

01-10-2002



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Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Western Town, L.L.C. 1-3-02

- Individual(s) Association General Partnership Limited Partnership Corporation-State Other Limited Liability Co.

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: June 17, 1998

2. Name and address of receiving party(ies)

Name: Pinnacle Rawhide, LLC

Internal Address:

Street Address: 23023 N. Scottsdale Road

City: Scottsdale State: AZ Zip: 85255

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State

Other Limited Liability Corp

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1994860

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Vince Ontiveros

Internal Address: Rawhide

Street Address: 23023 N. Scottsdale Road

City: Scottsdale State: AZ Zip: 85255

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 3.41): \$40.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

James E. Acridge

Name of Person Signing

Signature

11/26/01

Date

26

Total number of pages including cover sheet, attachments, and document:

Mall documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

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## OPTION AGREEMENT

This Option Agreement (the "Agreement") is entered into by and between PINNACLE RODEO, L.L.C., an Arizona limited liability company ("Pinnacle"), and WESTERN TOWN, L.L.C., an Arizona limited liability company ("Western"), this 17th day of June, 1998 (the "Effective Date").

### RECITALS:

A. Western, together with its affiliates, Rawhide Operating Company, Inc., an Arizona corporation ("Operating"), and Jaren Entertainment Promotions, Inc., an Arizona corporation (together, the "Affiliates"), is sole owner (subject to the limitations set forth in Article 6 and the Permitted Exceptions) of the following:

- (1) Those certain tracts or parcels of land (the "Land") situated in Scottsdale, Maricopa County, Arizona, more particularly described on Exhibit "A", attached hereto (the "Real Property");
- (2) The restaurant and entertainment improvements situated thereon and known as "Rawhide" and all other improvements owned by Western and situated on the Land (the "Improvements");
- (3) All of the rights and appurtenances pertaining to the Land and the Improvements, including all right, title and interest of Western in and to adjacent streets, alleys, easements and rights-of-way, including all utility deposits or other deposits held by utility companies or other suppliers of utilities or services to the Real Property and Improvements (the "Appurtenances");
- (4) All of the interest of Western, if any, in all furniture, furnishings, fixtures, the antiques referred to specifically in §2.5 below, appliances, equipment, machinery, names and other items of tangible and intangible personal property, if any, situated in the Improvements (except the improvement studies referred to in § 7.20 below) (the "FF&E");
- (5) All of the issued and outstanding stock (common or any other class) of Operating (the "Stock");
- (6) All of the interest of Western in all leases with tenants, if any, now or hereafter occupying space in the Improvements (the "Tenant Leases"), including all security deposits, to the extent not held by Operating;
- (7) All contacts for service providers to the project, of every sort (the "Service Contracts") to the extent not held by Operating;
- (8) Western's interest in all trade names, trade marks, logos, advertising campaigns, trade secrets, and intellectual property associated with or used

in connection with the Real Property (other than brand names belonging to third parties) (the "Intellectual Property Rights") to the extent not held by Operating;

- (9) All livestock currently used in connection with the Property, except livestock owned by third parties (the "Livestock") to the extent not held by Operating; and
- (10) All water rights or stock or other ownership interests of Western or its affiliates in water companies or water use rights of any nature serving the Real Property, to the extent that the Water Rights relate to the Property, together with certain Type II water rights (which have substantial restrictions) which cannot be used upon the property but will be conveyed with any other water rights, provided that there is no right to use the existing well on the Property (the "Water Rights"), and further provided, that the James Paul Water Company is not included in this sale.

The Improvements, Appurtenances, FF&E, Stock, Tenant Leases, Service Contracts, Intellectual Property Rights, Livestock and Water rights are hereafter collectively referred to as the "Personal Property"). Certain portions of the Personal Property are further described on Exhibit B, attached hereto and incorporated herein by this reference, but such description does not diminish the blanket nature of the description of the rights to be transferred pursuant to this Agreement.

For all purposes hereafter, when Western is obligated to transfer all or any part of the property, the term "Western" shall mean and refer to Western Town, L.L.C. and the affiliates named above, depending upon which entity owns which item of property.

B. Pinnacle, through one or more of its owners or affiliates, is in the business of developing, marketing, owning and operating businesses of various sorts, including real estate development, retail, entertainment and hospitality properties.

C. Subject to the terms and conditions set forth in this Agreement, and at the option of Pinnacle (after completion of due diligence with respect to the Property), the parties desire to form a limited liability company to be known as **Pinnacle RAWHIDE, L.L.C.** (the "LLC"), which will receive 25% of the Property from Western and the 75% of the Property being purchased pursuant to this Option Agreement from Pinnacle, and thereafter provide for the operation of all present uses of the Property and planning for future uses of the Property. The parties intend that the contribution by Western of its 25% interest in the Property shall be on a tax free basis as indicated in the Operating Agreement. Pinnacle and Western agree to report the transaction contemplated by this Agreement as a purchase by Pinnacle of an undivided 75% interest in the Property followed by a contribution of Pinnacle of such purchased 75% interest to the LLC in exchange for a membership interest in the LLC and a contribution by Western of the retained 25% undivided interest for a membership interest in the LLC.

## AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### 1. ARTICLE 1: GRANT OF OPTION

1.1. Grant of Option. From and after the Effective Date and only during the Option Term (as defined in Section 1.2 hereof) and in consideration of the Option Payment (as defined in Section 1.4), Western hereby grants to Pinnacle an exclusive option (the "Option") (a) to purchase an undivided 75% interest in and to the Real Property and the Personal Property either directly or indirectly through the purchase of Rawhide Operating Company, Inc., (b) to form the LLC, by entering into Articles of Organization in the form attached as Exhibit C hereto (the "Articles of Organization") and an Operating Agreement in the form attached as Exhibit D hereto (the "Operating Agreement"), (3) to cause Western and Pinnacle each to convey all of its undivided interests in the Property to the LLC on the terms and conditions set forth in this Agreement and the Operating Agreement and (4) to cause the LLC to contract with Operating to manage the operations of the Western Theme Park. The term "Property" as used in this Option Agreement shall hereinafter mean and refer to the undivided 75% percentage interest in all of the Real Property and the Personal Property.

1.2. Term of Option. The term during which the Option may be exercised (the "Option Term") shall commence on the Effective Date and shall expire 10:00 a.m. Mountain Standard Time June 18, 1998 (the "Outside Date").

#### 1.3. Additional Termination Rights.

1.3.1. Providing that the documents have been agreed upon on or before the Outside Date, Pinnacle shall have until 10:00 a.m. June 18, 1998, in which to satisfy itself that it desires to continue with the transaction. If, for any reason whatsoever, it wishes to terminate the transaction, it shall do so by giving written notice of termination to Western and Escrow Agent on or before 10:00 a.m. June 18, 1998. If Pinnacle gives such written termination notice, then Escrow Agent shall return the Option Payment to Pinnacle and return to each party any documents deposited theretofore into escrow, and neither party shall have any liability to the other thereafter except for specific indemnity provisions dealing with the inspection of the property, if any.

1.3.2. In the event a material casualty occurs between the Closing Date (as hereinafter defined) and the Outside Date, Pinnacle shall have the option to terminate the transaction in the same method as set forth above in § 1.3.1.

1.4. Option Payment. In consideration of the Option granted hereunder, and concurrently with the delivery of this Agreement to Escrow Agent in accordance with Section 2.1, Pinnacle shall deposit with Escrow Agent the sum of \$10,000.00 (the "Option Payment"). Immediately upon receipt of the Option Payment, Escrow Agent shall deposit the entire amount thereof in a money market or other similar account, subject to immediate withdrawal. at a

federally insured bank selected by Escrow Agent. The Option Payment (which for all purposes of this Agreement shall include all earnings thereon) is non-refundable unless Pinnacle elects to cancel or terminate this Agreement pursuant to Sections 4.1(e), 6.2, or 7.5 or by reason of a default by Western hereunder.

## 2. ARTICLE 2: ESCROW; EXERCISE OF OPTION

2.1. Escrow. The closing of the transactions provided for in this Agreement (the "Closing") shall occur through an escrow (the "Escrow") to be established with First American Title Insurance Company, 111 West Monroe, Phoenix, Arizona 85003, attention: Carol Peterson (the "Escrow Agent"). Promptly following the execution of this Agreement by both parties, Pinnacle shall cause the Escrow to be opened by depositing the Option Payment with Escrow Agent and causing Escrow Agent to execute a counterpart of this Agreement, thereby agreeing to be bound by the terms hereof that are applicable to Escrow Agent. This Agreement shall constitute joint escrow instructions by Pinnacle and Western to Escrow Agent.

2.2. Exercise of Option. Provided that the Option Term has not previously expired, Pinnacle may exercise the Option at any time at or before 10:00 p.m., Mountain Standard Time on the Outside Date by delivering written notice of such exercise (the "Exercise Notice") to Western and Escrow Agent. The date on which the Exercise Notice has been received by both Western and Escrow Agent is referred to hereinafter as the "Exercise Date." The Closing shall occur on or before 10:00 a.m. June 18, 1998, without extension. (the "Closing Date").

2.2.1. Inventory Purchase. In the event that the Option is exercised, Pinnacle shall cause the LLC to pay to Western, at 75% of Operating's cost, for its share of (i) the inventory of the restaurants; (ii) the amusement supplies; (iii) the livestock feed and supplies on hand and (iv) the maintenance supplies. In addition, Pinnacle shall pay the following sum to Western for its share of the inventory in the shops as of the Closing Date: Pinnacle shall pay to Western 75% of Operating's cost for all inventory or other items in said categories originally purchased by it on or after December 10, 1996. Any inventory purchased prior to that time shall be delivered to Western to dispose of as it sees fit. The payment from the LLC shall be made out of the Line of Credit as defined in § 3.2.17 below.

Pinnacle shall pay the price for the inventory to Western following Closing promptly upon funds becoming available under the Line of Credit. The balance of the inventory not paid for under this section shall be considered a contribution to the LLC on behalf of Western. The basis for closing calculations shall be that certain inventory dated May 30, 1998. Thereafter, an inventory now in progress shall be jointly completed within 30 days from the date of Closing, and the parties shall adjust the closing figures based upon such current inventory, direct and outside of escrow, with which the Escrow Agent need not be concerned.

2.3. Allocation of Option Price. The parties agree to allocate the Option Price for the Property as set forth in Exhibit "E" attached hereto.

2.4. Cash in Accounts of Operating. Consistent with the principle that liabilities of Operating existing prior to close are to be paid by Western, it is agreed that any cash in such accounts shall be applied as a credit to Western against any then-existing liabilities of Operating.

and, if there is an excess remaining thereafter, shall be paid to Western, which shall constitute an adjustment to the purchase price.

2.5. Purchase of Antiques. Pinnacle will purchase the Carousel, the Bank Organ and all the antiques in the barn (except those in the museum-locked area, the musical devices and the amusement and gaming devices, all of which shall be included in the Antiques Lease) for the gross purchase price of 75% of \$400,000.00, payable by including the sum of \$251,250.00 to the Note referred to in § 3.2.11, with the balance of \$48,750.00 payable by payment by the LLC of such amount to the amount due, as and when due, for the refurbishing of the Carousel and/or the Organ. Western shall contribute the remaining 25% of \$400,000.00, by contribution of its remaining interest in such antiques and by permitting the LLC to pay the remaining balance in the manner set forth above. Any other antiques on the property shall be included in the Antiques Lease between the parties to be delivered at Close of Escrow.

### 3. ARTICLE 3: OPTION CLOSING

3.1. Location. The Closing shall occur at the office of Escrow Agent or at such other location as is mutually acceptable to Pinnacle and Western.

3.2. Deposits In Escrow. Not later than the last business day immediately preceding the Closing Date, the parties shall take the following steps:

3.2.1. Pinnacle shall cause the Articles of Organization to be executed and filed with the Arizona Corporation Commission and shall deposit one copy of the filed Articles of Organization with Escrow Agent;

3.2.2. Each of Pinnacle and Western shall execute and deposit with Escrow Agent two counterpart copies of the Operating Agreement;

3.2.3. Western shall deposit with Escrow Agent two counterpart copies of an Assignment and Bill of Sale in the form attached as **Exhibit G-1** hereto and two counterpart copies of an Assignment and Bill of Sale in the form attached as **Exhibit G-2** hereto (the "LLC General Assignment"), each executed by Western;

3.2.4. Western shall deposit with Escrow Agent stock certificates representing 75% of the issued and outstanding shares of stock of any class of stock of Operating, duly endorsed to Pinnacle, together with completed stock powers, duly executed, to support such transfer of stock;

3.2.5. Western deposit with Escrow Agent stock certificates representing 25% of the issued and outstanding shares of stock of any class of stock of Operating, duly endorsed to the LLC, together with completed stock powers, duly executed, to support such transfer of stock as a portion of its contribution of assets to the LLC;

3.2.6. Pinnacle shall deposit with Escrow Agent stock certificates representing all of the transferred 75% of the issued and outstanding shares of stock of any class

of stock of Operating, duly endorsed to the LLC, together with completed stock powers, duly executed, to support such transfer of stock as a portion of its contribution of assets to the LLC;

3.2.7. Pinnacle shall deposit with Escrow Agent two counterpart copies of the Pinnacle General Assignment and the LLC General Assignment, each executed by Pinnacle (the latter in its capacity as Manager of the LLC);

3.2.8. Pinnacle shall deposit in escrow an Assignment and Bill of Sale in the form attached as **Exhibit G-3** hereto, duly executed by Pinnacle on its own behalf as Assignor and by Pinnacle in its capacity as Manager of the LLC as Assignee;

3.2.9. Western shall deposit with Escrow Agent a special warranty deed (the "**Pinnacle Deed**") in the form attached as **Exhibit H-1** hereto, duly executed by Western in recordable form, which shall include as attachments **Exhibit 1** (reflecting the legal description of the Property, based on the Survey), and **Exhibit 2** (containing a list of the Permitted Title Exceptions, as defined in Section 4.1(f) hereof) conveying the Property to Pinnacle, and a special warranty deed (the "**LLC Deed**") in the form attached as **Exhibit H-2** hereto, duly executed by Western in recordable form, which shall include the same attachments except that it relates to Western's remaining 25% undivided interest in the Real Property;

3.2.10. Pinnacle shall deposit in escrow a special warranty deed in the form attached as **Exhibit H-3** hereto, duly executed by Pinnacle in recordable form, containing the same attachments;

3.2.11. Pinnacle shall deposit with Escrow Agent two Promissory Notes (one note shall be in the original principal sum of \$16,751,250.00 [which includes the amount provided for in § 2.5 above for the Antiques and that in § 6.2.17 as to employee payments], and the other shall be in the original principal sum of \$1,000,000.00; they will be referred to together hereafter as the "Promissory Note") and a deed of trust securing payment of the Promissory Note (the "Pinnacle Deed of Trust"), in the form attached as **Exhibits I-1 (a) and (b) and I-2** respectively, duly executed by Pinnacle, the Deed of Trust to be in recordable form, which shall include as an attachment **Exhibit 1**, reflecting a legal description of the Property, based on the Survey;

3.2.12. As a material inducement for Western to enter into this Agreement, and without which Western would not have so entered, Pinnacle, in its capacity as Manager of the LLC, shall deposit with Escrow Agent a deed of trust (the "LLC Deed of Trust") in the form attached as **Exhibit I-3 (a) and (b)**, duly executed by the LLC in recordable form, which shall include as an attachment a description of the LLC's 100% interest in the Real Property;

3.2.13. Pinnacle shall cause James E. Acridge to execute and deliver into escrow his guaranty of "carveout" liabilities as set forth in the Promissory Note in the form attached hereto as **Exhibit I-4**.

3.2.14. Pinnacle shall deposit with Escrow Agent the Pinnacle Deposit, in immediately available funds. The "**Pinnacle Deposit**" means the sum of \$9,000,000 less the Option Payment and is subject to adjustment as provided in Section 3.5.2;

3.2.15. Pinnacle shall deposit with Escrow Agent a Pledge and Security Agreement from Pinnacle in the form attached hereto as **Exhibit J-1**, covering Pinnacle's membership interest in the LLC, a Security Agreement in the form attached hereto as **Exhibit J-2**, covering the LLC's interest in the Personal Property transferred pursuant to this Agreement and a forms UCC-1 (the "UCC-1") in the form attached hereto as **Exhibit J-3** to support both security agreements; and

3.2.16. Western and Pinnacle shall deposit with the Escrow Agent a lease in the form attached hereto as **Exhibit K**, (the "Antiques Lease") incorporated herein by this reference for all antiques other than those listed in § 2.5 above.

3.2.17. Western shall cause to be delivered to the LLC a commitment for a revolving line of credit in favor of the LLC (which shall have the primary obligation for payment thereof) for operations purposes from a lender acceptable to Pinnacle, and upon commercially reasonable terms and conditions, in the original principal sum of \$1,000,000 with a term of one year (the "Line of Credit"). The Line of Credit may be used the funding of any operating losses which might be required during the first year following Closing and the making of any payments specifically provided for in this Agreement. Western, as a material part of the consideration for this transaction, shall guaranty the Line of Credit in such form of guaranty as is required by the lender thereunder. In the event the LLC draws upon the Line of Credit, no distributions shall be made to any member until the Line of Credit has been fully paid. The Line of Credit shall be repaid by the LLC. Once a distribution has been made to the Members, no further draws shall be made on the Line of Credit.

3.3. Closing Procedure. On the Closing Date, Escrow Agent shall take the following actions in the following order of priority (provided that the Title Insurer is unconditionally and irrevocably committed to issue the Title Policy in accordance with **Section 4.2** hereof):

3.3.1. Cause the Pinnacle Deed and the Pinnacle Deed of Trust to be recorded (in that order) in the Official Records of Maricopa County, Arizona, with the original Pinnacle Deed to be delivered to Pinnacle following the recording and a copy of the recorded Pinnacle Deed to be delivered to Western and the original Pinnacle Deed of Trust to be delivered to Western following recording and a copy of the recorded Pinnacle Deed of Trust to be delivered to Pinnacle;

3.3.2. Cause the LLC Deed and the LLC Deed of Trust to be recorded (in that order) in the Official Records of Maricopa County, Arizona, with the original LLC Deed to be delivered to Pinnacle (as the LLC Manager) following the recording and a copy of the recorded Pinnacle Deed to be delivered to Western and the original LLC Deed of Trust to be delivered to Western following recording and a copy of the recorded LLC Deed of Trust to be delivered to Pinnacle;

3.3.3. Cause the UCC-1s to be filed with the office of the Secretary of State of the State of Arizona and deliver to Western the two original security agreements;

3.3.4. Disburse the cash portion of the Pinnacle Deposit to Western, after deducting therefrom the Closing Costs, as defined in Section 3.5 below and Western's share of



real property taxes, assessments and other items that are subject to proration, as determined under Section 3.5 hereof, and deliver to Western the Promissory Notes, the Acridge Guaranty and the security documents securing the Notes; and

3.3.5. Deliver to each of Pinnacle and Western a fully executed counterpart of the Operating Agreement and the various General Assignments and a copy of the filed Articles of Organization.

3.4. Failure to Close. If either party fails to make its deposits in Escrow when required under Section 3.2 hereof, the other party may (without limiting its other rights and remedies under this Agreement) terminate the Escrow by giving written notice of termination to the other party and Escrow Agent. Following any such notice of termination, Escrow Agent shall immediately destroy all documents deposited with it pursuant to Section 3.2 hereof, and shall return to Pinnacle any funds deposited by it with Escrow Agent. Notwithstanding the foregoing, if the Closing has not occurred on or before June 18, 1998, then on the next succeeding business day, Escrow Agent shall take the steps described in the immediately preceding sentence without further notice or action by either Pinnacle or Western.

3.5. Closing Costs; Prorations.

3.5.1. Closing Costs shall be paid as follows:

3.5.1.1. Western shall pay all fees, costs and transfer taxes relating to conveying title and recording the special warranty deed;

3.5.1.2. Western shall retain any tenant deposits and Pinnacle shall be given a credit therefor;

3.5.1.3. Western shall be credited with any utility or other outside deposits, and the deposits shall be transferred to Pinnacle;

3.5.1.4. Western shall pay any and all brokerage commissions as provided for herein;

3.5.1.5. Western shall pay the cost of the Survey;

3.5.1.6. Western shall be charged with any accrued amounts payable under the Service Contracts assumed by the LLC or Pinnacle;

3.5.1.7. Western shall pay for a standard owner's policy of title insurance in the amount set forth in section 4.2 below, and Pinnacle shall pay any incremental sums for the ALTA extended owner's policy, for the lender's policy insuring Western's Deed of Trust-related payment obligations, and for any endorsements to the owner's policy requested by Pinnacle;

3.5.1.8. Pinnacle shall pay all costs and fees related to any tests, reports, studies or other due diligence items in connection with Pinnacle's review of the Property;

3.5.1.9. Pinnacle and Western shall each pay their respective attorneys' fees; and

3.5.1.10. all other costs and expenses in connection with the transaction contemplated by this Contract shall be borne by Western and Pinnacle in the manner in which such costs and expenses are customarily allocated between the parties at closing of similar properties in Phoenix, Arizona.

3.5.2. Prorations as of the date of Closing shall be as follows:

3.5.2.1. Pinnacle shall receive a credit or a debit, as the case may be, from Western for the amount of any rents paid to Western by tenants of the Property for periods subsequent to the Closing or for rents payable in arrears for periods prior to the Closing.

3.5.2.2. Real property taxes and assessments associated with the Property shall be prorated between Western and the LLC through the Closing Date based upon actual tax bills. If, for any reason, the amount of real property taxes for the current calendar year has not been established, such proration shall be estimated based upon taxes paid for the immediately preceding calendar year, and adjusted when exact amounts are available. This subparagraph (2) shall survive Closing.

3.5.3. Pinnacle shall be credited with, and Western shall be charged with, the amount of any refundable Security Deposits with respect to any tenancy, including any interest required thereon pursuant to leases, or by any law or regulation.

3.5.4. Western shall collect and remit to the governmental authorities having jurisdiction, all transaction privilege taxes on rent or proceeds from operation received by Western on or before the Closing. Western agrees to pay all such transaction privilege taxes to the appropriate taxing authority on rents or other proceeds from operation which are subsequently collected by the LLC and paid to Western for periods prior to the Closing. This item shall be handled as a proration pursuant to §3.5.5.

3.5.5. The parties have agreed that a principle governing their relationships in this transaction with respect to the purchase of the Stock by Pinnacle is that Western shall undertake to pay any liabilities of any nature of Western or the Affiliates which related to the time period prior to the Closing, meaning that they have resulted from actions or inactions of Operating prior to the Closing, and that the LLC will cause Operating to discharge all of its liabilities arising after the closing. Goods and serviced contracted for prior to closing, but for delivery after closing or partial delivery after closing, shall be paid for on the basis of the date of delivery of the good or service rather than the date of contracting. Tort liability shall be based upon the date of the action or inaction causing the problem rather than the date of the result. In order to carry out that principle, the parties agree that they will meet and confer prior to the Closing to attempt in good faith to agree on the items receivable and payable, or prepayments

and arrears, and will reach an agreement as to the net credit or debit, as the case may be, which would serve as a proration to carry out this principle. They will jointly instruct the Escrow Agent of this net credit or debit to apply on the final settlement statement of the escrow. In the event the parties cannot agree on any particular item, it shall not be credited or debited, as the case may be, to the parties, but shall be held pending the receipt or making of payment in the ordinary course of business. Such items shall be thereafter adjusted pursuant to the following subsection. As to debits and credits for items owed to third parties, the party to this transaction to whom the credit is given shall be responsible for making the payment. For example, if the operating company has a payable pre-closing for which a credit is given to Pinnacle at the closing, Pinnacle shall cause the operating company to pay the payable.

3.5.6. In the event any adjustment(s) pursuant to this Section 3.5 are, subsequent to Closing, found to be erroneous (or have not been made pursuant to the preceding section), then either party hereto who is entitled to additional monies shall invoice the other party for such additional amounts as may be owing, and such amounts shall be paid within ten (10) days from receipt of the invoice. This subparagraph shall survive Closing; provided that all invoices (other than for real property taxes under § 3.4.2.2 submitted pursuant to this paragraph shall be submitted no later than fifty (50) days after the Closing. To the extent an indicated adjustment is for a sum of \$5,000.00 or less, the employees of Operating, shall be permitted to make the adjustment and notify the parties, billing the party owing the funds therefor, together with a brief explanation of the item and copies of the backup materials in support thereof. In the event the adjustment exceeds \$5,000.00, then each party shall be notified, in writing of the nature of the proposed adjustment, together with backup information, and the parties shall seek in good faith to reach agreement as to the disposition of the adjustment item. The parties agree that all claims for adjustment in favor of either of them must be brought within one year from the Closing, except claims based upon taxes, which must be brought within three years from Closing. If the parties do not agree to an adjustment, they shall meet and confer about the proposed (or, in the case of adjustments of less than \$5,000, completed) adjustment. If they are unable to agree, the parties will mediate and arbitrate pursuant to the provisions of Section 9.16 of the Operating Agreement of the LLC. Notwithstanding the foregoing, in the event Pinnacle's Special Initial Buyout Right arising pursuant to § 5.7(j) of the Operating Agreement is exercised by Pinnacle, any claims for adjustments pursuant to this provision shall be asserted by Pinnacle or Western on or before 90 days of the date of Closing of this transaction.

3.5.7. Where the parties have agreed that an account receivable is doubtful of collection, no credit shall be given to the Western on account thereof. The account shall remain upon the books of Operating, and the LLC shall make a good-faith effort to collect for a period of 90 days following Closing, provided that such effort shall not require the LLC to expend funds for third party assistance therefor. Any income actually derived from such accounts during such period shall be promptly paid to Western. In the event no income has been derived during such period of time, then the account shall be assigned without warranty to Western as its own property, and Western may thereafter take such action as it desires in order to collect such accounts.

3.5.8. In the event Credit has been given to Western for an item of receivables, but such account cannot later be collected despite good faith efforts to collect the

same, the LLC shall give written notice thereof to Western, whereupon Western shall pay to the LLC the amount of the credit given, and receive in return an assignment of such account.

#### 4. ARTICLE 4: TITLE MATTERS; SURVEY

##### 4.1. Title Review.

4.1.1. Title Report. Escrow Agent has delivered to Pinnacle and Western a preliminary title report with respect to the Property prepared by Escrow Agent, together with legible copies of all items of record referred to as exceptions to title in such preliminary title report (collectively, the "Title Report"). Escrow Agent shall promptly deliver to Pinnacle and Western copies of any amendments or modifications to the Title Report that are prepared by Escrow Agent, together with legible copies of any documents added as exceptions to title in such amendments or modifications.

4.1.2. Survey. Promptly following the execution of this Agreement, Western shall obtain an ALTA/ASCM survey of the Property (the "Survey"), certified to Western, Pinnacle, the Title Insurer (as defined below), and the LLC. Western shall provide copies of any amendments or modifications of the Survey to Pinnacle promptly following Western's receipt thereof. The cost of the Survey and any amendments and modifications thereto shall be borne solely by Western. The legal description of the Property (for purposes of this Agreement and the Operating Agreement) shall be based on the Survey, as certified to the parties as provided above.

4.1.3. Pinnacle Approval Rights. Pinnacle has approved all matters set forth in the Title Report, the Survey and any amendments or modifications thereto.

4.1.4. Permitted Title Exceptions. For purposes of this Agreement, the term "Permitted Title Exceptions" shall collectively mean and refer to (i) any matters set forth in the Title Report, the Survey and any amendment or modification thereto; (ii) any matters created by or arising from the act, omission or acquiescence of Pinnacle; and (iii) real estate taxes and assessments for 1998, a lien not yet due and payable. Notwithstanding any contrary provision of this Agreement, in no event shall the term "Permitted Title Exceptions" include any financial liens or encumbrances securing payment of private debts affecting the Property.

4.1.5. Amendments Issued Shortly Before Closing. If an amendment or modification to the Title Report or Survey is issued shortly before the scheduled Closing Date, and the amendment or modification reveals an additional exception (other than the Permitted Title Exceptions) affecting the Property, then Pinnacle may either elect to close or terminate this Option and obtain a return of any moneys and/or documents theretofore deposited in the Escrow, with neither party to have any liability to the other.

4.2. Title Insurance. At the Closing, Escrow Agent shall cause First American Title Insurance Company ("Title Insurer") to furnish (i) to the LLC an ALTA extended owner's title insurance policy issued by Title Insurer, and (ii) to Western an ALTA extended lender's title insurance policy, or the unconditional commitment of Title Insurer to issue such policies (which commitment shall be deemed made upon the recordation by Title Insurer of the Deed) with a limit of liability of \$29,500,000.00 for the owner's policy and \$17,751,250.00 for the

Lender's policy, insuring that fee simple title to the Property is held by the LLC subject only to the printed exceptions, conditions and stipulations appearing in Title Insurer's printed form of policy and to the Permitted Title Exceptions. Such policy shall include a "non-imputation" endorsement in form satisfactory to Pinnacle insuring that knowledge of Western and its affiliates will not be attributed to Pinnacle or the LLC for purposes of policy coverages and/or exclusions and, at Pinnacle's sole expense, any additional endorsements requested by Pinnacle.

4.3. Due Diligence Information. To the best of Western's knowledge, Western has supplied to Pinnacle the information set forth in **Exhibit L**.

## 5. **ARTICLE 5: RIGHT OF ENTRY**

5.1. Right of Entry. The parties acknowledged that Pinnacle and its designated agents have had the right to enter on the Property during reasonable business hours or other hours acceptable to Western for the purpose of conducting business analysis, financial examinations, operations and lease assessments, soils, geological, drainage, engineering and environmental tests and other studies which Pinnacle, in its reasonable discretion, deems necessary to determine whether the Property is suitable for the LLC's contemplated use and has had an opportunity to inspect any and all documents and records located at Rawhide (collectively, the "**Inspection Work**"). Pinnacle acknowledges, by its closing of the transaction provided for in this Agreement, its satisfaction with the results of the Inspection Work. Pinnacle shall indemnify, defend and hold Western harmless for, from and against any and all losses incurred by Western as a result of Pinnacle's conduct of the Inspection Work. This indemnity shall survive the termination of this Agreement or the Closing hereunder.

## 6. **ARTICLE 6: REPRESENTATIONS, WARRANTIES, COVENANTS AND INDEMNITY**

6.1. Representations, Warranties and Covenants of Pinnacle. Pinnacle hereby represents and warrants to and covenants with Western as follows:

6.1.1. Authority: Binding Agreement. Pinnacle has the full power and authority to enter into and perform this Agreement according to its terms. The individuals executing this Agreement on behalf of Pinnacle are authorized to do so and, upon their execution hereof, this Agreement shall be binding upon and enforceable against Pinnacle in accordance with its terms.

6.1.2. No Conflict. The execution, delivery and performance by Pinnacle of this Agreement and all other instruments and documents to be executed and delivered by Pinnacle in connection herewith do not, and will not, result in any violation of, or conflict with, or constitute a default under, any provision of Pinnacle's articles of organization or operating agreement or any mortgage, deed of trust, indenture, lease, security agreement, or other instrument or agreement to which Pinnacle is a party, or any judgment, writ, decree, order, injunction, rule or governmental regulation to which Pinnacle is subject.

6.1.3. No Bankruptcy. There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or pursuant to any other debtor relief laws contemplated

or filed by Pinnacle or pending in any current judicial or administrative proceeding against Pinnacle.

6.1.4. Finders Fees. There is no investment banker, broker, finder or other person who has been retained by or is authorized to act on behalf of Pinnacle who would be entitled to any fee or commission from any party to this Agreement with respect to any transaction contemplated under this Agreement. Pinnacle shall pay all amounts that any party may claim in the nature of a commission as a result of the actions of Pinnacle and the consummation of this Agreement.

6.2. Representations, Warranties and Covenants of Western. Western hereby represents and warrants to and covenants with Pinnacle as follows:

6.2.1. Authority; Binding Agreement. Western has the full power and authority to enter into and perform this Agreement according to its terms. The individuals executing this Agreement on behalf of Western are authorized to do so and, upon their execution hereof, this Agreement shall be binding upon and enforceable against Western in accordance with its terms.

6.2.2. No Conflict. To the knowledge of Western, the execution, delivery and performance by Western of this Agreement and all other instruments and documents to be executed and delivered by Western in connection herewith do not, and will not, result in any violation of, or conflict with, or constitute a default under, any mortgage, deed of trust, indenture, lease, security agreement, or other instrument or agreement to which Western is a party, or any judgment, writ, decree, order, injunction, rule or governmental regulation to which Western is subject.

6.2.3. No Bankruptcy. To the Knowledge of Western, there are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or pursuant to any other debtor relief laws contemplated or filed by Western or pending in any current judicial or administrative proceeding against Western.

6.2.4. Litigation. Except as disclosed in Exhibit M, to the Knowledge of Western, it has received no written notice of claims, actions, suits, or other legal proceedings pending or threatened by or before any governmental department or agency or any other person or entity, nor any voluntary legal actions or proceedings contemplated by Western, which in any manner or to any extent may materially and detrimentally affect Western's right, title or interest in the Agreement or Western's ability to perform its obligations under this Agreement or the ability of persons who acquire portions of the Property to develop the Property.

6.2.5. Condemnation. To the Knowledge of Western, there are no pending or threatened condemnation or similar proceedings affecting any part of the Property. Western has not received any notice of any such proceedings and has no knowledge that any such proceedings are pending.

6.2.6. Violation of Laws. To the Knowledge of Western, Western has not received notice from any governmental or other agency with respect to any violations of laws.

rules, regulations, ordinances, codes, covenants, conditions, restrictions, or agreements applicable to the Property which notice has not been resolved.

6.2.7. Ownership. The following entities are the owners of the following components of the Property, subject to the Permitted Exceptions:

6.2.7.1. Western is the sole owner and holder of all of the Real Property, the Improvements, the Appurtenances and the Water Rights;

6.2.7.2. Rawhide Operating Company, Inc. or Western is the owner of the FF&E, the Tenant Leases, the Service Contracts, the Intellectual Property Rights (except the stunt man shows) and the Livestock;

6.2.7.3. Jaren Entertainment & Promotions, Inc. is the owner of the rights (to the extent there are any such rights) to the stunt man shows;

6.2.7.4. Western and the Affiliates, among themselves, own all other interests being transferred at the Closing pursuant to this Agreement;

Except as disclosed in the Title Report or on Exhibit H-2, to the knowledge of Western, the Property and other interests have not been assigned, encumbered, pledged, or hypothecated in any manner whatsoever by Western or the Affiliates nor subjected by Western or the Affiliates to any interest of any other person or entity.

6.2.8. No Third Party Claims. To the Knowledge of Western, and except as disclosed in the Title Report and the Survey, as they may be amended or modified: no party has been granted any lease, license or other right relating to the use or possession of the Property other than those leases and occupancy agreements which have been furnished to Pinnacle for review, other than business invitees in the normal course of business.

6.2.9. Assessments. To the Knowledge of Western, there are no existing or pending assessment liens affecting the Property.

6.2.10. No Defaults. To the Knowledge of Western, there is no default, nor has any event occurred which, with the passage of time, the giving of notice or both, would constitute a default in any agreement or any contract, mortgage, deed of trust, lease or other instrument which relates to the Property or which affects the Property in any manner.

6.2.11. Environmental Matters. To the Knowledge of Western, except for any matters revealed in the following Environmental Reports: (a) November 20, 1995 report from GZA GeoEnvironmental, Inc., job number GZA 100949.00 and (b) February 25, 1997 report from GZA GeoEnvironmental, Inc., job number 101442.00, together with any reports referred to therein, (i) the Property is in compliance with all applicable state and federal environmental laws, regulations, ordinances, rules and orders (collectively, "Environmental Laws"); (ii) there are no pending judicial or administrative proceedings of any kind alleging the violation or potential violation of any Environmental Law nor are there any pending or threatened investigations of any matters relating to any Environmental Laws; (iii) there has been no release of any hazardous, toxic or otherwise regulated substance, waste, contaminant or

material (collectively "Hazardous Materials"), as such terms are defined in any applicable Environmental Law, on, in or at the Property, or any part thereof, (iv) no portion of the Property or any adjacent property has been used as a dump site or the location of above ground or underground fuel or storage tanks, and (v) no Hazardous Materials are currently present on or used on the Property except in compliance with Environmental Law. Western has received no written notice of any actual or pending violation of environmental law.

6.2.12. Archeology. To the Knowledge of Western, there are no sites of historical or archeological importance on the Property.

6.2.13. Impairments to Development. To the Knowledge of Western, there are no endangered species on the Property, the Property is not the site of "wetlands" or similar physical features which are materially adverse requiring compliance with governmental laws, rules or regulations relating to the protection or preservation of the environment (including, without limitation, those relating to "wetlands" located on the Property) the compliance with which would materially impair or render materially more costly the development of the Property as contemplated by the parties other than potential flood control facilities or as reflected in the Title Report, if any.

6.2.14. Finders Fees. There is no investment banker, broker, finder or other person who has been retained by or is authorized to act on behalf of Western who would be entitled to any fee or commission from any party to this Agreement with respect to any transaction contemplated under this Agreement, except that a fee will be paid to Grubb & Ellis, brokers, by Western pursuant to a separate agreement. Western shall pay all amounts that any party may claim in the nature of a commission as a result of the actions of Western and the consummation of this Agreement.

6.2.15. Insurance. At all times from the date hereof until closing, Western shall maintain or cause to be maintained commercial general liability insurance with respect to damage or injury occurring in the Property and fire and extended coverage property insurance policies (collectively "Policies") in prudent and appropriate amounts; the policies are in full force and effect and all premiums due thereunder have been paid; and Western has not received any notice from the insurance companies which issued the Policies, stating (or indicating) that any of the Policies will not be renewed or will be renewed at a substantially higher premium than is presently payable therefor. So long as Policies are in effect in conformance with this section, cancellations of prior policies of insurance are not covered by this representation.

6.2.16. Correction Notices. To the knowledge of Western, Western has not received within the last two years any notice from any insurance company which has issued a Policy with respect to the Property or from any board of fire underwriters or municipal body (or other body exercising similar functions) claiming any defects or deficiencies in the Property or suggesting or requesting the performance of any repairs, alterations or other work to the Property, which have not been resolved.

6.2.17. Employees. To the Knowledge of Western, all persons who are employed in connection with the management, operation or maintenance of the Property are employed by Operating, except for (1) temporary and seasonal employees supplied by employment services and (2) those employed by Jaren Corporation, who are not being hired



pursuant to this Option Agreement; that none is covered by a union contract; and that all employees are employed under employment arrangements which will be terminable with not more than 30 days notice. This representation and warranty does not encompass the hiring costs of Chuck Buckner, whose longer-term contract is intended to be continued (or any applicable termination benefits paid). There are certain deferred compensation arrangements with Vic Ostrow (which has been paid), Rick LoPresto and Keith Scarborough which will be due and payable following Closing. Pinnacle will pay to Western, by means of addition to the Promissory Note, the sum of \$375,000.00, which shall be paid in accordance with the terms of the Promissory Note.

6.2.18. Mechanic's Liens. To the Knowledge of Western, no work has been performed upon the Property which might or could give rise to a future mechanic's or materialman's lien which has not been paid or which will not have been paid as of Closing.

6.2.19. To the Knowledge of Western, there is no material adverse inaccuracy with respect to the books, records, information, data and other items supplied by it to Pinnacle pursuant to this Agreement which would cause actual harm to Pinnacle.

6.2.20. From and after the execution hereof, Western shall not create or voluntarily permit to be created any liens, easements or other encumbrances on title without the prior written consent of Pinnacle.

6.2.21. At all times from the Effective Date until Closing, Western shall maintain the Property in equal condition and repair as exists on the Effective Date, except for normal wear and tear. Western shall not remove any personal property from the Property without replacing the items removed with items of similar quality and utility except in the normal course of business. Western shall keep Pinnacle timely advised of any significant repair or improvement needed to keep the Property in such condition.

6.2.22. Operating has paid and discharged all Taxes shown as due on all federal, state, local and foreign tax returns and has paid all other Taxes as are due, other than such Taxes as are being contested in good faith by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with U.S. GAAP. All Taxes required to be withheld, collected or deposited by Operating have been timely withheld, collected or deposited and, to the extent required, have been paid to the relevant Tax authority. Neither the IRS nor any other taxing authority or agency, domestic or foreign, is now asserting or, to the knowledge of Western, threatening to assert against Operating any deficiency or claim for additional Taxes or interest thereon or penalties in connection therewith. Operating has not granted any waiver of any statute of limitations with respect to, or any extension of a period for the assessment of, any federal, state, county, municipal or foreign Tax. There are no filed Tax liens on any Assets of Operating or the Business. Operating has received no written notice of any proposed reassessments of any property owned or leased by it. For the purposes of this representation, "Tax" or "Taxes" means any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any government or taxing authority, including, without limitation: taxes or other charges on or with respect to income.

franchises, windfall or other profits, gross receipts, property, minimum, alternative minimum, estimated, sales, use, capital stock, payroll, employment, social security, workers' compensation, unemployment compensation, or net worth; taxes or other charges in the nature of excise, withholding, ad valorem, stamp, transfer, value added, or gains taxes; license, registration and documentation fees; and customs' duties, tariffs, and similar charges.

6.2.23. As used in this Agreement, the term "**Knowledge of Western**" shall mean the following:

6.2.23.1. that the statement is made to the actual knowledge of I. Jerome Hirsch ("Hirsch");

6.2.23.2. that Hirsch has not intentionally withheld any information from Pinnacle or its agents; and

6.2.23.3. that the statement is based upon his own present recollection but without any investigation or review of files, books or records.

If Western becomes aware of any change in the representations, warranties or covenants of Western set forth in this Section 6.2 after the date hereof (whether arising before or after the date hereof), Western shall give prompt notice (a "**Change Notice**") to Pinnacle. If Pinnacle elects to proceed with the Closing after receipt of a Change Notice from Western, then Pinnacle and the LLC shall be deemed to have accepted the matters set forth in the Change Notice, and Western's representations, warranties and covenants under this Section 6.2 shall thereafter be deemed to have been modified as provided in the Change Notice. If Pinnacle elects not to proceed with the Closing (by giving written notice of such election to Western and Escrow Agent within five business days after Pinnacle receives a Change Notice), this Agreement shall terminate, whereupon the Option Payment thereon shall be returned to Pinnacle, and neither Pinnacle nor Western shall have any further liabilities or obligations under this Agreement, except as provided in Sections 5.1, 6.2.15, 6.4 and 7.3 hereof. Except as stated herein, there are no representations and warranties made by Western pursuant to this Option Agreement.

6.3. Warranty Limitation: Notwithstanding anything set forth in this Article 6, Western makes no representation or warranty about (1) problems which have arisen or might arise out of the necessity for flood control on the Property, (2) the zoning of the subject property or (3) with respect to the physical condition of the Improvements, which are being purchased on an "as is" basis, except as expressly warranted otherwise in this agreement. The parties acknowledge that the property is in an identified flood plain, and that the nature of flood control adopted or not adopted may affect development of the property. The parties further acknowledge that no representation or warranty about Zoning has been made. To the extent this limitation is inconsistent with representations and warranties set forth above, this limitation shall control.

6.4. Survival: Warranty Indemnity. The representations and warranties set forth in this Agreement (as modified pursuant to the provisions of Section 6.2 above) shall survive the execution and delivery of this Agreement, the termination of this Agreement or the Closing hereunder and shall inure to the benefit of the LLC, for the following periods:

6.4.1. The representations contained in §§ 6.1.1 and 6.2.1 shall survive without limitation.

6.4.2. The representations contained in § 6.2.12 shall survive for a period of one year following discovery of an environmental problem arguably covered by such representations.

6.4.3. Any representation with respect to taxes shall survive for a period of three years from the date of Closing hereunder.

6.4.4. All other representations shall survive for a period of one year from the date of Closing hereunder.

6.4.5. Each party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other party (the "**Indemnified Party**") for, from and against any and all obligations, losses, damages, claims, liens, costs, including reasonable attorneys' fees and associated costs, expenses, demands, liabilities, and penalties, which the Indemnified Party may incur as a result of a material breach of or inaccuracy in the representations and warranties of the Indemnifying Party under this Agreement (as modified pursuant to the provisions of Section 6.2 above); provided, however, that such matter must have a material adverse effect on Pinnacle and cause actual damage to Pinnacle. The damages recoverable shall be limited to those which are reasonably foreseeable; provided, however, that such reasonably foreseeable damages shall not include a calculation based upon a long term projection of income resulting from such damages. For example (but not in limitation), in the event a representation has been breached by Western which results in a claim for a certain amount which would otherwise have resulted in an equal amount of additional profit, such amount would be the responsibility of Western, but not the value of a theoretical income stream which would have been created except for that item. To further elaborate, if an amount which is owed on a one-time basis is \$50,000.00, the amount of damage would be limited to \$50,000.00 rather than a capitalization of the \$50,000.00 amount ("Capitalization" meaning \$50,000.00 divided by a capitalization rate, such as 10%, which would equal \$500,000.00). Pinnacle shall have the right to Offset (as that term is defined in § 6.6 below) the indemnity rights created under this section against payments due under the \$1,000,000.00 Promissory Note during the first two years following Closing. Pinnacle and the LLC shall have the right to Offset the indemnity rights created under this section against distributions due to Western under the Operating Agreement of the LLC, without a time period limitation, as to any portion of the Western interest owned by I. Jerome Hirsch or one or more of his heirs, except that no Offset may be asserted for environmental problems covered in § 6.2.12 after the expiration of three years from the Closing Date. Additionally, in the event of an exercise of Pinnacle's special Initial Buyout Right under the Operating Agreement, any claim based upon documents located at Rawhide must be made within 90 days of closing.

6.5. Stock Purchase Indemnity. In consideration for Pinnacle's purchase of the Stock in lieu of a purchase of the assets as originally contemplated between the parties, and the acceptance by the LLC of the contribution of the remaining Stock in lieu of a contribution of assets, which also was as originally contemplated, both of which Western agrees is good, adequate and valuable consideration for this indemnity, Western does hereby agree to indemnify, defend and hold harmless Pinnacle and the LLC for, from and against any and all obligations, losses, damages, claims, liens, tax assessments or tax penalties, costs, including reasonable attorneys' fees and associated costs, expenses, demands, liabilities, and penalties, which the

either Pinnacle or the LLC may incur as a result of any action or inaction on the part of Operating prior to the date of Closing as defined herein, including but not limited to any contractual, tax, employment, statutory or common-law liabilities of any sort and nature. It is agreed that ordinary course of business contractual liabilities shall be handled pursuant to the method set up in §3.5 above. In the case of non-contractual liabilities, Pinnacle agrees to cause the LLC to give written notice of any claim made by any party which might be covered by this indemnity. Western shall thereupon undertake to resolve the claim at its own expense. The LLC shall cooperate with Western in processing any such claim, and shall permit the employees of Operating, to assist in the processing and defense of such claim, to the extent reasonably necessary based upon Western's need for their testimony or advice, or for the provision of information reasonably necessary for the processing of the claim and defense against same, if required. Pinnacle shall have the right to Offset the indemnity rights created under this section against payments due under the \$1,000,000.00 Promissory Note during the first two years following Closing. The LLC shall have the right to Offset the indemnity rights created under this section against distributions due to Western under the Operating Agreement of the LLC without a time period limitation. Notwithstanding the foregoing, all claims for indemnity pursuant to this subsection must be brought on or before one year from the date of Closing, except for claims arising out of (i) tax laws of any nature or claims arising out of alleged violations of ERISA or similar employee benefit laws, federal or state, or (ii) claims arising out of environmental conditions covered by §6.2.17, as to which tax/ERISA or environmental claims the indemnity shall cover claims made within three years of the date of Closing.

6.6. Offset Procedure. For the purpose of this Agreement, an "Offset" shall be the right of one party to this agreement to set off a debt owed to it by the other party to this agreement against a debt owed to such other party, after having followed the procedures set forth in this section. Subject to all terms and conditions herein, before either party shall be entitled to set off any items resulting from the post-closing adjustments, from breaches of warranty, or from the indemnity pursuant to the Stock Purchase Indemnity, the following procedure shall be followed: A written notice of intent to Offset shall be given (which may be included in the notice relating to a post-closing adjustment), together with a brief statement of the facts giving rise to the Offset and the amount of the proposed Offset. The other party shall have a period of 30 days in which to respond in writing to the proposed Offset and set forth its reasons why no Offset should be permitted or why the Offset amount should be lower than that proposed. The parties shall thereupon meet and confer in an attempt to resolve any dispute. If such dispute cannot be resolved, the matter shall be mediated and/or arbitrated pursuant to the terms of Section 9.16 of the Operating Agreement of the LLC.

## 7. ARTICLE 7: MISCELLANEOUS

7.1. Notices. All communications, notices and demands of any kind which any party may be required or may desire to give to or serve upon the other shall be made in writing and (a) delivered by personal service to an officer of the other party, (b) sent by overnight (one-day) courier service, or (c) sent by registered or certified United States mail, postage prepaid, return receipt requested, to the following addresses:

To Pinnacle: 23733 North Scottsdale Road  
Scottsdale, Arizona 85255  
Attn: Mr. Harv Acridge  
Facsimile number: (602) 502-6102

With a copy to: Michael V. Mulchay  
Fennemore Craig  
North Central Avenue  
Suite 2600  
Phoenix, Arizona 85012-2913  
Facsimile number: (602) 916-5338

To Western: 4455 East Camelback Road, Suite 215-A  
Phoenix, Arizona 85018  
Attn: Mr. I. Jerome Hirsch  
Facsimile number: (602) 840-1543

With a copy to: Neil Irwin, Esq.  
Streich Lang PA  
Two North Central Ave.  
Phoenix, Arizona 85004-2391  
Facsimile number: (602) 229-5690

To Escrow Agent: As provided below Escrow Agent's signature

All notices delivered by any of the foregoing means shall be effective only upon actual receipt thereof (or upon refusal of delivery, as evidenced by affidavit of the party attempting delivery or by other customary means employed by the party attempting delivery to indicate that a refusal of delivery has occurred). Any party may change its address from time to time herein by providing notice to the other party pursuant to this Section.

7.2. Legal Fees. If either party to this Agreement shall breach its representations or warranties set forth herein or shall fail to fulfill or perform any of its covenants or obligations in this Agreement, that party shall pay all costs, including, without limitation, reasonable attorneys' fees, that may be incurred by the other to enforce such other party's rights hereunder. Notwithstanding anything in this Agreement to the contrary, the covenants contained in this paragraph shall survive any termination of this Agreement.

7.3. Governing Law. This Agreement shall be interpreted and governed by the laws of the State of Arizona, without giving effect to its conflict of laws principles.

7.4. Condemnation. If all or any part of the Property is condemned or taken by power of eminent domain, or is transferred to a governmental authority by conveyance in lieu of the exercise of such power, the proceeds thereof shall be the sole property of Western, and Pinnacle shall have no interest therein. This Section 7.5 shall not preclude Pinnacle from seeking independent compensation for the loss of any of its rights under this Agreement. If a substantial portion of Property is condemned, taken or transferred prior to the Closing as

described above, Pinnacle shall have the right, exercisable by written notice to Western and Escrow Agent within thirty days following such condemnation or transfer, to terminate this Agreement, whereupon the Option Payment shall be returned to Pinnacle and neither Pinnacle nor Western shall have any further liabilities or obligations under this Agreement, except as otherwise provided in Sections 5.1, 6.2.15, 6.3 and 7.3 hereof. If Pinnacle does not elect to terminate this Agreement, as provided in this Section 7.5, the Agreement shall continue in full force and effect in accordance with the terms hereof, except that the Pinnacle Deposit shall be reduced by the amount of proceeds of the condemnation.

7.5. Modification of Agreement. No modification of this Agreement shall be effective unless in writing and signed by both parties hereto. Any waiver granted shall not be deemed effective except for the instance and the circumstances particularly specified therein. To be effective any waiver must be in writing and executed by the party against whom enforcement of the waiver is sought.

7.6. Entire Contract. This Agreement and documents executed pursuant hereto or otherwise described herein constitute the entire agreement between the parties with respect to the Property. All terms and conditions contained in any other writings previously executed by the parties and all other discussions, understandings or agreements regarding the Property and the subject matter of this Agreement shall be deemed to be superseded by this Agreement.

7.7. Construction of Agreement. The language and all parts of this Agreement shall be in all cases construed simply according to their fair meaning and not strictly for or against either of the parties hereto. Headings at the beginning of sections and subsections of this Agreement are solely for the convenience of the parties and are not part of this Agreement. When required by the context, whenever the singular number is used in this Agreement, the same shall include the plural, and the plural shall include the singular; the masculine genders shall include the feminine and neuter genders and vice versa; and the word "person" shall include corporations, partnerships or other forms of associations or entities.

7.8. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, and their respective heirs, executors, administrators, successors and assigns.

7.9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and such counterparts shall together constitute but one and the same instrument.

7.10. Invalidation. Invalidation of any one of the covenants or provisions of this Agreement or any part thereof by judgment or court order shall not affect any other covenant or provision of this Agreement which shall remain in full force and effect.

7.11. Confidentiality. The parties and Escrow Agent agree not to disclose any of the terms of this Agreement and to keep all matters pertaining to this Agreement and the transactions contemplated hereby strictly confidential, except the parties shall be permitted to disclose the terms of this Agreement to their attorneys and professional advisors and parties to whom disclosure of the possibility of the transaction must be disclosed in order to obtain information, including, by way of example and not in limitation, zoning authorities and

permitting authorities; provided that in connection with any such disclosure, the parties shall inform the attorneys and advisors of the confidential nature of this Agreement.

7.12. Incorporation of Recitals/Exhibits. All Recitals in this Agreement and all Exhibits attached hereto are hereby fully incorporated by reference herein. This Agreement includes the following Exhibits:

Exhibit A	Legal Description of Real Property
Exhibit B	Description of Personal Property
Exhibit C	Articles of Organization for the LLC
Exhibit D	Operating Agreement
Exhibit E	Allocation of Option Price
Exhibit F	Form of Employee Questionnaire
Exhibit G-1	General Assignment: Western to Pinnacle
Exhibit G-2	General Assignment: Western to LLC
Exhibit G-3	General Assignment: Pinnacle to LLC
Exhibit H-1	Deed: Western to Pinnacle
Exhibit H-2	Deed: Western to LLC
Exhibit H-3	Deed: Pinnacle to LLC
Exhibit I-1(a)	\$16,751,250.00 Promissory Note
Exhibit I-1(b)	\$1,000,000 Promissory Note: Pinnacle to Western
Exhibit I-2	Deed of Trust: Pinnacle to Western
Exhibit I-3(a)	Deed of Trust: LLC to Western securing \$16,751,250.00 Note
Exhibit I-3(b)	Deed of Trust: LLC to Western securing \$1,000,000 Note
Exhibit I-4	"Carve-out" Guaranty of notes by James E. Acridge
Exhibit J-1	Pledge and Security Agreement
Exhibit J-2	Security Agreement: Personal Property
Exhibit J-3	Form of UCC-1
Exhibit K	Antiques Lease
Exhibit L	Due Diligence Information Letter
Exhibit M	List of Litigation

7.13. Time is of the Essence. Time is of the essence of this Agreement and every provision hereof. If the time for the performance of any obligation or taking any action under this Agreement expires on a day that is not a business day, the time for performance or taking such action shall be extended to the next succeeding business day. For purposes of this Agreement, "business day" shall mean days on which the Office of the Maricopa County Recorder is open for business.

7.14. Additional Documents. Each party shall execute and deliver any and all documents that may be reasonably requested by the other party in order to document and perform fully and properly the provisions of this Agreement.

7.15. No Partnership. This Agreement is not intended to create and does not create a joint venture or partnership between the parties.

7.16. Waiver. The waiver or failure to object by any party to any default by the other party of any term, covenant or provision of this Agreement shall not be deemed to be a waiver of such term, covenant or provision, nor a waiver of any subsequent default of such term, covenant or provision or any other term, covenant or provision of this Agreement.

7.17. Specific Enforcement. The obligations of Western under this Agreement shall be specifically enforceable by Pinnacle, provided that Pinnacle shall tender all cash and other consideration required for it to close, both to Western and, if refused, to the court if legal action is sought. If this Agreement is terminated other than through a default by Western that would entitle Pinnacle to specific enforcement, then upon such termination neither party shall have any further liabilities or obligations to the other under this Agreement, except as provided in Sections 5.1, 6.3 and 7.3 hereof. Except as provided in the immediately preceding sentence, each party hereby specifically waives and covenants not to assert any right to seek monetary damages of any kind (including, but not limited to, lost profits or consequential, special, exemplary or punitive damages) for any default by the other party under this Agreement.

7.18. No Shop Agreement. Western hereby agrees that until the expiration of the Option Term it will not solicit offers for the sale or contribution of the Property to any other person or entity or respond to inquiries from, share information with, negotiate with or in any way facilitate inquiries or offers from third parties who express or have expressed an interest in acquiring a direct or indirect interest in the Property.

7.19. Mediation and Arbitration. The parties agree that in the event of any dispute between them regarding the terms of this agreement shall be resolved, if the parties are unable to do so in direct discussions, through a brief mediation followed by binding arbitration, using the procedure set forth in section 9.16 of the Operating Agreement for the LLC, even if the LLC has not come into being at that time. The terms of such procedure are incorporated herein by this reference.

7.20. Improvement Studies. Western has caused to be prepared five separate concepts, plans or studies relating to future developments of the Western Theme Park concept on the property. They are studies relating to: (a) a Nocturnal Zoo; (b) a Wildlife enclosure; (c) a Movie Studio (d) a Shopping Center at the Southwest Corner of the Property and (e) the relocation of the Cantina. Western agrees to divulge the contents of such studies to Pinnacle prior to Closing. If Pinnacle elects to close, Pinnacle shall cause the LLC to pay to Western, out of the Line of Credit, the sum of \$100,000.00 in reimbursement for the costs thereof, and shall cause the LLC to pay the balance, not to exceed \$35,000, as and when due.

7.21. Exchange. Pinnacle acknowledges and agrees that at some time between the execution of this Option Agreement and the Closing Date, Western shall have the right to engage in a Section 1031 tax-deferred exchange in connection with this transaction, and Pinnacle agrees to cooperate with Western to effect such tax-deferred exchange, provided that (a) Western shall not be released from liability under this Option Agreement, (b) there are no costs, expenses or charges associated with the tax deferred exchange required to be paid by Pinnacle, (c) Pinnacle shall not be obligated to enter into any agreement with any third party (other than an exchange escrow), acquire title to any other real estate or otherwise enter into any other agreement which would subject Pinnacle to any liability, (c) such exchange cannot result in anyone other than



Western becoming a member of the LLC, and (d) such exchange will not delay Closing. Western may assign its interest in this Option Agreement to a qualified § 1031 exchange intermediary, provided that the balance of conditions (a) through (d) shall be fulfilled.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

**PINNACLE:**

**PINNACLE RODEO, L.L.C.**, an Arizona limited liability company

By: James E. Mulcahy  
Name: Harley A. Rodeo  
Title: ATTORNEY IN FACT MEMBER

**WESTERN:**

**WESTERN TOWN, L.L.C.**, an Arizona limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WESTERN TOWN, L.L.C.

BY: HIRSCH GENERAL CORPORATION, an  
Arizona corporation

By: 

I. Jerome Hirsch, its President

ITS: MANAGING MEMBER