e. such other relief as is just and proper.

**COUNT II - BREACH OF CONTRACT**  
**(PLAINTIFF v. TENANT)**

35. The preceding paragraphs of this Complaint are incorporated herein by reference as if set forth at length.

36. The Lease constitutes a valid and enforceable contract between Landlord and Tenant.

37. Under Section 7.8 of the Lease, Tenant is required to open and operate the restaurant every day.

38. Since at least May 30, 2020, Tenant has failed to be open and operate as required by Section 7.8 of the Lease.

39. As a result of the foregoing, Landlord has been damaged in an amount in excess of this Court's arbitration limits.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor and against Tenant and grant Plaintiff the following relief:

- a. all damages which Plaintiff has incurred, including but not limited to consequential damages, direct damages, indirect damages, and lost profits, which are in excess of the arbitration limits of this Court (exclusive of interest and costs);
- b. an award of costs and disbursements Plaintiff has incurred and will incur in the prosecution of this lawsuit;
- c. an award of attorney's fees pursuant to Paragraphs 13.3 and 16.13 of the Lease;
- d. an award of pre-judgment interest and post-judgment interest; and
- e. such other relief as is just and proper.

**COUNT III - BREACH OF CONTRACT**  
**(PLAINTIFF v. GLIMCHER)**

40. The preceding paragraphs of this Complaint are incorporated herein by reference as if set forth at length.

41. Under the terms of the Glimcher Guaranty, Glimcher, *inter alia*, "irrevocably and unconditionally guarantee[d] the punctual payment, performance and fulfillment of all of the obligations of Tenant under the Lease and any and all extensions and modifications therefore, including, but not limited to, the obligation to pay Rent thereunder. This is a guaranty of payment and performance and not of collection only." Glimcher Guaranty at ¶ 2.

42. As set forth above, Tenant is in breach of the Lease and, as a result, has caused and is causing damages to Landlord.

43. Under the terms of the Glimcher Guaranty, Landlord is entitled to proceed against Glimcher for those damages caused by Tenant.

44. Glimcher has not compensated Landlord for the damages caused by Tenant.

45. Landlord has satisfied all prerequisites to proceed against and collect against the Glimcher Guaranty.

46. As a result of the foregoing, Landlord has been damaged in an amount in excess of this Court's arbitration limits.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor and against Defendant Glimcher and grant Plaintiff the following relief:

- a. all damages which Plaintiff has incurred, including but not limited to lost rent, consequential damages, direct damages, indirect damages, and lost profits, which are in excess of the arbitration limits of this Court (exclusive of interest and costs);
- b. an award of costs and disbursements Plaintiff has incurred and will incur in the prosecution of this lawsuit;
- c. an award of attorney's fees pursuant to Paragraph 10 of the Glimcher Guaranty;
- d. an award of pre-judgment interest and post-judgment interest; and
- e. such other relief as is just and proper.

**COUNT IV - BREACH OF CONTRACT**  
**(PLAINTIFF v. HAMMEL)**

47. The preceding paragraphs of this Complaint are incorporated herein by reference as if set forth at length.

48. Under the terms of the Hammel Guaranty, Hammel, *inter alia*, “irrevocably and unconditionally guarantee[d] the punctual payment, performance and fulfillment of all of the obligations of Tenant under the Lease and any and all extensions and modifications therefore, including, but not limited to, the obligation to pay Rent thereunder. This is a guaranty of payment and performance and not of collection only.” Hammel Guaranty at ¶ 2.

49. As set forth above, Tenant is in breach of the Lease and, as a result, has caused and is causing damages to Landlord.

50. Under the terms of the Hammel Guaranty, Landlord is entitled to proceed against Hammel for those damages caused by Tenant.

51. Hammel has not compensated Landlord for the damages caused by Tenant.

52. Landlord has satisfied all prerequisites to proceed against and collect against the Hammel Guaranty.

53. As a result of the foregoing, Landlord has been damaged in an amount in excess of this Court’s arbitration limits.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor and against Defendant Hammel and grant Plaintiff the following relief:

- a. all damages which Plaintiff has incurred, including but not limited to lost rent, consequential damages, direct damages, indirect damages, and lost profits, which are in excess of the arbitration limits of this Court (exclusive of interest and costs);
- b. an award of costs and disbursements Plaintiff has incurred and will incur in the prosecution of this lawsuit;

- c. an award of attorney's fees pursuant to Paragraph 10 of the Hammel Guaranty;
- d. an award of pre-judgment interest and post-judgment interest; and
- e. such other relief as is just and proper.

**COUNT V - BREACH OF CONTRACT**  
**(PLAINTIFF v. STEVENS)**

54. The preceding paragraphs of this Complaint are incorporated herein by reference as if set forth at length.

55. Under the terms of the Stevens Guaranty, Stevens, *inter alia*, "irrevocably and unconditionally guarantee[d] the punctual payment, performance and fulfillment of all of the obligations of Tenant under the Lease and any and all extensions and modifications therefore, including, but not limited to, the obligation to pay Rent thereunder. This is a guaranty of payment and performance and not of collection only." Stevens Guaranty at ¶ 2.

56. As set forth above, Tenant is in breach of the Lease and, as a result, has caused and is causing damages to Landlord.

57. Under the terms of the Stevens Guaranty, Landlord is entitled to proceed against Stevens for those damages caused by Tenant.

58. Stevens has not compensated Landlord for the damages caused by Tenant.

59. Landlord has satisfied all prerequisites to proceed against and collect against the Stevens Guaranty.

60. As a result of the foregoing, Landlord has been damaged in an amount in excess of this Court's arbitration limits.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor and against Defendant Stevens and grant Plaintiff the following relief:

- a. all damages which Plaintiff has incurred, including but not limited to lost rent, consequential damages, direct damages, indirect damages, and lost profits, which are in excess of the arbitration limits of this Court (exclusive of interest and costs);
- b. an award of costs and disbursements Plaintiff has incurred and will incur in the prosecution of this lawsuit;
- c. an award of attorney's fees pursuant to Paragraph 10 of the Stevens Guaranty;
- d. an award of pre-judgment interest and post-judgment interest; and
- e. such other relief as is just and proper.

Dated: June 30, 2020

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

By: /s/ Eric M. Spada  
Eric M. Spada (Pa. Id. #311446)  
Union Trust Building  
501 Grant Street, Suite 200  
Pittsburgh, PA 15219  
(412) 562-8800  
(412) 562-1041 (fax)  
eric.spada@bipc.com

Counsel for Plaintiff DIV 501 Grant, LLC

**VERIFICATION**

I, Gary Hofstetter, SVP, Asset Management of The Davis Companies, hereby verify that I am authorized to sign this Verification on behalf of Plaintiff DIV 501 Grant, LLC, that I have read the foregoing Complaint, and that the averments of fact contained therein are true and correct to the best of my knowledge, information, and belief.

This statement is made subject to the penalties of 18 Pa. Cons. Stat. Ann. § 4904 relating to unsworn falsification to authorities.

Date: June 29, 2020

  
\_\_\_\_\_

# EXHIBIT 1



## GUARANTY

WHEREAS, a certain lease ("**Lease**"), more fully described below, has been executed:

- a. Landlord: DIV 501 GRANT LIMITED PARTNERSHIP
- b. Tenant: DOWNTOWN ARCADE, LLC
- c. Effective Date: March 2, 2016
- d. Premises: approximately 3,173 rentable square feet of space located on the first floor (the "**First Floor Premises**") and approximately 4,131 rentable square feet of space located on the mezzanine floor (the "**Mezzanine Premises**") and together with the First Floor Premises, collectively, the "**Premises**") of the building located at 501 Grant Street, Pittsburgh, Pennsylvania (the "**Building**") for a total rentable square footage for the Premises of 7,304 square feet.

WHEREAS, the Landlord under the Lease requires as a condition to its execution of said Lease that the undersigned (herein referred to as "**Guarantor**") guarantee the payment and performance of the obligations of Tenant under the Lease.

WHEREAS, the undersigned is desirous that Landlord enter into the Lease with Tenant.

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Lease.

NOW, THEREFORE, in consideration of the execution of the Lease by Landlord, Guarantor agrees as follows:

1. Guarantor warrants and represents that the making and performance of this Guaranty by Guarantor will not result in any breach of any term, condition or provision of, or constitute a default under, any contract, agreement or other instrument to which Guarantor is a party or by which it may be bound, or result in a breach of any regulation, order, writ, injunction or decree of any court or any commission, board or other administrative agency entered in any proceeding to which Guarantor is a party or by which it may be bound.

2. Guarantor hereby irrevocably and unconditionally guarantees the punctual payment, performance and fulfillment of all of the obligations of Tenant under the Lease and any and all extensions and modifications thereof, including, but not limited to, the obligation to pay rent thereunder. This is a guaranty of payment and performance and not of collection only. Guarantor further agrees to defend with counsel reasonably acceptable to Landlord, and to indemnify and save Landlord harmless from and against any and all loss, cost, damage or liability arising out of any breach by Tenant of any of the terms, conditions and covenants of the Lease, or out of any breach of warranty or misrepresentation made by Tenant under the Lease or heretofore or hereafter made to Landlord, including without limitation, reasonable attorneys' fees and any other costs incurred by Landlord in connection therewith. Notwithstanding anything to the contrary contained herein or in the Lease, Guarantor's liability hereunder shall not exceed (a) \$200,000 from the Effective Date through and including the day before the fifth (5<sup>th</sup>) anniversary of the Rent Commencement Date and (b) provided no Event of Default has occurred prior to the fifth (5<sup>th</sup>) anniversary of the Rent Commencement Date, \$100,000 from the fifth (5<sup>th</sup>) anniversary

of the Rent Commencement Date through the tenth (10<sup>th</sup>) anniversary of the Rent Commencement Date. If no Event of Default has occurred during the Term of the Lease, Tenant, upon prior written notice to Landlord expressly referencing this section of this Guaranty and delivered no sooner than the fifth (5<sup>th</sup>) anniversary of the Rent Commencement Date, may choose to increase the amount of the Letter of Credit posted as a security deposit to cover the remaining reduced amount of this obligation (or portion thereof). Upon both (a) delivery by Tenant to Landlord of a replacement Letter of Credit in such increased amount and (b) Tenant and Landlord's execution of an amendment to the Lease, properly documenting the increased amount of the Security Deposit, Landlord shall (i) return the original Letter of Credit to Tenant and (ii) the liabilities of Guarantor under this Guaranty shall be proportionately reduced, dollar for dollar, by the amount that the Letter of Credit has been increased. All costs associated with increasing the Letter of Credit and amending the Lease, including, without limitation, Landlord's attorney's fees, shall be at Tenant's sole cost and expense.

3. Without notice to or the consent of Guarantor, Landlord may alter, compromise, extend or change the time or manner for the performance of any obligation hereby guaranteed, substitute or add any one or more guarantors, accept additional or substituted security for the performance of any such obligation, or release or subordinate any security therefor, any and all of which may be accomplished without any effect on the obligations of Guarantor hereunder. No exercise or non-exercise by Landlord of any right hereby given, no dealing by Landlord with Tenant, any other guarantor or other person, and no change, impairment or suspension of any right or remedy of Landlord shall in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse against Landlord.

4. Guarantor hereby waives and agrees not to assert or take advantage of the following:

(a) Any right to require Landlord to proceed against Tenant or any other person or to proceed or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power before proceeding against Guarantor;

(b) Any defense based on the statute of limitations in any action hereunder or in any action for the performance of any obligation hereby guaranteed;

(c) Any defense that may arise by reason of the incapacity, lack of authority, bankruptcy, death or disability of any other person or persons or the failure of Landlord to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;

(d) Any right to receive demands, protests and notices of any kind including, but not limited to, notice of the existence, creation or incurring of any new or additional obligation or of any action or non-action on the part of Tenant, Landlord or any other person;

(e) Any defense based on an election of remedies including, but not limited to, any action by Landlord which shall destroy or otherwise impair any subrogation right of Guarantor or the right of Guarantor to proceed against Tenant for reimbursement, or both;

(f) Any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and of all circumstances bearing on the risk of nonperformance of any obligation hereby guaranteed;

(g) Any right to receive notice of or to consent to any amendments that may hereafter be made to the Lease; and

(h) Any defense based on the fact that Guarantor's obligations hereunder are larger or more burdensome than that of Tenant's under the Lease.

5. Until all obligations hereby guaranteed shall have been fully performed or exhausted, Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Landlord now has or may hereafter have against Tenant and any benefit of, and any right to participate in, any security now or hereafter held by Landlord.

6. All existing and future obligations of Tenant to Guarantor, or any person owned in whole or in part by Guarantor, and the right of Guarantor to cause or permit itself or such person to withdraw any capital invested in Tenant are hereby subordinated to all obligations hereby guaranteed, and, without the prior written consent of Landlord, such obligations to Guarantor shall not be performed, and such capital shall not be withdrawn, in whole or in part, while Tenant is in default under the Lease.

7. The validity of this Guaranty and Guarantor's obligations hereunder shall not be impaired, changed, released or limited in any manner whatsoever by reason of (a) the assertion or failure to assert by Landlord against Tenant of any of the rights or remedies of Landlord pursuant to the Lease or by law, (b) any impairment, change, release or limitation of the obligations of Tenant under the Lease or any remedy for the enforcement thereof, (c) the sublease by Tenant of all or any portion of the premises covered by the Lease or the making of any assignment by Tenant, with or without notice to Landlord, of its interest under the Lease (whether or not such sublease or assignment is permitted under the Lease and whether or not it is approved by Landlord), or (d) any impairment, change, release or limitation of Tenant's obligations under the Lease or otherwise by (i) the release or discharge of Tenant in any creditors' proceedings, (ii) any impairment, limitation or modification of the liability of Tenant or the estate of Tenant in receivership, bankruptcy, insolvency, composition, dissolution, liquidation, reorganization, arrangement or adjustment, or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of the Bankruptcy Act or any other present or future statute or from the decision of any court or other tribunal, or (iii) the rejection or disaffirmance of the Lease or any obligation thereunder in any such proceedings.

8. All rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to all

rights, powers and remedies given to Landlord at law or in equity. This Guaranty is in addition to and exclusive of the guarantee of any other guarantor of any obligation of Tenant to Landlord.

9. The obligations of Guarantor hereunder are independent of the obligations of Tenant under the Lease, and, in the event of any default hereunder or under the Lease, a separate action or actions may be brought and prosecuted against Guarantor, whether or not Tenant is joined therein or a separate action or actions are brought against Tenant. Landlord may maintain successive actions for other defaults. Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations hereby guaranteed shall have been fully performed.

10. Guarantor shall pay to Landlord, without demand, reasonable attorneys' fees and all costs and other expenses which Landlord shall expend or incur in collecting or compromising any obligation hereby guaranteed or in enforcing this Guaranty against Guarantor, whether or not suit is filed including, but not limited to, attorneys' fees, costs and other expenses incurred by Landlord in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving Guarantor which in any way affects the exercise by Landlord of its rights and remedies hereunder. Provided, however, in no event shall any Guarantor be liable for more than the amount specified in Paragraph 2 hereof.

11. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

12. This Guaranty is absolute and is not conditioned in any way upon the genuineness, validity, regularity or enforceability of the Lease or the obligations of Tenant thereunder.

13. This Guaranty shall inure to the benefit of Landlord and its successors and assigns, and shall bind the heirs, executors, administrators, successors and assigns of Guarantor. Landlord may assign this Guaranty concurrently with the transfer of title to property covered by the Lease, and, when so assigned, Guarantor shall be liable to the assignees without in any manner affecting the liability of Guarantor hereunder.

14. Upon the earlier to occur of (a) the tenth (10<sup>th</sup>) anniversary of the Rent Commencement Date or (b) full performance of all obligations hereby guaranteed, this Guaranty shall be of no further force or effect; provided, however, Guarantor's obligations hereunder shall continue and remain in effect if such full performance is avoided or recovered from Landlord as a preference, fraudulent transfer or otherwise.

15. No provision of this Guaranty or right of Landlord hereunder can be waived or modified, nor can Guarantor be released from Guarantor's obligations hereunder, except by a writing duly executed by Landlord or in accordance with Paragraph 14.

16. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

17. If two (2) or more persons are signing this Guaranty as Guarantor, then all such persons shall be severally liable for the obligations of Guarantor hereunder.

18. This Guaranty shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. In any action brought under or arising out of this Guaranty, Guarantor hereby consents to the jurisdiction of any competent court within Commonwealth of Pennsylvania and hereby consents to service of process by any means authorized by Pennsylvania law. This Guaranty shall constitute the entire agreement of Guarantor with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Landlord unless expressed herein.

19. The Parties agree that the Court of Common Pleas of Allegheny County, Pennsylvania shall have exclusive jurisdiction over any matters arising hereunder.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, Guarantor has caused this Guaranty of Lease to be executed as of February 2, 2016.

Address of Guarantor:

c/o Glimcher Group, Inc.  
BNY Mellon Center, Suite 2000  
PITTSBURGH, PA 15219

GUARANTOR:

By: [Signature]

Name: Robert Glimcher

Date: MARCH 2, 2016

STATE OF Pennsylvania

County of Allegheny, ss.

On this 2 day of March, 2016, before me, the undersigned notary public, personally appeared Robert Glimcher, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

[Signature]

[Official signature and seal of notary]

My commission expires:

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Donna J. Hirschfield, Notary Public  
City of Pittsburgh, Allegheny County  
My Commission Expires July 22, 2016  
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

# EXHIBIT 2

## GUARANTY

WHEREAS, a certain lease ("**Lease**"), more fully described below, has been executed:

- a. Landlord: DIV 501 GRANT LIMITED PARTNERSHIP
- b. Tenant: DOWNTOWN ARCADE, LLC
- c. Effective Date: March 2, 2016
- d. Premises: approximately 3,173 rentable square feet of space located on the first floor (the "**First Floor Premises**") and approximately 4,131 rentable square feet of space located on the mezzanine floor (the "**Mezzanine Premises**") and together with the First Floor Premises, collectively, the "**Premises**") of the building located at 501 Grant Street, Pittsburgh, Pennsylvania (the "**Building**") for a total rentable square footage for the Premises of 7,304 square feet.

WHEREAS, the Landlord under the Lease requires as a condition to its execution of said Lease that the undersigned (herein referred to as "**Guarantor**") guarantee the payment and performance of the obligations of Tenant under the Lease.

WHEREAS, the undersigned is desirous that Landlord enter into the Lease with Tenant.

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Lease.

NOW, THEREFORE, in consideration of the execution of the Lease by Landlord, Guarantor agrees as follows:

1. Guarantor warrants and represents that the making and performance of this Guaranty by Guarantor will not result in any breach of any term, condition or provision of, or constitute a default under, any contract, agreement or other instrument to which Guarantor is a party or by which it may be bound, or result in a breach of any regulation, order, writ, injunction or decree of any court or any commission, board or other administrative agency entered in any proceeding to which Guarantor is a party or by which it may be bound.

2. Guarantor hereby irrevocably and unconditionally guarantees the punctual payment, performance and fulfillment of all of the obligations of Tenant under the Lease and any and all extensions and modifications thereof, including, but not limited to, the obligation to pay rent thereunder. This is a guaranty of payment and performance and not of collection only. Guarantor further agrees to defend with counsel reasonably acceptable to Landlord, and to indemnify and save Landlord harmless from and against any and all loss, cost, damage or liability arising out of any breach by Tenant of any of the terms, conditions and covenants of the Lease, or out of any breach of warranty or misrepresentation made by Tenant under the Lease or heretofore or hereafter made to Landlord, including without limitation, reasonable attorneys' fees and any other costs incurred by Landlord in connection therewith. Notwithstanding anything to the contrary contained herein or in the Lease, Guarantor's liability hereunder shall not exceed (a) \$200,000 from the Effective Date through and including the day before the fifth (5<sup>th</sup>) anniversary of the Rent Commencement Date and (b) provided no Event of Default has occurred prior to the fifth (5<sup>th</sup>) anniversary of the Rent Commencement Date, \$100,000 from the fifth (5<sup>th</sup>) anniversary



of the Rent Commencement Date through the tenth (10<sup>th</sup>) anniversary of the Rent Commencement Date. If no Event of Default has occurred during the Term of the Lease, Tenant, upon prior written notice to Landlord expressly referencing this section of this Guaranty and delivered no sooner than the fifth (5<sup>th</sup>) anniversary of the Rent Commencement Date, may choose to increase the amount of the Letter of Credit posted as a security deposit to cover the remaining reduced amount of this obligation (or portion thereof). Upon both (a) delivery by Tenant to Landlord of a replacement Letter of Credit in such increased amount and (b) Tenant and Landlord's execution of an amendment to the Lease, properly documenting the increased amount of the Security Deposit, Landlord shall (i) return the original Letter of Credit to Tenant and (ii) the liabilities of Guarantor under this Guaranty shall be proportionately reduced, dollar for dollar, by the amount that the Letter of Credit has been increased. All costs associated with increasing the Letter of Credit and amending the Lease, including, without limitation, Landlord's attorney's fees, shall be at Tenant's sole cost and expense.

3. Without notice to or the consent of Guarantor, Landlord may alter, compromise, extend or change the time or manner for the performance of any obligation hereby guaranteed, substitute or add any one or more guarantors, accept additional or substituted security for the performance of any such obligation, or release or subordinate any security therefor, any and all of which may be accomplished without any effect on the obligations of Guarantor hereunder. No exercise or non-exercise by Landlord of any right hereby given, no dealing by Landlord with Tenant, any other guarantor or other person, and no change, impairment or suspension of any right or remedy of Landlord shall in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse against Landlord.

4. Guarantor hereby waives and agrees not to assert or take advantage of the following:

(a) Any right to require Landlord to proceed against Tenant or any other person or to proceed or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power before proceeding against Guarantor;

(b) Any defense based on the statute of limitations in any action hereunder or in any action for the performance of any obligation hereby guaranteed;

(c) Any defense that may arise by reason of the incapacity, lack of authority, bankruptcy, death or disability of any other person or persons or the failure of Landlord to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;

(d) Any right to receive demands, protests and notices of any kind including, but not limited to, notice of the existence, creation or incurring of any new or additional obligation or of any action or non-action on the part of Tenant, Landlord or any other person;

(e) Any defense based on an election of remedies including, but not limited to, any action by Landlord which shall destroy or otherwise impair any subrogation right of Guarantor or the right of Guarantor to proceed against Tenant for reimbursement, or both;

(f) Any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and of all circumstances bearing on the risk of nonperformance of any obligation hereby guaranteed;

(g) Any right to receive notice of or to consent to any amendments that may hereafter be made to the Lease; and

(h) Any defense based on the fact that Guarantor's obligations hereunder are larger or more burdensome than that of Tenant's under the Lease.

5. Until all obligations hereby guaranteed shall have been fully performed or exhausted, Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Landlord now has or may hereafter have against Tenant and any benefit of, and any right to participate in, any security now or hereafter held by Landlord.

6. All existing and future obligations of Tenant to Guarantor, or any person owned in whole or in part by Guarantor, and the right of Guarantor to cause or permit itself or such person to withdraw any capital invested in Tenant are hereby subordinated to all obligations hereby guaranteed, and, without the prior written consent of Landlord, such obligations to Guarantor shall not be performed, and such capital shall not be withdrawn, in whole or in part, while Tenant is in default under the Lease.

7. The validity of this Guaranty and Guarantor's obligations hereunder shall not be impaired, changed, released or limited in any manner whatsoever by reason of (a) the assertion or failure to assert by Landlord against Tenant of any of the rights or remedies of Landlord pursuant to the Lease or by law, (b) any impairment, change, release or limitation of the obligations of Tenant under the Lease or any remedy for the enforcement thereof, (c) the sublease by Tenant of all or any portion of the premises covered by the Lease or the making of any assignment by Tenant, with or without notice to Landlord, of its interest under the Lease (whether or not such sublease or assignment is permitted under the Lease and whether or not it is approved by Landlord), or (d) any impairment, change, release or limitation of Tenant's obligations under the Lease or otherwise by (i) the release or discharge of Tenant in any creditors' proceedings, (ii) any impairment, limitation or modification of the liability of Tenant or the estate of Tenant in receivership, bankruptcy, insolvency, composition, dissolution, liquidation, reorganization, arrangement or adjustment, or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of the Bankruptcy Act or any other present or future statute or from the decision of any court or other tribunal, or (iii) the rejection or disaffirmance of the Lease or any obligation thereunder in any such proceedings.

8. All rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to all

rights, powers and remedies given to Landlord at law or in equity. This Guaranty is in addition to and exclusive of the guarantee of any other guarantor of any obligation of Tenant to Landlord.

9. The obligations of Guarantor hereunder are independent of the obligations of Tenant under the Lease, and, in the event of any default hereunder or under the Lease, a separate action or actions may be brought and prosecuted against Guarantor, whether or not Tenant is joined therein or a separate action or actions are brought against Tenant. Landlord may maintain successive actions for other defaults. Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations hereby guaranteed shall have been fully performed.

10. Guarantor shall pay to Landlord, without demand, reasonable attorneys' fees and all costs and other expenses which Landlord shall expend or incur in collecting or compromising any obligation hereby guaranteed or in enforcing this Guaranty against Guarantor, whether or not suit is filed including, but not limited to, attorneys' fees, costs and other expenses incurred by Landlord in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving Guarantor which in any way affects the exercise by Landlord of its rights and remedies hereunder. Provided, however, in no event shall any Guarantor be liable for more than the amount specified in Paragraph 2 hereof.

11. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

12. This Guaranty is absolute and is not conditioned in any way upon the genuineness, validity, regularity or enforceability of the Lease or the obligations of Tenant thereunder.

13. This Guaranty shall inure to the benefit of Landlord and its successors and assigns, and shall bind the heirs, executors, administrators, successors and assigns of Guarantor. Landlord may assign this Guaranty concurrently with the transfer of title to property covered by the Lease, and, when so assigned, Guarantor shall be liable to the assignees without in any manner affecting the liability of Guarantor hereunder.

14. Upon the earlier to occur of (a) the tenth (10<sup>th</sup>) anniversary of the Rent Commencement Date or (b) full performance of all obligations hereby guaranteed, this Guaranty shall be of no further force or effect; provided, however, Guarantor's obligations hereunder shall continue and remain in effect if such full performance is avoided or recovered from Landlord as a preference, fraudulent transfer or otherwise.

15. No provision of this Guaranty or right of Landlord hereunder can be waived or modified, nor can Guarantor be released from Guarantor's obligations hereunder, except by a writing duly executed by Landlord or in accordance with Paragraph 14.

16. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

17. If two (2) or more persons are signing this Guaranty as Guarantor, then all such persons shall be severally liable for the obligations of Guarantor hereunder.

18. This Guaranty shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. In any action brought under or arising out of this Guaranty, Guarantor hereby consents to the jurisdiction of any competent court within Commonwealth of Pennsylvania and hereby consents to service of process by any means authorized by Pennsylvania law. This Guaranty shall constitute the entire agreement of Guarantor with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Landlord unless expressed herein.

19. The Parties agree that the Court of Common Pleas of Allegheny County, Pennsylvania shall have exclusive jurisdiction over any matters arising hereunder.

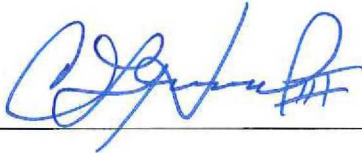
[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, Guarantor has caused this Guaranty of Lease to be executed as of February ~~2~~, 2016.

<sup>MARCH</sup>  
Address of Guarantor:

15 27<sup>th</sup> Street  
Pittsburgh, PA 15222

**GUARANTOR:**

By: 

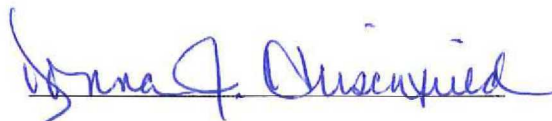
Name: Chuck Hammel

Date: March 2<sup>nd</sup>, 2016

STATE OF Pennsylvania

County of Allegheny, ss.

On this 2 day of March, 2016, before me, the undersigned notary public, personally appeared Chuck Hammel, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.



[Official signature and seal of notary]

My commission expires:

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Donna J. Hirschfield, Notary Public  
City of Pittsburgh, Allegheny County  
My Commission Expires July 22, 2016  
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

# EXHIBIT 3

## GUARANTY

WHEREAS, a certain lease ("**Lease**"), more fully described below, has been executed:

- a. Landlord: DIV 501 GRANT LIMITED PARTNERSHIP
- b. Tenant: DOWNTOWN ARCADE, LLC
- c. Effective Date: March 2, 2016
- d. Premises: approximately 3,173 rentable square feet of space located on the first floor (the "**First Floor Premises**") and approximately 4,131 rentable square feet of space located on the mezzanine floor (the "**Mezzanine Premises**") and together with the First Floor Premises, collectively, the "**Premises**") of the building located at 501 Grant Street, Pittsburgh, Pennsylvania (the "**Building**") for a total rentable square footage for the Premises of 7,304 square feet.

WHEREAS, the Landlord under the Lease requires as a condition to its execution of said Lease that the undersigned (herein referred to as "**Guarantor**") guarantee the payment and performance of the obligations of Tenant under the Lease.

WHEREAS, the undersigned is desirous that Landlord enter into the Lease with Tenant.

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Lease.

NOW, THEREFORE, in consideration of the execution of the Lease by Landlord, Guarantor agrees as follows:

1. Guarantor warrants and represents that the making and performance of this Guaranty by Guarantor will not result in any breach of any term, condition or provision of, or constitute a default under, any contract, agreement or other instrument to which Guarantor is a party or by which it may be bound, or result in a breach of any regulation, order, writ, injunction or decree of any court or any commission, board or other administrative agency entered in any proceeding to which Guarantor is a party or by which it may be bound.

2. Guarantor hereby irrevocably and unconditionally guarantees the punctual payment, performance and fulfillment of all of the obligations of Tenant under the Lease and any and all extensions and modifications thereof, including, but not limited to, the obligation to pay rent thereunder. This is a guaranty of payment and performance and not of collection only. Guarantor further agrees to defend with counsel reasonably acceptable to Landlord, and to indemnify and save Landlord harmless from and against any and all loss, cost, damage or liability arising out of any breach by Tenant of any of the terms, conditions and covenants of the Lease, or out of any breach of warranty or misrepresentation made by Tenant under the Lease or heretofore or hereafter made to Landlord, including without limitation, reasonable attorneys' fees and any other costs incurred by Landlord in connection therewith. Notwithstanding anything to the contrary contained herein or in the Lease, Guarantor's liability hereunder shall not exceed (a) \$200,000 from the Effective Date through and including the day before the fifth (5<sup>th</sup>) anniversary of the Rent Commencement Date and (b) provided no Event of Default has occurred prior to the fifth (5<sup>th</sup>) anniversary of the Rent Commencement Date, \$100,000 from the fifth (5<sup>th</sup>) anniversary

of the Rent Commencement Date through the tenth (10<sup>th</sup>) anniversary of the Rent Commencement Date. If no Event of Default has occurred during the Term of the Lease, Tenant, upon prior written notice to Landlord expressly referencing this section of this Guaranty and delivered no sooner than the fifth (5<sup>th</sup>) anniversary of the Rent Commencement Date, may choose to increase the amount of the Letter of Credit posted as a security deposit to cover the remaining reduced amount of this obligation (or portion thereof). Upon both (a) delivery by Tenant to Landlord of a replacement Letter of Credit in such increased amount and (b) Tenant and Landlord's execution of an amendment to the Lease, properly documenting the increased amount of the Security Deposit, Landlord shall (i) return the original Letter of Credit to Tenant and (ii) the liabilities of Guarantor under this Guaranty shall be proportionately reduced, dollar for dollar, by the amount that the Letter of Credit has been increased. All costs associated with increasing the Letter of Credit and amending the Lease, including, without limitation, Landlord's attorney's fees, shall be at Tenant's sole cost and expense.

3. Without notice to or the consent of Guarantor, Landlord may alter, compromise, extend or change the time or manner for the performance of any obligation hereby guaranteed, substitute or add any one or more guarantors, accept additional or substituted security for the performance of any such obligation, or release or subordinate any security therefor, any and all of which may be accomplished without any effect on the obligations of Guarantor hereunder. No exercise or non-exercise by Landlord of any right hereby given, no dealing by Landlord with Tenant, any other guarantor or other person, and no change, impairment or suspension of any right or remedy of Landlord shall in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse against Landlord.

4. Guarantor hereby waives and agrees not to assert or take advantage of the following:

(a) Any right to require Landlord to proceed against Tenant or any other person or to proceed or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power before proceeding against Guarantor;

(b) Any defense based on the statute of limitations in any action hereunder or in any action for the performance of any obligation hereby guaranteed;

(c) Any defense that may arise by reason of the incapacity, lack of authority, bankruptcy, death or disability of any other person or persons or the failure of Landlord to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;

(d) Any right to receive demands, protests and notices of any kind including, but not limited to, notice of the existence, creation or incurring of any new or additional obligation or of any action or non-action on the part of Tenant, Landlord or any other person;

(e) Any defense based on an election of remedies including, but not limited to, any action by Landlord which shall destroy or otherwise impair any subrogation right of Guarantor or the right of Guarantor to proceed against Tenant for reimbursement, or both;



(f) Any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and of all circumstances bearing on the risk of nonperformance of any obligation hereby guaranteed;

(g) Any right to receive notice of or to consent to any amendments that may hereafter be made to the Lease; and

(h) Any defense based on the fact that Guarantor's obligations hereunder are larger or more burdensome than that of Tenant's under the Lease.

5. Until all obligations hereby guaranteed shall have been fully performed or exhausted, Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Landlord now has or may hereafter have against Tenant and any benefit of, and any right to participate in, any security now or hereafter held by Landlord.

6. All existing and future obligations of Tenant to Guarantor, or any person owned in whole or in part by Guarantor, and the right of Guarantor to cause or permit itself or such person to withdraw any capital invested in Tenant are hereby subordinated to all obligations hereby guaranteed, and, without the prior written consent of Landlord, such obligations to Guarantor shall not be performed, and such capital shall not be withdrawn, in whole or in part, while Tenant is in default under the Lease.

7. The validity of this Guaranty and Guarantor's obligations hereunder shall not be impaired, changed, released or limited in any manner whatsoever by reason of (a) the assertion or failure to assert by Landlord against Tenant of any of the rights or remedies of Landlord pursuant to the Lease or by law, (b) any impairment, change, release or limitation of the obligations of Tenant under the Lease or any remedy for the enforcement thereof, (c) the sublease by Tenant of all or any portion of the premises covered by the Lease or the making of any assignment by Tenant, with or without notice to Landlord, of its interest under the Lease (whether or not such sublease or assignment is permitted under the Lease and whether or not it is approved by Landlord), or (d) any impairment, change, release or limitation of Tenant's obligations under the Lease or otherwise by (i) the release or discharge of Tenant in any creditors' proceedings, (ii) any impairment, limitation or modification of the liability of Tenant or the estate of Tenant in receivership, bankruptcy, insolvency, composition, dissolution, liquidation, reorganization, arrangement or adjustment, or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of the Bankruptcy Act or any other present or future statute or from the decision of any court or other tribunal, or (iii) the rejection or disaffirmance of the Lease or any obligation thereunder in any such proceedings.

8. All rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to all

rights, powers and remedies given to Landlord at law or in equity. This Guaranty is in addition to and exclusive of the guarantee of any other guarantor of any obligation of Tenant to Landlord.

9. The obligations of Guarantor hereunder are independent of the obligations of Tenant under the Lease, and, in the event of any default hereunder or under the Lease, a separate action or actions may be brought and prosecuted against Guarantor, whether or not Tenant is joined therein or a separate action or actions are brought against Tenant. Landlord may maintain successive actions for other defaults. Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations hereby guaranteed shall have been fully performed.

10. Guarantor shall pay to Landlord, without demand, reasonable attorneys' fees and all costs and other expenses which Landlord shall expend or incur in collecting or compromising any obligation hereby guaranteed or in enforcing this Guaranty against Guarantor, whether or not suit is filed including, but not limited to, attorneys' fees, costs and other expenses incurred by Landlord in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving Guarantor which in any way affects the exercise by Landlord of its rights and remedies hereunder. Provided, however, in no event shall any Guarantor be liable for more than the amount specified in Paragraph 2 hereof.

11. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

12. This Guaranty is absolute and is not conditioned in any way upon the genuineness, validity, regularity or enforceability of the Lease or the obligations of Tenant thereunder.

13. This Guaranty shall inure to the benefit of Landlord and its successors and assigns, and shall bind the heirs, executors, administrators, successors and assigns of Guarantor. Landlord may assign this Guaranty concurrently with the transfer of title to property covered by the Lease, and, when so assigned, Guarantor shall be liable to the assignees without in any manner affecting the liability of Guarantor hereunder.

14. Upon the earlier to occur of (a) the tenth (10<sup>th</sup>) anniversary of the Rent Commencement Date or (b) full performance of all obligations hereby guaranteed, this Guaranty shall be of no further force or effect; provided, however, Guarantor's obligations hereunder shall continue and remain in effect if such full performance is avoided or recovered from Landlord as a preference, fraudulent transfer or otherwise.

15. No provision of this Guaranty or right of Landlord hereunder can be waived or modified, nor can Guarantor be released from Guarantor's obligations hereunder, except by a writing duly executed by Landlord or in accordance with Paragraph 14.

16. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

17. If two (2) or more persons are signing this Guaranty as Guarantor, then all such persons shall be severally liable for the obligations of Guarantor hereunder.

18. This Guaranty shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. In any action brought under or arising out of this Guaranty, Guarantor hereby consents to the jurisdiction of any competent court within Commonwealth of Pennsylvania and hereby consents to service of process by any means authorized by Pennsylvania law. This Guaranty shall constitute the entire agreement of Guarantor with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Landlord unless expressed herein.

19. The Parties agree that the Court of Common Pleas of Allegheny County, Pennsylvania shall have exclusive jurisdiction over any matters arising hereunder.


[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, Guarantor has caused this Guaranty of Lease to be executed as of March 2, 2016.

Address of Guarantor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**GUARANTOR:**

By: 

Name: Derek Stevens

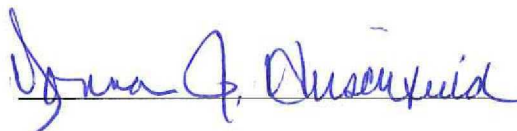
Title: Managing Member

Date: 3-2-16

STATE OF Pennsylvania

County of Allegheny, ss.

On this 2 day of March, 2016, before me, the undersigned notary public, personally appeared Derek Stevens, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.



[Official signature and seal of notary]

My commission expires:

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Donna J. Hirschfield, Notary Public  
City of Pittsburgh, Allegheny County  
My Commission Expires July 22, 2016  
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

# EXHIBIT 4

**DIV 501 GRANT, LLC**  
c/o The Davis Companies  
125 High Street, Suite 2111  
Boston, MA 02110

April 6, 2020

**EMAIL AND  
OVERNIGHT DELIVERY**

Downtown Arcade, LLC  
294 Crafton Blvd.  
Pittsburgh, P A 15205

**Re: Lease between DIV 501 Grant, LLC, as landlord (the “Landlord”) and Downtown Arcade, LLC as tenant (the “Tenant”) dated as of March 2, 2016 (as assigned and amended, the “Lease”) for certain leased premises located at 501 Grant Avenue, Pittsburgh, PA (the “Building”)**

Dear Sir or Madam:

As of the date of this notice, Landlord has not received Tenant’s payment of (i) Annual Base Rent for the month of April, 2020 in the amount of \$20,357.01 and (ii) Additional Rent in the amount of \$3,658.09. This letter shall constitute Landlord’s written notice to Tenant of the non-payment of such amounts, which are due and payable under the Lease. Please remit payment within five (5) days as required pursuant to the terms of the Lease.

We suggest that you please reach out to your insurance provider to understand potential insurance coverages that may be available to you to fund your business and rental obligations, as prompt notice of filing an insurance claim may be required. Additionally, the Coronavirus Aid, Relief, and Economic Security Act (“**CARES Act**”), any subsequent governmental action, or the Small Business Administration (the “**SBA**”) may provide you with government assistance during these unusual times. Please consult your attorney or accountant to understand whether you may be able to benefit from any programs implemented under the CARES Act or a loan issued by the SBA.

Nothing contained in this letter is intended to create or constitute, and nothing shall be deemed or construed to create or constitute, a waiver, modification, relinquishment, approval, or forbearance on behalf of the Landlord of any of its rights and remedies set forth in the Lease, all of which are expressly reserved. Neither the delay by, nor failure of, the Landlord to exercise any of its rights under the Lease shall operate as a waiver thereof, and no single or partial exercise of any right shall preclude any other or further exercise thereof.

Please feel free to contact Gary Hofstetter (ghofstetter@TheDavisCompanies.com / 617-451-1300) if you have any questions. Thank you for your prompt attention to this matter.

Sincerely,

**DIV 501 Grant, LLC**, a [Massachusetts] limited liability company

By:   
As Counsel to Landlord

cc Goldberg, Kamin & Garvin, LLP  
1806 Frick Building  
437 Grant Street  
Pittsburgh, PA 15219-6101

Jessica Powell, Esq. (via email)  
Gary Hofstetter (via email)

# EXHIBIT 5



**DIV 501 GRANT, LLC**  
c/o The Davis Companies  
125 High Street, Suite 2111  
Boston, MA 02110

April 15, 2020

**\*\*\*DEFAULT NOTICE – WITH RESERVATION OF RIGHTS\*\*\***

**EMAIL AND  
OVERNIGHT DELIVERY**

Downtown Arcade, LLC  
294 Crafton Blvd.  
Pittsburgh, P A 15205

**Re: Lease between DIV 501 Grant, LLC, as landlord (the “Landlord”) and Downtown Arcade, LLC as tenant (the “Tenant”) dated as of March 2, 2016 (as assigned and amended, the “Lease”) for certain leased premises located at 501 Grant Avenue, Pittsburgh, PA (the “Building”)**

Dear Sir or Madam:

Reference is made to the Landlord’s notice letter dated April 6, 2020, in which the Landlord provided the Tenant with written notice of the Tenant’s failure to make the following payments pursuant to the terms of the Lease: (i) Annual Base Rent for the month of April, 2020 in the amount of \$20,357.01, and (ii) Additional Rent in the amount of \$3,658.09. The Tenant had a period of 5 days after receipt of the Landlord’s notice letter to cure the non-payment of such amounts by making the outstanding payments to the Landlord. The Tenant has failed to remit the outstanding payments to the Landlord and, as such, the Tenant is in default under the terms of the Lease.

As permitted pursuant to the terms of the Lease, the Landlord shall have all rights and remedies set forth in Section 13.3 of the Lease following an Event of Default, in addition to any and all other rights or remedies available to the Landlord at law or equity. In addition to the payment of all outstanding rent as set forth above, the Tenant shall be responsible for, among other things, all unpaid monetary obligations under the Lease (as currently outstanding and as the same may become outstanding from time to time), including, without limitation, unpaid base and additional rent payments bearing interest accruing from the date such amount was due until paid in full to the Landlord at a rate of the lesser of twelve percent (12%) per annum or the maximum legal rate that the Landlord may charge the Tenant, the Landlord’s attorneys’ fees, and any applicable late charges. The foregoing shall not limit the Landlord’s other rights and remedies pursuant to the terms of the Lease, all of which are expressly reserved.

As we previously noted in our April 6, 2020 letter, we suggest that you please reach out to your insurance provider to understand potential insurance coverages that may be available to you to fund your business and rental obligations, as prompt notice of filing an insurance claim may be required. Additionally, the Coronavirus Aid, Relief, and Economic Security Act (“**CARES Act**”), any subsequent governmental action, or the Small Business Administration (the “**SBA**”) may provide you with government assistance during these unusual times. Please consult your attorney or accountant to understand whether you may be able to benefit from any programs implemented under the CARES Act or a loan issued by the SBA.

Nothing contained in this letter is intended to create or constitute, and nothing shall be deemed or construed to create or constitute, a waiver, modification, relinquishment, approval, or forbearance on behalf of the Landlord of any of its rights and remedies set forth in the Lease or any lease guaranty, all of which are expressly reserved. Neither the delay by, nor failure of, the Landlord to exercise any of its rights under the Lease or any guaranty shall operate as a waiver thereof, and no single or partial exercise of any right shall preclude any other or further exercise thereof. Any capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Lease.

Please feel free to contact Gary Hofstetter (ghofstetter@TheDavisCompanies.com / 617-451-1300) if you have any questions. Thank you for your prompt attention to this matter.

Sincerely,

**DIV 501 Grant, LLC**, a Massachusetts limited liability company

By:   
As Counsel to Landlord

cc Goldberg, Kamin & Garvin, LLP  
1806 Frick Building  
437 Grant Street  
Pittsburgh, PA 15219-6101

Jessica Powell, Esq. (via email)  
Gary Hofstetter (via email)

# EXHIBIT 6

**DIV 501 GRANT, LLC**  
c/o The Davis Companies  
125 High Street, Suite 2111  
Boston, MA 02110

June 5, 2020

**\*\*\*NOTICE OF CONTINUING DEFAULT– WITH RESERVATION OF RIGHTS\*\*\***

**VIA ELECTRONIC MAIL AND  
OVERNIGHT DELIVERY**

Downtown Arcade, LLC  
294 Crafton Blvd.  
Pittsburgh, PA 15205

**Re: Lease between DIV 501 Grant, LLC, as landlord (the “Landlord”) and Downtown Arcade, LLC as tenant (the “Tenant”) dated as of March 2, 2016 (as assigned and amended, the “Lease”) for certain leased premises located at 501 Grant Street, Pittsburgh, PA (the “Building”)**

Dear Sir or Madam:

Reference is made to (i) the Landlord’s notice letter dated April 6, 2020, in which the Landlord provided the Tenant with written notice of the Tenant’s failure to make certain payments pursuant to the terms of the Lease, and (ii) the Landlord’s default notice letter dated April 15, 2020, in which the Landlord notified the Tenant of the Tenant’s continued non-payment of such amounts constituting an Event of Default under the Lease (hereinafter referred to, together, as the “**April Notices**”).

As of the date of this notice, the amounts set forth in the April Notices remain outstanding. In addition, as of the date hereof, additional amounts remain outstanding for the months of May and June, 2020. In total, the amounts remaining outstanding are as follows: (i) Annual Base Rent in the amount of \$61,070.88, and (ii) Additional Rent in the amount of \$10,974.27, exclusive of interest, late fees, and other charges which Landlord may charge Tenant pursuant to the Lease. An Event of Default by Tenant continues to exist under the terms of the Lease. The foregoing constitutes the occurrence of a default by Tenant, which remains uncured beyond any applicable notice and cure period pursuant to Section 4.8 of the Lease, for which Landlord, in addition to any and all other remedies to which Landlord is entitled under the Lease, at law and/or in equity, is entitled to draw upon, use, apply or retain any or all of the Security Deposit in the amount of \$22,925.37 currently held by Landlord for the payment of Rent or for any other purpose that is set forth in said Section 4.8.

Nothing contained in this letter is intended to create or constitute, and nothing shall be deemed or construed to create or constitute, a waiver, modification, relinquishment, approval, or forbearance on behalf of the Landlord of any of its rights and remedies set forth in the Lease or any lease guaranty, all of which are expressly reserved. Neither the delay by, nor failure of, the Landlord to exercise any of its rights under the Lease or any guaranty shall operate as a waiver thereof, and no single or partial exercise of any right shall preclude any other or further exercise thereof. Any capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Lease.

Please feel free to contact Gary Hofstetter (ghofstetter@TheDavisCompanies.com / 617-451-1300) if you have any questions. Thank you for your prompt attention to this matter.

Sincerely,

**DIV 501 Grant, LLC**, a Massachusetts limited liability company

By:   
As Counsel to Landlord

cc Goldberg, Kamin & Garvin, LLP  
1806 Frick Building  
437 Grant Street  
Pittsburgh, PA 15219-6101

Robert Glimcher  
c/o Glimcher Group, Inc.  
500 Grant Street, Suite 2000  
Pittsburgh, PA 15219

Chuck Hammel  
15 27<sup>th</sup> Street  
Pittsburgh, PA 15222

Jessica Powell, Esq. (via email)  
Gary Hofstetter (via email)

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Eric M. Spada, Esquire

Signature: /s/ Eric M. Spada

Attorney No.: 311446