Deerfield Beach
Florida

Special City Commission Meeting Agenda

150 NE 2nd Avenue | Deerfield Beach, FL, 33441 | 954-480-4200

Mayor Bill Ganz
Vice Mayor Bernie Parness
District 1 Commissioner Michael Hudak
District 2 Commissioner Ben Preston
District 4 Commissioner Todd Drosky

Tuesday
August 22, 2023
6:45 PM

CALL TO ORDER & ROLL CALL

MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

APPROVAL OF THE AGENDA

August 22, 2023

ZOOM MEETING

Join Zoom Meeting by clicking the below link:
https://deerfield-beach.zoom.us/j/83287340163?pwd=WjFjYVNCeHZPaFVhRTM5N0VjdGlvUT09

Join Zoom Meeting via telephone by dialing:
Call-in Number: (301) 715-8592
Meeting ID: 832 8734 0163#
Participant ID: #
Passcode: 382814#

For complete instructions on joining and/or participating during public comment, please click the following link or attend in person in the City Commission Chambers:

Attachment: Zoom Instructions

PUBLIC HEARING – SECOND READING

1. **P.H. 2023-101: ORDINANCE 2023/ - AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DEERFIELD BEACH, FLORIDA, APPROVING THE LEASE AGREEMENT BETWEEN THE CITY OF DEERFIELD BEACH AND DEERFIELD BEACH CAFÉ, LLC FOR THE LEASE OF THE CITY'S PIER RESTAURANT FOR A TWENTY YEAR TERM, WITH TWO, FIVE YEAR RENEWAL OPTIONS; PROVIDING FOR EXECUTION, SEVERABILITY, CONFLICTS, AND AN**

EFFECTIVE DATE.

Suggested Action: Commission to vote on Ordinance

Voting Requirement: Adoption requires a 3/5 vote of the City Commission

Sponsor: Office of the City Manager

Attachment: Pier Lease Agreement

ADJOURNMENT

FUTURE CITY COMMISSION MEETINGS

Regular City Commission Meeting - September 5, 2023

Any person wishing to appeal any decision made by the City Commission with respect to any matter considered at such meetings or hearings will need a record of the proceedings, and for such purposes may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and the evidence upon which the appeal is made. The above notice is required by State Law (F.S. 286.0105). Anyone desiring a verbatim transcript shall have the responsibility, at his/her own expense, to arrange for the presence of a certified court reporter at the hearing.

Special City Commission Meeting - August 22, 2023

DEERFIELD BEACH - YOU ARE HEREBY NOTIFIED that a **Special City Commission Meeting** will be held on **Tuesday, August 22, 2023, at 6:45 PM in the City Commission Chambers located at the City Hall Complex, 150 NE 2nd Avenue, Deerfield Beach, Florida.** A quorum of the City Commission will be physically present at the meeting and the City will be utilizing communications media technology with most City staff participating through video conferencing.

The August 22, 2023, Special City Commission Meeting will proceed utilizing communications media technology; **however, the City Commission Chambers located at the City Hall Complex, 150 NE 2nd Avenue, Deerfield Beach, will be open to the public as an additional method** for speakers wishing to speak on items. A copy of the agenda for the August 22, 2023 meeting will be available at http://www.deerfield-beach.com/1554/Meetings-Agendas.

Attending and Viewing the Special City Commission Meeting:

This meeting will be broadcast live for members of the public. There are several options available to the public to attend/view the meeting:

1. **In Person Attendance**. Attend in person in the City Commission Chambers.

2. **Zoom**

   a. **Via Zoom Online** - Access to the meeting will begin at 6:30 PM on August 22, 2023.
      i. Use the following link below to access the meeting via Zoom:
https://deerfield-beach.zoom.us/j/83287340163?pwd=WjFjYVNCeHZPaFVhRTM5N0VjdGlvUT09
      ii. The video camera display feature is disabled for public use

   b. **Via Zoom Telephone** - Join the meeting via telephone (audio only) using the Call-in number below, followed by the Meeting ID when prompted. No computer or access code is required.

Call-in Number: (301) 715-8592, Meeting ID: 832 8734 0163#, Participant ID: #, Passcode: 382814#

For more information on using Zoom, please visit Zoom Support at the following link: https://support.zoom.us/hc/en-us.

3. **YouTube**

The meeting will also be available to the public via YouTube for audio and video access; however, public participation, i.e. comments are not possible. The link to watch the meeting via YouTube will be active no later than 6:30 PM on August 22, 2023, and can be found by clicking the camera icon in the Media column at http://www.deerfield-beach.com/1554/Meetings-Agendas.

Providing Public Comment:

Public participation is strongly encouraged. Your comments will be limited to three minutes per person. To participate, please choose the option best for you and remember to include your name and address for the record.

1. **In person** - Public comment may be given in the Commission Chambers during the applicable public comment portion of the meeting.

2. **Live Zoom Video Participation** - If attending via Zoom online, at the appropriate public comment period, click “raise hand” at the bottom under the “reactions” tab, and your audio will be unmuted when you are recognized.

3. **Live Zoom Telephone Participation** - If attending via Zoom by telephone, at the appropriate public comment period, press *9 to “raise your hand” and your audio will be unmuted when you are recognized.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT AND FLORIDA STATUTE 286.26, PERSONS WITH DISABILITIES NEEDING SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE CITY CLERK NO LATER THAN 3 DAYS PRIOR TO THE MEETING AT (954) 480-4213 FOR ASSISTANCE.

Should you have any questions, please feel free to contact the City Clerk’s Office at 954.480.4213. For additional information on the agenda items for the Commission meeting, please visit www.dfb.city.

150 NE 2nd Ave
Deerfield Beach, FL
33441
954-480-4200

City of Deerfield Beach

Face Sheet
File Number: I.D. 2023-2098

Agenda Date: 8/22/2023

Status: PUBLIC HEARING – SECOND READING

In Control: City Commission

Title
P.H. 2023-101: ORDINANCE 2023/ - AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DEERFIELD BEACH, FLORIDA, APPROVING THE LEASE AGREEMENT BETWEEN THE CITY OF DEERFIELD BEACH AND DEERFIELD BEACH CAFÉ, LLC FOR THE LEASE OF THE CITY'S PIER RESTAURANT FOR A TWENTY YEAR TERM, WITH TWO, FIVE YEAR RENEWAL OPTIONS; PROVIDING FOR EXECUTION, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

Recommended Action
Commission to vote on Ordinance

Voting Requirement
Adoption requires a 3/5 vote of the City Commission

Background/History
The Pier Restaurant Invitation to Negotiate process has been ongoing since March, 2023. An ITN (ITN 23-02-PC) document was prepared containing all pertinent components of the expected lease terms. The opportunity was widely advertised through the City's purchasing network, direct mail to interested restaurateurs, the Florida Hospitality & Lodging Association and restaurant brokers.

At the June 20, 2023 meeting, the Commission approved the ranking of the Evaluation Committee, and authorized concurrent negotiations with the two top-ranked proposers, LM Cove, LLC and Deerfield Beach Cafe LLC. The City authorized a final lease extension with the existing operator, and the final extension of that lease expires at the end of October 2023.

Current Activity
In continuation of the Pier Restaurant ITN procurement process and as per the direction of City Commission at the June 20, 2023 City Commission meeting, the City Manager designated a Negotiation Committee assigned with the task of negotiating the best overall deal for the City. The Committee met individually with the top two highest rated proposers, as per the requirements of the City procurement code. Both proposers were asked for their last and best offer. The Negotiation Committee met one final time to confirm the findings of the negotiation process and made a motion to recommend that the City Commission authorize entering into a lease with Deerfield Beach Cafe LLC.

On August 1, 2023, the City Commission heard presentations from the two top ranked proposers. Thereafter, the City Commission approved the award of the ITN for the Pier Restaurant Lease to Deerfield Beach Cafe, LLC.

Deerfield Beach Cafe, LLC is offering an initial annual base lease payment of $210,000 that will increase automatically by 2% annually, with a profit sharing option beginning in year 2 of 5% of net sales over a natural break even point of $4,200,000. The proposal includes a mix of full service indoor dining, grab and go meal service, and outdoor alfresco dining in the adjacent patio area and elevated deck. The restaurant will be open for breakfast, lunch and dinner seven days a week throughout the year, with the exception of limited holiday and special event closures. In order to continue to provide public access to the elevated deck, Deerfield Beach Cafe proposes working with the City to offer scheduled recreational programming on the deck similar to the morning yoga courses that are offered there now.

The lease term is proposed for 20 years with two (2) five year renewable options. Deerfield Beach Cafe proposes making $2.4 million in improvements to the restaurant, including kitchen, interior and signage remodels. Improvements also include the build-out of a fixed awning over the patio area, as well as a small service area and bar on the elevated deck. The construction phase of the project is estimated to take up to five months. A list of the key business terms is attached, along with the proposed Lease Agreement.

Staff recommends adoption of an ordinance approving the lease of the Pier Restaurant to Deerfield Beach Cafe, LLC.

Recommendation
Staff recommends adoption of an Ordinance approving the lease of the Pier Restaurant to Deerfield Beach Cafe, LLC.

ORDINANCE NO. 2023/

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DEERFIELD BEACH, FLORIDA, APPROVING THE LEASE AGREEMENT BETWEEN THE CITY OF DEERFIELD BEACH AND DEERFIELD BEACH CAFÉ, LLC FOR THE LEASE OF THE CITY'S PIER RESTAURANT FOR A TWENTY YEAR TERM, WITH TWO, FIVE YEAR RENEWAL OPTIONS; PROVIDING FOR EXECUTION, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE

WHEREAS, on August 1, 2023, the City Commission passed and adopted Resolution No. 2023/136 awarding Invitation to Bid No. 23-02-PC (the "ITN") for the lease of the City's Pier Restaurant to Deerfield Beach Café, LLC; and

WHEREAS, the City and Deerfield Beach Café, LLC have negotiated the Lease Agreement, attached as Exhibit "A", which provides for an initial Lease term of twenty years, with the mutual option to renew for two additional five year periods; and

WHEREAS, under the terms of the Lease Agreement, the City receives rent revenue based upon a minimum annual base rent amount of $210,000.00 commencing in Year 1, with a 2% annual increase thereafter, and the potential for additional rent based on a revenue share of 5% of gross sales with the base rent amount serving as the natural breakpoint; and

WHEREAS, Article III, Section 3.16(4)(f) of the City Charter requires the City Commission to approve leases of any lands of the City for a period in excess of five years to be authorized by Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DEERFIELD BEACH, FLORIDA AS FOLLOWS:

Section 1. The above referenced "Whereas" clauses are true and correct and made a part hereof.

Section 2. The Lease Agreement with Deerfield Beach Café, LLC, attached as Exhibit "A," is hereby approved.

Section 3. The Mayor and City Manager are authorized to execute the Lease Agreement with Deerfield Beach Café, LLC, attached as Exhibit "A", together with such non-substantial changes as are acceptable to the City Manager and approved as to form and legal sufficiency by the City Attorney.

Section 4. If any word, phrase, clause, sentence, or section of this Ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this Ordinance.

Section 5. All ordinances and parts of ordinances, and all resolutions and parts of resolutions, in conflict with this Ordinance are repealed but only to the extent of such conflict.

Section 6. This Ordinance shall take effect immediately upon adoption.

PASSED AND ADOPTED THIS ____ DAY OF __________, 2023.

CITY OF DEERFIELD BEACH

____

BILL GANZ, MAYOR

ATTEST:

____

HEATHER MONTEMAYOR, CITY CLERK

EXHIBIT A

PIER RESTAURANT LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Agreement" or "Lease") is made and entered into as of this _______ day of August, 2023, by and between the **CITY OF DEERFIELD BEACH**, a Florida Municipal Corporation ("Landlord"), whose address is 150 N.E. 2nd Avenue, Deerfield Beach, Florida 33441, and **DEERFIELD BEACH CAFE, LLC**, a Florida Limited Liability Company, whose address is 1080 SW 17th Street, Boca Raton, FL 33486 ("Tenant").

R E C I T A L S:

WHEREAS, on August 1, 2023, the City Commission passed and adopted Resolution No. 2023/_______awarding Invitation to Negotiate #23-02-PC for the Lease of the City of Deerfield Beach Pier Restaurant to Tenant; and

WHEREAS, on August 22, 2023, in accordance with Section 3.16(4)(f) of the City's Charter, the City Commission passed and adopted Ordinance No. 2023/____ approving the execution of this Lease Agreement; and

WHEREAS, the parties wish to enter into this Agreement for the lease of the City Pier Restaurant located at 202 NE 21st Avenue, Deerfield Beach, Florida, consisting of approximately 4,283 square feet, inclusive of the second floor observation deck, and further described in Section 1.4 and the attached Exhibit "A", for the purpose of Tenant operating the Premises as a restaurant; and

WHEREAS, Landlord is willing to lease the Premises to Tenant upon the terms, covenants and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the premises and the sum of TEN AND NO/100 DOLLARS ($10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree that the terms and conditions of this Agreement are as follows:

1. DEFINITIONS.

Unless the context otherwise specifies or requires, the following capitalized terms shall have the meanings herein specified.

1.1. "Audited Financial Statement" means a Financial Statement certified by an independent certified public accounting firm to have been prepared in accordance with Generally Accepted Accounting Principles and Generally Accepted Auditing Standards as promulgated by the American Institute of Certified Public Accountants.

1.2. "Base Rent" shall mean the fixed annual basic rent payable by Tenant to Landlord for the Premises during each Rental Year of the Term, as more specifically set forth in Section 4 and Exhibit "C" attached hereto and incorporated herein by reference.

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1.3. “Building” means the entire building located at the entrance to the Pier, and located at 202 NE 21st Avenue in which the administrative offices and Premises and Restaurant are located.

1.4. “Premises” shall mean the restaurant space consisting of approximately 4,283 square feet, located at the Deerfield Beach Fishing Pier, 202 NE 21st Avenue, Deerfield Beach, FL 33441, and including approximately 1,738 square feet of interior space, a 1,311 square foot second story observation deck, 494 square feet of second floor restroom and storage space, and a 740 square foot outdoor seating area, and all other improvements on or appurtenances to the Premises, which Premises are depicted and legally described in Exhibit “A” attached hereto and incorporated herein by reference.

1.5. “Pier Restaurant Operating Account” shall mean one or more accounts in a federally insured banking institution located in the State of Florida, in the name of the Tenant in a bank selected by the Tenant, into which Tenant shall deposit all Gross Revenues of the Pier Restaurant Operations.

1.6. “Pier Restaurant Operations” shall mean and include (i) the restaurant to be operated on the Premises; (ii) the operation of food and beverage service at the Observation Deck and any and all future temporary or permanent concessions established and approved by Landlord within the Premises; and (iii) catering services for on-site events and parties within Premises or at the Observation Deck, except as specifically excluded in this Agreement and subject to the restrictions and limitations set forth in Section 7 of this Agreement, and all activities in support or a part of all such operations.

1.7. “Effective Date” is the date that this Agreement is executed by Tenant and Landlord. This date is different from the Lease Commencement Date and Possession Date.

1.8. “Expense(s) of Operation” shall mean the amount of all expenses (whether ordinary, extraordinary or capital) incurred or paid by Tenant for leasing, using, operating, improving, rehabilitating and/or repairing the Premises, performing the Pier Restaurant Operations, and performing all other obligations undertaken hereunder, including without limitation, any and all ad valorem taxes, intangible taxes, taxes payable on the fees payable hereunder or on the leasehold interest created hereby, insurance as required by the terms of this Agreement, utility charges and fees, and any other taxes, fees or charges payable as a result of this Agreement or Tenant’s performance hereunder.

1.9. “Furniture, Fixtures and Equipment” (“FF&E”) shall consist of all furniture, fixtures and equipment to be placed on or located on the Premises, including, but not limited to, carpeting, wall covers, decorative lighting, electric or electronic equipment, kitchen equipment, seating, interior and exterior features, artifacts and artwork, interior and exterior graphics, office furniture, all fixtures and specialized equipment, telephone and alarm systems, cleaning and engineering equipment, tools, and all other similar items to be placed and hereafter located in the Premises, and all other items which are required for the operation of the restaurant at the Premises and the Pier Restaurant Operations in accordance with the provisions of this Agreement, together with all replacements, modifications, alterations and additions thereto.

1.10. “Gross Revenues” shall consist of all revenue, proceeds of sales for cash or credit (including check, charge, exchange or otherwise), all goods, services and merchandise sold, leased, licensed or delivered, all other receipts by sale, barter or otherwise of all business conducted in and from the Premises, and the Pier Restaurant Operations, income or receipts of any nature or kind, all deposits not refunded to purchasers or patrons, all sales to employees and agents of Tenant, all orders taken on or from the Premises, and in connection with the Pier Restaurant Operations (although said orders may be received by telephone, mail, electronic mail or filled otherwise), or procured from the Premises, and all uncollected or uncollectible credit amounts, determined on an accrual basis in accordance with generally accepted accounting principles consistently applied, whether cash or credit, derived directly or indirectly from the Restaurant, the Pier Restaurant Operations (including all concessions operated at the Premises and catered events) or any operation or source over which Tenant has any direct or indirect responsibility under this Agreement. The following amounts shall be expressly excluded from Gross Revenues: (1) any sums collected and paid out for any sales or direct excise tax imposed by any duly constituted governmental authority, (2) the exchange of inventory between other stores of Tenant, its subsidiaries, affiliates and parent company, if any, where such exchanges are made solely for the convenient operation of Tenant’s business and not for the purpose of consummating a sale which has theretofore been made in or from the Premises and/or for the purpose of depriving Landlord of the benefit of a sale which otherwise would be made in or from the Premises, (3) sums and credits received from shippers or manufacturers in settlement of claims for loss or damage to merchandise, (4) refunds to customers, (5) sales of Tenant’s fixtures (other than fixtures which constitute inventory of Tenant’s business in the Premises), (6) the amount of any tips collected by or for employees or any discount on sales to employees of Tenant, (7) the proceeds of any sale of (X) all or substantially all of Tenant’s assets at the Premises, or (Y) shares of Tenant’s corporate stock; (8) fees paid to companies providing credit card services; (9) shipping charges, (10) actual bad debts, (11) meals served to employees while on the job for which no charge is made or receipts is collected, (12) insurance or condemnation proceeds, (13) the value of merchandise returned to the manufacturer, wholesaler, vendor or shipper or transferred from the Premises, (14) sponsorships (not for profit), refunds, rebates or advertising allowances provided to Tenant by manufacturers, wholesalers, vendors or shippers, (15) the value of promotional items that are distributed to Tenant’s customers without charge, (16) amounts received as a result of litigation (including settlements thereof), except with respect to lost revenue/profit, (17) commercially reasonable franchise fees, royalty fees and other consideration received by Tenant in connection with any franchise of Tenant’s business at the premises (except for other consideration generated at the Premises), and (18) licensing fees received by Tenant in connection with its trade name.

1.11. “Lease Commencement Date” is the date which is the earlier of (i) six (6) months after the Possession Date (May 1, 2024), or (ii) the date of issuance of the applicable Certificate of Completion and/or Certificate of Occupancy for the Premises. Should said date be other than the first day of a calendar month, then the Lease Commencement Date shall be on the first day of a calendar month following such date.

1.12. “Operating Supplies” shall mean all inventories of merchandise held for sale, and all stocks of supplies necessary for the Pier Restaurant Operations including, without limitation, all repair and maintenance supplies, food, beverages, food services items, fuel and miscellaneous expendables.

1.13. “Percentage Rent” shall mean rent payable by Tenant to Landlord, in addition to Base Rent, but only to the extent that the calculation exceeds Base Rent, in an amount equal to five percent (5%) of Gross Revenues, commencing on the second Rental Year of the Term and continuing throughout the Term of this Agreement, as set forth in Section 4 and Exhibit “C” attached hereto.

1.14. “Pier” shall mean the City of Deerfield Beach Municipal Fishing Pier located at 202 N.E. 21 Avenue, Deerfield Beach.

1.15. “Possession Date” is November 1, 2023, which is the date when physical possession and control of the Premises is delivered by Landlord to Tenant in the manner set forth in Section 5 hereof.

1.16. “Rent” shall mean Base Rent and Percentage Rent as respectively defined in this Agreement and more specifically set forth in Section 4 and Exhibit “C” attached hereto and incorporated herein by reference, together with Additional Rent and any other amounts payable by Tenant to Landlord under this Agreement and as may be mutually agreed to by the parties hereafter in written form as an amendment to this Agreement.

1.17. “Rental Year” means a year consisting of twelve (12) consecutive calendar months. The first Rental Year during the Term of this Agreement shall commence on the Lease Commencement Date and end on a date which is twelve (12) consecutive calendar months thereafter. The first Rental Year of the Term shall include twelve (12) full calendar months plus the partial month, if any, should the date of the twelve months (12) after the Possession Date or the issuance of the Certificate of Completion and/or Certificate of Occupancy fall on any other day which is not the first day of a calendar month. Each subsequent Rental Year shall mean a period of twelve (12) full calendar months commencing with the date following the last day of the first Rental Year, and commencing with each subsequent annual anniversary of such day. The last Rental Year of the Term shall be the period which commences on the day immediately following the last day of the preceding Rental Year and terminates on the last day of the Term.

1.18. “City” shall mean the City of Deerfield Beach, in its municipal capacity as opposed to as Landlord.

2. GRANT OF LEASE OF PREMISES; USE AND OPERATION OF PREMISES.

2.1. Lease of Premises. Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, upon the terms, covenants and conditions set forth in this Agreement.

2.2. Use and Operation of Premises. Tenant shall have the right to use and operate the Premises, including the Observation Deck, solely for a restaurant and Pier Restaurant Operations, or programming, in compliance with the terms and conditions of this Agreement. The Tenant shall have the right to use the Observation Deck, subject to the terms and conditions of this Agreement, and as more specifically set forth in Paragraph 7 of this Agreement. Tenant shall ensure that the Observation Deck remains accessible to the public commencing at 8:00 am daily and during all times of Tenant's restaurant operations on the Observation Deck (including the public's access to the eastern portion of the Observation Deck), except to the extent that a member of the public is disturbing the Tenant's operations on the Observation Deck, creating a public nuisance, or otherwise violating any applicable laws.

3. TERM.

3.1. Initial Term. This Agreement shall be for a term (the "Term") of twenty (20) years commencing on the Lease Commencement Date and ending on the last day of the twentieth (20th) Rental Year following the Lease Commencement Date, unless sooner terminated as provided herein or extended as provided herein. All references hereinafter to Term shall, unless the content indicates the contrary, include any Renewal Term(s), if in effect in accordance with the terms of this Agreement.

3.2. Renewal Term(s). Provided that: (i) Tenant remains in occupancy of the Premises and continues to conduct and operate the Restaurant thereon and the Pier Restaurant Operations in accordance with this Agreement, and (ii) no uncured event of a material default by Tenant exists or has occurred under the Agreement during the last two (2) Rental Years of the initial Term, the Term of this Agreement may be renewed and extended for up to two (2) additional five (5) year terms, subject to the mutual agreement of the parties to renew, and of all terms and conditions of this Agreement in the manner set forth in this Section (except for potential Lease payment increases for the Landlord). In the event that Tenant wishes to renew and extend the initial Term of this Lease, Tenant shall provide written notice to Landlord of its desire to extend and renew the Term (the "First Renewal Notice") at least 180 days, but not more than 365 days prior to the expiration of the Term. Upon Tenant providing Landlord with the First Renewal Notice, the Landlord may elect to consider and/or negotiate with Tenant for renewal of the Term subject to the mutual agreement of the terms and conditions for the First Renewal Term. In the event that the parties mutually agree on the renewal of the Term, and the terms and conditions of such five (5) year renewal, the parties shall enter into an Addendum to this Agreement, as appropriate, setting forth the terms and conditions for renewal of the Term (the "First Renewal Term").

In the event that the parties agree to the First Renewal Term, the Tenant may wish to further renew the Term of this Agreement for a second five (5) year renewal term, and shall provide written notice to Landlord of its desire to renew the Term (the "Second Renewal Notice") at least 180 days, but not more than 365 days prior to the expiration of the First Renewal Term. Upon Tenant providing Landlord with the Second Renewal Notice, the Landlord may elect to consider and/or negotiate with Tenant for a second renewal of the Term subject to the mutual agreement of the terms and conditions of the Second Renewal Term. In the event that the parties mutually agree on the second renewal of the Term, and the terms and conditions of such second five (5) year renewal (the "Second Renewal Term"), the parties shall enter into an Addendum to this Agreement, as appropriate, setting forth the terms and conditions of the Second Renewal Term.

Notwithstanding anything contained herein to the contrary, nothing herein shall be construed to grant Tenant the right or option to renew or extend the initial Term of this Agreement without the City's mutual consent and agreement.

3.3. Extension. In the event that the Pier Restaurant Operations are scheduled to end due to the expiration of this Agreement, the Tenant shall continue the Pier Restaurant Operations in accordance with this Agreement upon written request of the City Manager or designee. The extension period shall not extend for more than 180 days beyond the expiration date of the existing Lease Agreement. The Landlord shall be compensated during the extension period at the base rent and percentage rent rates in effect when this extension is invoked by the City.

4. BASE RENT, PERCENTAGE RENT AND ADDITIONAL RENT; PAYMENT OF EXPENSES OF OPERATION.

4.1. Payment of Rent. Tenant shall pay the Landlord the Base Rent and Percentage Rent in the amounts and at the times set forth in Exhibit "C" attached hereto, which payments shall be payable and delivered to the City of Deerfield Beach, Finance Department, at 150 N.E. 2nd Avenue, Deerfield Beach, Florida 33441 or such other place as the Landlord shall designate from time to time in a notice given pursuant to the provisions of this Agreement. All payments due to the Landlord pursuant to this Agreement shall be absolutely net to the Landlord, free from any abatement, offset, set-off, defense, expense, charge, or other deduction whatsoever, and shall be paid without notice.

4.1.1 Late Payments – Interest. Landlord shall be entitled to collect interest at the rate of 18% from the date any sum is due to Landlord until the date paid on any amounts that are not paid within ten (10) days of their due date under this Agreement. The right of Landlord to require payment of such interest and the obligation of Tenant to pay same shall be deemed to be Additional Rent and shall not be in lieu of the right of Landlord to enforce other provisions in this Agreement and to pursue other remedies provided by law.

4.2. Base Rent. Base Rent shall commence on the Lease Commencement Date. Tenant's failure to occupy the Premises or Tenant's failure to complete any of the Tenant Improvements in a timely manner shall not delay the payment of Base Rent. All provisions of this Agreement shall be in full force and effect upon the Effective Date, notwithstanding the fact that prior to the payment of Base Rent, Tenant shall first perform and complete the Tenant Improvements. During the Term, Tenant will pay as the minimum Base Rent for the Premises the sums for each Rental Year of the Term and Renewal Terms as set forth in the Rent Schedule attached hereto as Exhibit "C", with Base Rent being payable without notice, demand, set-off or deduction, in advance, on or before the first (1st) day of each calendar month, beginning on the Lease Commencement Date, in equal monthly installments, plus all applicable sales and use taxes as are presently payable or hereinafter imposed. Base Rent for the first month of the Term shall include the amount due for the fractional portion of the month should the date that is the earlier of twelve (12) months after the Possession Date or the date of issuance of the applicable Certificate of Completion and/or Certificate of Occupancy for the Premises fall on any day of the calendar month which is not the first day of the month, through the first day of the Lease Commencement Date.

4.3 Percentage Rent. Commencing in the second Rental Year, in addition to the Base Rent and other charges for each and every Rental Year as set forth in this Agreement, and continuing throughout the Term, Tenant shall pay Landlord the Percentage Rent**,** if due in accordance with this Section 4.3, without previous demand therefore and without any abatement, offset, setoff, defense, expense, charge, or other deductions whatsoever, on or before the fifteenth (15th) day of the month immediately following the first quarter of such Rental Year and thereafter on the fifteenth (15th) day of each succeeding quarter during the remainder of such Rental Year on all Gross Revenues. Within fifteen (15) days after the end of each quarter in the Term, Tenant will deliver to Landlord a statement signed by a responsible corporate officer of Tenant accurately setting forth the amount of Gross Revenues made during each quarter, itemized in reasonable detail (the "Quarterly Gross Revenues Statement") and will contemporaneously therewith pay any Percentage Rent equal to five percent (5%) ("Percentage Rent Rate") of such Gross Revenues, but only to the extent that such calculations exceed Base Rent (by way of example, if the Gross Revenues equal $5,000,000 the 5% calculation results in a figure of $250,000.00 for the second Rental Year, and the Base Rent is equal to $214,200.00, only the additional $35,800.00 would be due for that Rental Year). Within sixty (60) days after the end of each Rental Year in the Term and Renewal Term, Tenant will furnish to Landlord a statement signed and sworn to by the same party who is to sign the quarterly statement of Gross Revenues according to the foregoing provisions hereof, accurately showing Gross Revenues for the preceding Rental Year itemized in reasonable detail (the "Yearly Gross Revenues Statement") and will contemporaneously therewith pay any additional Percentage Rent due for such Rental Year and provide Landlord with certified gross sales reports consistent with the form required by the State for the reporting of sales tax, and deliver to Landlord true and complete copies of all monthly sales tax reports filed by Tenant with the State. Computation of Percentage Rent shall be made separately and independently for each Rental Year of the Term, without regard to the Gross Revenues made during or Base Rent paid for any other Rental Year.

4.3.1. Records and Reports. For the purpose of ascertaining the amount payable as Percentage Rent, Tenant agrees to prepare, keep and maintain complete, accurate, and adequate books of account and supporting records, which shall show daily sales made by Tenant and daily bank deposit records, and to install and maintain a system of sales records by which will be recorded daily all sales and other transactions had by Tenant in connection with the Pier Restaurant Operations, and Tenant shall keep the same on file for a period of not less than five (5) years (unless Applicable Law requires a greater time period), including at least three years after the expiration or earlier termination of this Agreement. If any audit shall be commenced by Landlord or if there shall arise a difference or dispute concerning Gross Revenues, then Tenant's books and records (including all supporting data and any other records from which Gross Revenues may be tested or determined) shall be preserved or retained by Tenant until a final determination of such dispute or difference or litigation, including through all appeals, and if no appeal is filed, until the expiration of the period of time in which an appeal may be filed.

4.3.2. Sale System; Sales Evidence. Tenant agrees to install and use as installed, a cash register or other point-of-sale system, said system to have locked-in cumulative capacity and memory and otherwise to be in accordance with generally accepted accounting practices and standards. Tenant also agrees to: (i) give to each patron or customer a cash register itemized receipt and a copy of sales slip having cash register or other certification thereon, and will retain the cash register tapes or other evidence for a period of not less than five years (5) years, (unless Applicable Law requires a greater time period), including at least three years after the expiration or earlier termination of this Agreement; or (ii) maintain a reasonable equivalent record keeping system to provide Landlord with the records necessary to conduct an audit.

4.3.3. Monthly Sales Tax Reports and Gross Revenue Statements. Tenant further agrees to deliver to Landlord, concurrently with the Quarterly Gross Revenues Statements, specified hereinabove, a copy of Tenant's monthly sales tax reports for such quarter. Tenant further agrees to furnish Landlord within sixty (60) days following the expiration of each Rental Year, a statement signed by a responsible corporate officer of Tenant, certifying the Gross Revenues for the Rental Year then ended. Only if in any given Rental Year, Tenant shall have received a statement by an independent Certified Public Accountant, certifying the Gross Revenues for the Rental Year then ended, Tenant shall forward a copy of said statement to Landlord, without demand.

4.3.4. Electronic Transmittal of Gross Revenues Reports. Landlord agrees that should Landlord develop during the Term or Renewal Terms adequate computer capability, it will not unreasonably refuse to allow Tenant to transmit its Gross Revenues reports electronically, and to maintain its books and records in computerized form, provided that: (i) sales reports are transmitted by internet transmission to Landlord's data center, in a manner compatible with Landlord's computer system and approved in writing by Landlord, (ii) print copies of such Gross Revenues reports are furnished to Landlord within thirty (30) days after request (which request may be made at any time within one year after the electronic sales reports are furnished by Tenant to Landlord); (iii) Tenant's computerized books and records provide the same level of information as the print books and records described above, are retained for the full three (3) year record retention period provided for herein, and are made accessible for Landlord's inspection on request, and (iv) print copies of any of such books and records are made available to Landlord's representatives who are engaged in inspecting Tenant's books and records, as provided herein, promptly upon request. Nothing herein contained shall obligate Landlord to develop, install, or maintain said electronic computer capabilities.

4.3.5. Access to Books and Records; Audit. Tenant further grants unto Landlord and Landlord's designees upon at least 48 hours prior written notice, the right during all regular business hours to have access to all books, accounts, records and reports, including true copies of state sales tax reports that shall be kept by Tenant showing daily Gross Revenues, and shall permit Landlord to make an audit thereof (but not more than once per year in any Rental Year, and to make copies as Landlord or its designees may require) by a Certified Public Accountant and/or Landlord's designees, and shall freely lend Tenant's assistance in the making of any inspection, examination or audit. Should such audit by the Landlord disclose a variance of understated Gross Revenues by: (i) three (3%) percent or more for any period of this Agreement, the Tenant agrees to pay the reasonable costs of such an audit, and (ii) by five (5%) percent or more or any other fraudulent or grossly inaccurate reporting for any Rental Year (in addition to Landlord's aforesaid remedy), the same shall constitute an Event of Default, and in any event, Tenant shall immediately pay any such deficiency to Landlord. If Tenant's Gross Revenues are required to be reported on any Federal, State or local sales tax return and

Gross Revenues as so reported on said returns shall exceed the Gross Revenues as reported by Tenant, after taking into account any deductions from Gross Revenues permitted under this Agreement, then the Gross Revenues shall be taken at the highest figure so reported. If any governmental authority shall increase the Gross Revenues reported by Tenant to Landlord on any such tax return, after audit, for any Rental Year for which such Gross Revenues have been reported, then Tenant shall notify Landlord promptly of such increase, supply to Landlord a true copy of such audit and pay any additional Percentage Rent due at that time. Tenant agrees to pay Landlord, as Additional Rent, the additional sum within ten (10) days after submission by Landlord to Tenant of a bill thereof. Tenant's obligations under this Section 4.3.5 shall survive the expiration or sooner termination of this Agreement.

4.3.6. Percentage Rent during Cessation of Operations. Should Tenant at any time during the Term hereof vacate, abandon or desert the Premises or cease the Pier Restaurant Operations, or any appreciable part thereof (except during any time when the Premises may be untenantable by reason of fire, Force Majeure or other casualty, as to which other provisions of this Agreement shall control), in addition to the same constituting an Event of Default, Tenant shall pay Landlord for each month or fraction thereof (fractional months being prorated) during which said business is not so continuously conducted on the Premises or the Pier Restaurant Operations are not conducted, a sum per month, in addition to the Base Rent, as Additional Rent equal to the greater of: (i) the Percentage Rent earned hereunder for the same period during the preceding year; or (ii) the Percentage Rent on Gross Revenues and business transacted by Tenant in that part of the Premises operated by it, if any, and the portion of the Pier Restaurant Operations conducted.

4.4 Proration for Mandatory Closure. In the event of closure due to a natural disaster, such as a tropical storm or hurricane, or other act of nature beyond the reasonable control of Tenant, the Base and Percentage Rent Payment shall be prorated for the period of closure in accordance with the Base Rent per month and Percentage Rent per month provided that any closure is specifically due to the act of nature and through no fault of the Tenant.

4.5. Additional Rent. In addition to Base Rent and Percentage Rent, Tenant shall pay all Expenses of Operation and any other amounts or monetary obligations that Tenant is obligated to pay pursuant to the terms of this Agreement, commencing upon the Effective Date and such obligations shall be treated as Additional Rent.

5. RENOVATION OF PREMISES.

5.1. Tenant Improvements. Tenant shall be responsible for completion of the interior and exterior improvements, inclusive of the purchasing of furnishings to be placed in the Premises, as well as decorative treatments, that are consistent with the renovation and operation proposal and theme submitted by Tenant in response to the ITN, and Tenant shall pay all costs associated with improvements of the Premises and alteration, design, construction and installation of the improvements, including all permits and approvals, inspection fees, fees for architects, engineers and contractors, and the cost of all labor, materials, fixtures and equipment, insurance and letter of credit securing the Tenant's Work or any portion of the Tenant Improvements (collectively, the "Tenant Improvements") and the Initial Capital Investment (hereinafter defined). The Tenant Improvements required to be performed and completed by Tenant, and the estimated cost thereof, are described in Exhibit "B" attached hereto. From and after the Effective Date and attainment of all required governmental approvals, the Tenant shall use good faith efforts, diligently pursue, and exercise due diligence to obtain all necessary permits and approvals required to perform and thereafter expeditiously prosecute to completion the Tenant Improvements, which completion shall be evidenced by the issuance of a Certificate of Completion or Certificate of Occupancy by the City.

5.2. Permitting; Compliance with Governmental Requirements. Tenant shall comply with all planning, zoning and building codes and requirements and all other applicable laws, codes, ordinances, resolutions, rules and regulations in performing and completing the Tenant Improvements, including, without limitation, the Florida Building Code and applicable Fire Codes. Tenant shall obtain and pay for all necessary building permit(s) and approvals required by any Governmental Authority with respect to the Tenant Improvements and Pier Restaurant Operations. Tenant shall be responsible for the fees and costs of all permits and approvals. Any denial of a permit or approval required for the Tenant Improvements by a Governmental Authority shall entitle the Tenant to an extension of the time frame for completion of the Tenant Improvements, provided, Tenant demonstrates to Landlord that such denial of the permit and the extension of the time needed to complete the Tenant Improvements was not occasioned by the acts or omissions of the Tenant and is beyond the reasonable control of the Tenant, and in any event not the failure of the Tenant to comply with all applicable laws, rules and regulations.

5.3. Submission of Conceptual Plan/Site Plan and Architectural Plans. Within seventy-five (75) days of the Effective Date, Tenant shall submit to the City for its review and approval a Conceptual Plan and/or Site Plan indicating the interior and exterior layout and drawings of the proposed Restaurant in the Premises for the purpose of seeking the appropriate government approvals. If additional monies are required to complete the Tenant Improvements over and above the estimated costs set forth in Exhibit "B", Tenant agrees to assume responsibility for and pay for any and all additional costs over and above the amounts set forth in Exhibit "B" to insure that the Tenant Improvements are completed in a timely and satisfactory matter. City agrees to diligently review and process Tenant's development and permit applications submitted to the City in connection with this Lease.

5.4. Security for Tenant Improvements. In order to secure the monies needed to pay for the Tenant's Work and the Tenant Improvements, and any cost overruns or additional costs, Tenant shall pay for and provide to the Landlord, prior to commencement of any Tenant Improvements, a payment and performance bond in accordance with Section 255.05, Fla. Stat., from a U.S. federally insured banking institution in form and content acceptable to the Landlord, securing and in the amount of the total Tenant

Improvements, naming the Landlord as beneficiary thereof. The payment and performance bonds shall be recorded in the public records of Broward County.

5.5. Construction and Completion of Tenant Improvements. Tenant shall diligently pursue a Building Permit for the Tenant Improvements and promptly commence the Tenant Improvements upon receipt of the applicable Building Permit(s), and shall thereafter diligently prosecute to completion all work in a good and workmanlike manner, in accordance with the approved Architectural Plans and/or Design Plans, and Site Plan, and shall install only new materials and equipment in the Premises. Tenant shall substantially complete (as evidenced by a Certificate of Completion or Certificate of Occupancy as applicable) the repair, renovation, improvements and equipping of the Premises (including installation of the Furniture, Fixtures and Equipment (FF&E) and Operating Supplies) no later than six (6) months after the Possession Date, subject to extension for delays due to denial or delay in obtaining the necessary permits to commence construction (not caused by or within the reasonable control of Tenant)Force Majeure, which extensions must be approved in writing, it being understood, however, that funding (or the lack thereof) is not a Force Majeure event. On or before the sixth month after the Possession Date, the Premises shall be fully operational and Tenant shall open the Premises and Restaurant for business. Upon completion of the Tenant Improvements, Tenant shall furnish to Landlord: (i) an affidavit by Tenant stating that Tenant Improvements have been substantially completed in accordance with this Agreement and Architectural Plans and/or Design Plans approved by Landlord, which shall include a detailed breakdown of Tenant's final and total construction costs, together with receipted invoices showing payment thereof; (ii) a final Release from Tenant's general contractor, together with an affidavit from the general contractor that all bills for labor and materials furnished to the Premises have been paid, together with receipted invoices, and which affidavit shall also state the names and addresses of all those in privity with such general contractor and it is understood that any deliberately false statement by Tenant therein shall constitute a default of this Agreement; (iii) an affidavit of the general contractor performing the Tenant Improvements, stating that all work has been substantially completed in accordance with this Agreement, that all subcontractors, sub-subcontractors, laborers and materialmen supplying labor or materials for the Tenant Improvements have been paid in full and that all liens therefore that have been or might be filed have been discharged of record or waived, and that no security interests relating thereto are outstanding; (iv) written certifications and approvals (including Certificate of Occupancy and/or Certificate of Completion, as applicable) with respect to the Tenant Improvements and Tenant's right to use and occupy the Premises as may be required for any government authority; and (v) a copy of final construction plans (sealed as-built) including any amendments, change orders, etc. to be provided to Landlord in digital and hard copy formats.

5.6. Ownership of Improvements and Tenant Improvements. All Tenant Improvements and any other improvements made by or installed by either Landlord or Tenant on the Premises, as the same are performed and incorporated into the Premises, shall become the property of the Landlord and shall be owned by the Landlord and shall remain upon and be surrendered with the Premises upon the expiration or earlier termination of this Agreement, without payment or credit to Tenant. At the expiration or earlier termination of this Agreement, the Furniture, Fixtures and Equipment shall remain with the Premises and become the property of Landlord. The Tenant Improvements and any other improvements made by or installed by either Landlord or Tenant on the Premises, and the FF&E, shall be free and clear of all liens and encumbrances. Landlord may, however, at its option, require Tenant to remove any Tenant Improvements or other improvements and make whatever repairs are necessary to restore the Premises to the condition existing at the Possession Date, with all costs of removal, repair, and restoration to be borne by Tenant. However, Tenant may remove any hanging artwork, decorations, or furnishings, installed by Tenant that are not permanently affixed to the structure provided that they can be removed without material damage to the structure, as well as any personal equipment not affixed to the structure. In the event that Tenant fails to remove any of the equipment or personal property within fifteen (15) calendar days after expiration or earlier termination of this Agreement, Landlord shall conclude that the Tenant has abandoned such personal equipment and personal property.

5.7. Additional Improvements/Alterations. Upon completion of the Tenant Improvements, Tenant shall not make any additional improvements or alterations to the Premises (other than minor or cosmetic alterations that are interior and nonstructural in nature not to exceed $100,000.00), without Landlord's prior written consent (except as to replacements or upgrades made by Tenant in the ordinary course of business to replace or upgrade items affected by normal wear and tear). The Landlord may withhold or delay consent at Landlord's sole discretion, for any alteration or improvement that: (i) will alter or affect any portion of the plumbing, heating, ventilating, air conditioning, mechanical, electrical, or other building systems, installations, and facilities of the Premises or structure, façade, wall, roof, or foundation of the Premises, which consists of the Building, restaurant and observation deck; (ii) will detract from the use or character of the Premises or be visible from the exterior of the Premises; (iii) will require amendment of any certificate of occupancy for the Premises; (iv) will require the consent of any insurer under any of Landlord's or Tenant's policies of insurance covering the Premises; (v) void or otherwise adversely impair any applicable roofing guaranty in effect; or (vi) violate the spirit and intent of this Agreement. All obligations relating to any renovations or Tenant Improvements performed by Tenant either at the commencement of the Term hereof, or any time thereafter, shall be the sole responsibility of, and shall be performed at the sole cost of, Tenant.

5.8. Contractor Insurance. In the event Tenant is permitted to make Improvements requiring a building permit, Tenant shall require any contractor performing work on the Premises to provide, pay for and maintain in force, during the time such work is being performed, the following insurance policies: (i) comprehensive general liability with minimum limits of One Million Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000.00) annual aggregate;(ii) a minimum of One Million Dollars ($1,000,000.00) combined single limit automotive liability; (iii) Workers' Compensation and employer's liability insurance in the amounts specified in Section V. With respect to the insurance to be obtained, Tenant shall provide to Landlord not less than thirty (30) calendar days prior to commencement of the construction of the Improvements at the Premises, certificates of such applicable insurance evidencing the insurance coverage as specified above and expressly including Landlord (including its elected officials, officers, employees and agents) as an additional named insured as its interests may appear. If the initial insurance expires prior to the completion of the improvements, renewal certificates of insurance shall be furnished thirty (30) calendar days prior to the date of their expiration. Insurance shall not be canceled, modified, or restricted, without thirty (30) calendar days' prior written notice to Landlord, and policies must be endorsed to provide the same. Carriers shall meet the insurance ratings specified herein.

6. GUARANTY OF PAYMENT AND PERFORMANCE OF AGREEMENT; SECURITY FOR INITIAL CAPITAL INVESTMENT; IRREVOCABLE STANDBY LETTER OF CREDIT.

6.1. Guaranty of Payment and Performance. Within five (5) business days of execution of this Agreement, Tenant shall deliver to Landlord a duly executed irrevocable standby letter of credit from a U.S. federally insured banking institution acceptable to the Landlord, naming Landlord as beneficiary, and securing six (6) months of the Base Rent for the first Rental Year, and in form, content and amount acceptable to Landlord, but in no event less than the amount of $105,000.00, securing the faithful payment and performance of Tenant's obligations under this Agreement (the "ISLC"). The ISLC shall state that the City may draw on the ISLC if the City Manager certifies that the Tenant is in material default under any provision of this Lease. Upon the one-year anniversary date of this Agreement, and provided the Tenant has not been declared in breach of this Agreement, the ISLC shall be reduced to three (3) months of the Base Rent and shall remain in effect for the duration of the Agreement/lease Term. Tenant may substitute a cash bond, in a form acceptable to the City, in lieu of the required ISLC provided that all other conditions shall apply to such cash bond and shall be documented in the acceptable of such cash bond.

6.2. Initial Capital Investment. Attached and marked as Exhibit "B" attached hereto and incorporated by reference, is Tenant's estimate of the Initial Capital Investment requirements for this Agreement and operation of the Premises and the Pier Restaurant Operations, which includes the costs of Tenant Improvements, Furniture, Fixtures and Equipment, Design Documents, Architectural Plans, Operating Costs and Contingency (the "Initial Capital Investment"). When Tenant performs the renovation, equipping and Tenant Improvements required in Section 5 of this Agreement, the costs thereof shall be automatically added to the definition and amount of the Initial Capital Investment.

6.3 Landlord and Tenant acknowledge and agree that the amount of the irrevocable standby letter of credit is not intended to be nor shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Tenant to the Landlord in the event of a material breach of this Agreement by Tenant. The purpose is to secure the Tenant's obligations under this Agreement. The failure to provide the required irrevocable standby letter of credit to Landlord at least 30 days prior to the expiration of the outstanding irrevocable letter of credit documents shall be considered a breach of this Agreement and entitle the Landlord to demand payment under the ISLC, unless Tenant provides an updated ISLC or an alternative security in the form of a cash bond in the same amount of the ISLC. Demand by the Landlord under the irrevocable letter of credit does not act as a waiver of any other rights or remedies that the Landlord may have.

6.4 In addition to any other rights and remedies of Landlord under this Agreement, in the event that this Agreement is breached, canceled, or terminated by mutual agreement prior to its expiration, the Landlord may apply the ISLC to be held against outstanding Tenant obligations and as an offset against expenses occurred by Landlord until a new Tenant is found and a new lease agreement is executed.

7. PERMITTED USE AND QUALITY OF OPERATIONS.

7.1.1 Permitted Use of Premises. The Tenant shall use, manage and operate the Premises solely as a restaurant, and food and beverage related operations and services, generally consistent with Tenant's response to the ITN, and for no other uses or purposes that are expressly prohibited in this Agreement. Nothing contained herein shall preclude a private dining event in the normal course of restaurant operations within an area of the restaurant to be served by food from the kitchen, provided that the provision of grab-and-go (and takeout) services remain available at all such times. Tenant shall have access to and from the Premises at all times in connection with this Agreement. It is the express intent of the parties to continue restaurant and food service operations at the Premises. At all times during this Agreement, Tenant shall comply with the covenants and restrictions imposed upon the Premises by the City's Code of Ordinances, all applicable local, state and federal laws and regulations, and the restrictions and limitations set forth herein below.

7.1.2. Alcoholic Beverages. Tenant may serve beer, wine and other alcoholic beverages at the Premises, provided that Tenant shall comply with all applicable laws and licensure requirements and consumption of such alcoholic beverages is restricted to the Premises. The Landlord makes no assurances, representations or warranties with regards to the availability of such liquor or alcohol permits or licenses or the ability of Tenant to obtain such, provided, however Landlord shall assist by executing all necessary landlord related documents to obtain such licenses should Tenant wish to apply for any alcoholic license at any time during the Lease Term, as extended. Tenant shall conspicuously place signage indicating that alcoholic beverages shall not be taken out of the Leased Premises and shall strictly enforce this provision. Alcoholic beverages shall not be sold in unopened original bottles or cans, or disposable cups which would promote the transport of such beverages off of the leased Premises, unless such sales are in full compliance with Florida Statute Section 561.20, as may be amended from time to time.

7.1.3. City Uses and Events. Notwithstanding anything contained in this Agreement to the contrary, the City shall have the right to use and hold City-sponsored food-related and other City-sponsored festivals and community events at the Pier or beach (i.e. 4th of July, Ocean Way Holiday Lighting, etc.), and may utilize other vendors or food service providers for such community events. **Sales of prepared foods may be made by other food service providers at community events held at the Pier or beach but said shall not exceed more than two (2) times per month**. No other restaurant or food service providers shall be allowed to operate within the Building.

7.1.4. Catering Services. During the Term, Tenant shall have the exclusive right to provide food, beverage and catering services for special events or private parties at the Premises except for City-sponsored food-related and other community events as set forth in Section 7.1.3. hereinabove.

7.2. Duty to Open and Continuously Operate the Restaurant Café and Pier Restaurant Operations. The Pier Restaurant and all Pier Restaurant Operations shall be fully operational and open to the public, and the grab and go food services operations and concessions shall be available within thirty (30) days of the issuance of a Certificate of Completion and/or Certificate of Occupancy for the Premises by the City, unless Landlord agrees, in writing, to extend such date (however, no such extension shall affect the payment of Rent as provided herein). During the Term of this Agreement, the Restaurant and the Pier Restaurant Operations shall be continuously operated and service the public, with the hours of operation and service as detailed in Section 8 of this Agreement.

7.3. Trade Name of Restaurant Café and Pier Restaurant Operations. Tenant shall operate the restaurant and all Pier Restaurant Operations under the name Deerfield Beach Cafe, LLC d/b/a The Palm House. Should Tenant wish to change the name during the Lease Term, as extended, Tenant shall submit to Landlord for approval by the City the name or trade name of the Restaurant and all Pier Restaurant Operations, including food and catering operations. Throughout the Term, the Tenant shall conduct its business, including the Restaurant and Pier Restaurant Operations, under the name(s) approved pursuant to this Section, and shall not be known, identified or referred to by any other name. Tenant shall file all necessary documentation required to operate under its trade name in accordance with all applicable laws, including but not limited to filing its Article of Incorporation and/or fictitious name registration with the Florida Division of Corporations. Any change to the trade name shall require the prior written approval of the Landlord.

7.4. Specifically Prohibited Uses. Tenant agrees that at no time during the Term hereof shall it use the Premises for any other use than as specifically permitted in this Agreement. For purposes of emphasis, Tenant shall be expressly prohibited from using the Premises for the following: (i) adult arcade, adult bookstore/adult video store, adult booth, adult dancing establishment, adult entertainment establishment, adult motel or adult theater, as such terms are defined in City Ordinances as may be amended from time to time; (ii) live entertainment of any kind, except with the prior written authorization of the City through the City's special event application and approval process; (iii) any use that requires the storing of hazardous substances, materials or both at the Premises in violation of law, (iv) any use of the Premises for residential purposes, (v) any use that is not a permitted use under this Agreement (provided at least 30 days written notice and an opportunity to cure is provided), and (vi) any use prohibited by any applicable law or regulation of any government entity with jurisdiction. In the event the Tenant uses or allows the Premises to be used for uses or activities not expressly permitted herein, or ceases to provide regular and continuous Pier Restaurant Operations and services consistent with the approved uses set forth in this Agreement, Landlord may, in its sole and absolute discretion and in addition to all other remedies available to it, terminate this Agreement and/or restrain the improper use by injunction or similar legal process.

7.5. Parking Facilities. Landlord shall provide two (2) designated parking spaces in the Pier parking lot to the west of the Restaurant for use by restaurant staff and for a delivery/unloading areas. Other than the two designated parking spaces, no other designated parking shall be provided by the Landlord.

7.6. Advertising. Tenant shall not advertise the business of Tenant conducted at the Premises in any manner that violates the City Code of Ordinances or any other applicable law.

7.7. Use of City Seal. Tenant shall not use the City Seal.

7.8. No Sales of Articles. Tenant shall not, except with Landlord's prior written approval, exhibit, sell or offer for sale, in or on the Premises, any item other than items connected with the Restaurant or Pier Restaurant Operations on the Premises, unless designated with the restaurant name, provided that such sales items shall be included in Gross Revenues for purposes of Percentage Rent.

7.9. No Obstructions. Tenant shall use reasonable efforts not to obstruct any sidewalk, passageway, entrance, exit, stairway, lobby, corridor, hall, or other area outside of the Premises or inside or about the Premises. Neither Tenant nor any employee, agent or invitee of Tenant shall enter into areas of the Building reserved for the exclusive use of Landlord, its employees, agents or invitees. During construction of the Tenant Improvements or subsequent alterations or work to the Premises, Tenant, and any contractors performing work on the Premises, shall use all reasonable efforts not to obstruct any sidewalk, passageway, entrance, exit, stairway, lobby, corridor, hall, or other area outside of the Premises or inside or about the Pier and shall minimize disturbance or interference with the City's and public's use and occupancy of the Pier and adjacent public areas. Tenant shall not interfere with access to the Deerfield Beach International Fishing Pier.

7.10. Doors. Tenant shall keep doors and other means of entry to the Premises closed except during operating hours for the restaurant, and shall during non-operating hours, keep the same secure. To the full extent permitted by law, Tenant shall assume liability for all risks and claims arising out of theft, robbery, pilferage, or other crimes committed by or against Tenant, its employees, agents, guests, and invitees in or about the Premises. Tenant shall be responsible for the locking of doors and the closing of transoms and windows in and to the Premises.

7.11. Locks. Tenant shall install new locks on the doors of the Premises as part of the Tenant Improvements. Upon installation of the door locks, Tenant shall provide Landlord with at least two copies of each key for each lock in the Premises. Upon termination of this Agreement or of Tenant's possession, Tenant shall surrender to Landlord all keys to the Premises and shall make known to Landlord the explanation of all combination locks on safes, cabinets and vaults that may be affixed to the Building. Tenant shall make known to Landlord in the event that any keys are lost or stolen.

7.12. Window Treatments. Any blinds, shades, awnings, window ventilators, or other indoor or outdoor window treatments, shall be furnished, installed and maintained at the expense of Tenant. No insulation, plastic, wood, paper, or other sheet materials shall be applied directly to the inside or outside of any glass windows.

7.13. Intentionally Deleted.

7.14 Signs.

a. Tenant shall not affix or attach (or permit the attachment of) any flags, placards, signs, poles, wires, aerials, balloons antennae or fixtures to the outside of the building, without the prior written consent of the City which consent shall not be unreasonably denied, withheld or delayed. Any and all flags, placards, signs, poles, wires, aerials, antennae or fixtures that the City has given permission to attach to the outside of the Premises, must be done so in accordance with all City sign and building codes, and all County and State laws, ordinances, rules and regulations.

b. A west-facing monument will be provided by the City within the landscape area at the intersection of NE 21 Ave and NE 2nd Street, set back approximately 10' from A1A and 15' feet from NE 2nd Street. The Tenant will be provided approximately 15 square feet of sign space on the face of that monument for its name/logo in channel letters. The final location and configuration of the sign shall be in the sole discretion of the City.

c. The conformance of any particular sign proposal with the City's Land Development Code, or the City Commission's discretion on any proposed sign code variance, will be a determining factor. In general, a wall sign and a monument sign are allowed by the Code. Pole signs are not allowed.

7.15 Hood System and Grease Traps. Tenant agrees to utilize and maintain the hood system and all grease traps serving the Premises. Failure of the Tenant to properly maintain the hood system and all grease traps shall be considered a wrongful act of negligence. The grease interceptor is located west of the Restaurant within the first parking space of the adjacent parking lot.

7.16 Drainage. In no event shall Tenant permit any drainage to occur from the east side of the Premises on to the adjacent beach area.

7.17 Garbage.

a. Tenant shall remove from the Premises or otherwise dispose of all garbage, debris and other waste materials (whether solid or liquid) arising out of the use and occupancy of the Premises or out of any operations conducted within or upon the Premises in accordance the highest standards of sanitary practice and at all times in accordance with Applicable Laws. When removing such waste, Tenant shall comply with all Applicable Laws relating to sanitation and waste disposal. Any waste items shall be kept in suitable garbage and waste receptacles, as reasonably approved in writing by Landlord.

b. The Tenant shall be responsible for all solid waste and recycling fees arising from the Premises or out of any operations conducted within or upon the Premises. Additional waste produced by the Tenant, including, but not limited to, spent grease and oil, hazardous and bio-hazardous materials, and any other waste restricted from entering the solid waste and recycling stream, or not in compliance with the use of the Somat Trash System or LEED certification, shall be the sole responsibility of the Tenant.

c. Tenant shall be responsible for daily cleaning of paver patio and walkways surrounding the Premises and regular pressure cleaning of said area on a weekly basis.

7.18 Odor. Tenant shall not create nor permit to be caused or created upon the Premises any obnoxious odors or smoke or noxious gases or vapors which would constitute a nuisance; provided, however, that fumes resulting from normal business operations shall be excepted from this provision, unless same constitutes a legal nuisance or is otherwise prohibited by applicable laws.

7.19 Request for Additional Outdoor Seating. During the Term, the Tenant may submit a request to Landlord and City for additional outdoor seating along the eastern portion of the sidewalk adjacent to the first floor of the Premises. Such request shall be submitted to the City Manager and subject to compliance with all applicable Federal, State and local laws and regulations, including the City's

Code of Ordinances, and shall be subject to approval by the City Commission, which may be withheld or conditioned in the City's sole discretion, via a revocable license agreement that provides for the Tenant to pay for and maintain any furniture within such area and indemnify, defend and hold harmless the City.

8. DAYS/HOURS OF OPERATION AND MENUS.

8.1. Hours of Operation. The Tenant shall be required to operate the Restaurant and Pier Restaurant Operations, including the Observation Deck, and be open for business to the public year-round excluding, however, in the Tenant's sole discretion, Thanksgiving and Christmas when both the Restaurant and Pier Operations, including the Observation Deck, may be closed for a twenty-four (24) hour period. The Restaurant located on the first floor of the Premises shall be open for business at a minimum from the hours of 8:00 am to 10:00 p.m. on weekdays and weekends. Tenant may expand or contract those hours based upon seasonal flow of visitors subject to the local rules and laws relating to the hours of operation of restaurants; provided however Tenant may not operate between the hours of midnight and 6:00 a.m. Any change in hours of operation to permit operation after midnight shall require City Commission approval via Resolution. Hours of operation for any future temporary or permanent concessions that may be established within the Premises (including but not limited to any pop-up operations for holidays) shall be subject to prior written approval by the Landlord, which may be withheld in the Landlord's reasonable discretion. Hours of operation for the Pier Restaurant Operations shall be part of the Operational Plan and periodic updates thereto.

8.2 Observation Deck Food and Beverage Services Hours. The Observation Deck shall be open for food and beverage service from noon to 10:00 p.m. on weekdays and weekends except that the Observation Deck may be closed at the City's request for City sponsored or approved Special Events (ex. July 4th Holiday, Ocean Way Holiday Lighting, Pioneer Days) for public health, safety and welfare purposes in the reasonable discretion of the City, provided that such events shall not exceed more than three per year (unless a greater number is approved by Tenant). Tenant may expand or contract the Observation Deck hours of operation for food and beverage service based upon seasonal flow of visitors subject to the local rules and laws relating to the hours of operation of restaurants; provided however Tenant may not operate the observation deck between the hours of midnight and 6:00 a.m.

8.3 Adjustments to Hours of Operation. Landlord agrees to consider reasonable adjustments to hours of operation. Such requests from Tenant shall be submitted to the City Manager in writing at least ninety days prior to Tenant's proposed implementation. Any adjustments to the Hours of Operation set forth herein shall require the prior written approval of the City Manager or his/her designee prior to implementation.

8.4 Menus. The Tenant's proposed menus and price points for all of Pier Restaurant Operations shall be submitted to the City Manager for approval at least 30 days prior to the commencement of such operations. Approval of the menus and price points shall not be unreasonably withheld, denied or delayed provided that such menu and price points shall be consistent with the Tenant's response to the ITN. Once the menus and price points are approved, subject to normal inflationary increases, any substantial adjustments to the menus and price points shall require the prior written approval of the City Manager or his/her designee, in his or her reasonable discretion, prior to implementation.

9. DELIVERIES.

Deliveries to the Premises shall be limited to hours prior to and after the Tenant's Restaurant is open for business and to the public, and no later than 5:00 p.m. All off-loading deliveries will be at the designated two parking spaces, however, smaller deliveries, or small box truck deliveries, may occur anytime, subject to compliance with applicable law.

10. BUDGET AND RECORDS.

10.1. Intentionally Deleted.

10.2. Accounting Systems and Records. Tenant shall install and maintain suitable accounting systems and records for the Pier Restaurant Operations in accordance with generally accepted accounting principles. Tenant shall keep and maintain, at the Premises or the principal office of the Tenant, which shall be located within Broward or Palm Beach County, the books of account and all other records relating to the Pier Restaurant Operations. All such books and records shall be maintained in accordance with generally accepted accounting principles and shall be available to the Landlord and its authorized representatives at all reasonable times no more than two times per lease year upon at least 48 hours prior written notice for examination, audit, inspection, and copying or transcription. Furthermore, Tenant shall authorize the company's chief financial officer (or the accounting or bookkeeping firm if prepared by such firm) which prepares and reviews such books and records to discuss same with Landlord and provide access to its work papers related thereto. All books of account and records pertaining to the Pier Restaurant Operations shall at all-times be the property of Tenant. Upon the expiration or earlier termination of this Agreement, copies of all books of account and records shall be given to Landlord, but the originals thereof shall nevertheless thereafter be available to Landlord at all reasonable times for inspection, audit, examination, and transcription for a period of three (3) years or the required retention period under then applicable law, whatever is longer.

10.3. Financial Reports for Pier Restaurant Operations. Within 45 days after the end of each Rental Year of the Term and Renewal Terms, Tenant shall deliver to Landlord certified gross sales reports detailing its Gross Revenues for each Lease Year (the "Revenue Statement"). The Statement shall be prepared both in accordance with generally accepted accounting principles and consistent with the form required by the State for the reporting of sales tax. The Statement will be certified by Tenant as a true and correct determination of the Percentage Sum based on the Gross Revenue for the applicable Rental Year. Tenant shall, in addition to providing Landlord with the Statement, deliver true and complete copies of all monthly sales tax reports filed by Tenant with the State.

10.4. Tenant shall maintain required records and prepare and file all forms related to the collection and payment of all real estate, sales and use taxes and make all required payments to the appropriate taxing authorities. Tenant's responsibilities hereunder specifically include the preparation and filing of federal income tax returns.

10.5. Tenant shall institute and maintain all personnel records and payroll systems for employees of Tenant employed as part of the Pier Restaurant Operations.

10.6. All Gross Revenues for the Pier Restaurant Operations shall be deposited into the Pier Restaurant Operating Account.

11. TENANT'S MANAGEMENT TEAM, STAFF AND PERSONNEL.

11.1 Management Team. Tenant has represented to Landlord and agreed that key principals and personnel from Deerfield Beach Café, LLC, acceptable to Landlord shall be directly involved in the oversight of the renovation, operation and management of the Pier Restaurant Operations during the Term, which key personnel shall include Danielle Rosse in a oversight management and supervisory role ("Key Personnel"). Any such change to the Key Personnel proposed to occur prior to completion of the first year of operations of the restaurant café and Pier Restaurant Operations shall require the prior written approval of Landlord, in its sole and absolute discretion.

11.2 Staff and Personnel.

a. Tenant shall ensure restaurant is staffed with sufficient qualified personnel at all times in order to handle the patron demand efficiently.

b. Tenant shall be responsible for the appearance of all working personnel (clean and appropriately dressed at all times). Personnel must wear visible identification or a uniform while working at all times.

c. All employees of the Tenant shall be considered to be at all times the sole employees of the Tenant, under the Tenant's sole direction, and not an employee or agent of the City of Deerfield Beach. The Tenant shall supply competent and physically capable employees that are polite, friendly, honest and courteous, the City may require the Tenant to remove any employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose presence on City property is not in the best interest of the City, provided the City submits written notice of the issue to Tenant.

d. Food handling procedures and personnel must meet standards of cleanliness and neatness which meet the required standards of the health department.

12. INSURANCE.

During the Term of this Agreement, Tenant shall pay for and maintain in effect, at its expense (and any extensions and/or renewals thereof), the insurance policies amounts stipulated in the Landlord's Minimum Insurance requirements attached hereto as Exhibit "D".

Tenant shall furnish to Landlord, Certificates of Insurance and/or endorsements prior to the Occupancy Date. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Lease, and state that such insurance is as required by this Lease. All policies of such insurance and renewals of them (except Workers' Compensation coverage) required to be provided by Tenant shall name Landlord (including its elected officials, officers, employees and agents), as an additional named insured as their interests may appear, and shall provide that the loss, if any, shall be adjusted with and payable to Tenant and Landlord (as their interests may appear), except as otherwise provided in Section 21 of this Lease.

13. COMPLIANCE WITH GOVERNMENTAL AND OTHER REQUIREMENTS.

13.1. <u>No Nuisances, Noise, Music, Odor or Hazardous Substances</u>. Tenant shall not commit any nuisance; nor permit the emission of any objectionable noise or odor, nor burn any trash or refuse within the Premises. At all times, Tenant shall comply with the City's Noise Ordinance in the use and operation of the Premises, including the Observation Deck and the Pier Restaurant Operations. Except as otherwise provided herein or as authorized in a special event permit approved by the City, music on the Premises shall be limited to ambient dining music as is customary and consistent with the quality, amenities and service provided in other comparable first class restaurants.

Tenant shall not bring on, deposit or allow to be brought on or adjacent to the Premises, any Hazardous Substances or other noxious materials or substances, as the same may be defined by federal, state or local laws, codes, ordinances, rules, or regulations ("Environmental Laws"); nor make any use of the Premises, or any part thereof, or allow any equipment therein, which is offensive, a nuisance or contrary to applicable law.

13.2. <u>Compliance with Laws</u>. Tenant shall comply with all applicable federal, State, County, and City statutes, laws, ordinances, resolutions, and governmental rules, regulations and orders as may be in effect now or at any time during the Term (collectively "Applicable Laws"), all as may be amended, which are applicable to Tenant, the Premises, the Tenant Improvements or the Pier Restaurant Operations conducted at the Premises. A violation of any such Applicable Laws, not cured within any applicable notice and cure period, shall constitute a material breach of this Lease, and in such event, Landlord shall be entitled to exercise any and all rights and remedies provided in this

Lease and available at law and in equity. Tenant shall provide for background checks as set forth in Section III, paragraph 18 of the ITN and Section 38-140 of the City Code of Ordinances.

13.3. Notice of Laws and Compliance. Tenant agrees to give Landlord notice of any law, ordinance, rule, regulation, requirement, inquiry or audit which is enacted, passed, promulgated, made, issued or adopted by any governmental authority with jurisdiction during the Term that affects the Premises, the Pier Restaurant Operations, or Tenant's use or operation thereof, received by Tenant, or a copy of which is posted on, or fastened or attached to the Premises or otherwise brought to the attention of Tenant, by transmitting within five (5) days after such service, receipt, posting, fastening or attaching or after the same otherwise comes to the attention of Tenant, a copy of each and every one thereof to Landlord. At the same time, Tenant shall inform Landlord as to the steps that Tenant proposes to do or take in order to comply therewith or respond thereto. Notwithstanding the foregoing, however, if such work or step would require any alterations to the Premises, and if Tenant does not desire to contest the same, Tenant shall, if Landlord so requests, defer compliance therewith in order that Landlord may, if Landlord wishes, contest or seek modification of or other relief with respect to such requirements, but nothing herein shall relieve Tenant of the duty and obligation, at Tenant's expense, to comply with such requirements, or such requirements as modified whenever Landlord shall so direct and approve. Notwithstanding the foregoing, Tenant shall furnish the City a copy of each Health Department inspection within two (2) business days of Tenant's receipt.

14. RELATIONSHIP OF PARTIES.

Nothing herein contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between Landlord and Tenant, it being expressly understood and agreed that neither the payment of Rent nor any other provisions contained in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant. Notwithstanding the fact that the City is the Landlord under this Agreement and that there exists a Landlord/Tenant relationship between Landlord and Tenant, Tenant acknowledges and agrees that this Agreement does not grant Tenant any rights or create any exceptions to its obligation to comply with and meet the requirements of the City's Charter and Ordinances, resolutions and codes, and that the Landlord/Tenant relationship shall have no effect upon the jurisdiction and governing rights of the City over the Premises and Tenant shall be required to fulfill and comply with all applicable laws, rules and regulations, ordinances and resolutions of the City as though no such landlord/tenant relationship existed, including, without limitation, all police powers and requirements of the City's Building and Planning Department or other pertinent City agencies.

15. LICENSES, FEES AND TAXES

15.1. Payment of Taxes, Assessments, Fees and Charges. Tenant shall be responsible for and shall timely pay before their respective due dates, to the appropriate collecting authorities, all federal, State, County, and City taxes, licenses, permits, assessments, and fees, which are now or may subsequently be levied upon or apportioned to the Premises or the leasehold estate granted by this Agreement (or any occupancy interest), or upon Tenant, or upon any of Tenant's property used in connection with this Agreement, or upon any rentals or other sums payable under this Agreement, including, but not limited to any applicable ad valorem, sales or excise taxes, and shall maintain in current status all federal, State, County and City licenses and permits, now or subsequently required for the operation of the business conducted by Tenant including, but not limited to, business tax receipts and occupational licenses.

15.2 Landlord to Request Estimate. Promptly after the Effective Date, Landlord agrees to submit a copy of this Agreement to the Broward County Property Appraiser and to request a statement of the appraised value of the taxable real and personal property subject to this Agreement. Landlord and/or the Broward County Property Appraiser will determine the amount of the estimated taxes to be paid by Tenant during the first year of the Term and Tenant shall pay the estimated taxes as determined by Landlord and/or the Broward County Property Appraiser. Tenant shall pay the estimated taxes, which will be prorated over the number of months of the Term that occur during the first calendar year.

16. OPERATION, UTILITIES, MAINTENANCE AND REPAIR EXPENSES.

16.1. Maintenance and Repair of Premises. Tenant, at its sole cost and expense, from and after the Possession Date and throughout the Term (and any Renewal Terms thereof), shall assume the entire responsibility and shall relieve Landlord from all responsibility for all repair, maintenance, replacements (except as provided below with respect to equipment) and capital improvements to the Premises and the Restaurant generally, with the exception of the roof, and structural repairs to the Building (not necessitated by the negligence or default of Tenant).

Tenant shall perform all maintenance, repairs, replacements and capital improvements in a good and workmanlike manner in accordance with all Applicable Laws. All materials utilized in any repairs or replacements shall be of a quality and grade comparable or superior to that in existence in the Premises as of the Occupancy Date. Except as otherwise set forth in this Lease, Tenant shall be required to keep the Premises in good, tenantable, useable condition throughout the Term (subject to casualty, condemnation and the other provisions of this Lease with regard to development and the redevelopment of the Premises), and without limiting the generality of the foregoing, Tenant shall:

a. Keep and maintain the Premises at all times in a clean and orderly condition and appearance.

b. Provide and maintain all lights and similar devices, HVAC system, elevator, ceiling (except repairing leaks not caused by Tenant, or its agents, contractors and employees), fire protection and safety equipment and all other equipment of every kind and nature required by Applicable Laws in good working order and condition.

c. Be responsible for the maintenance and repair of all utilities servicing the Premises including but not limited to, service lines for the supply of water, gas service lines, electrical power and telephone conduits and lines, sanitary sewers and storm sewers which are now or which may be subsequently located upon any portion of the Premises which are controlled by Tenant.

d. Provide adequate security measures for the Premises and all portions of them as would be reasonable for the purposes of protecting persons and property. This is not to be construed as requiring dedicated security personnel.

e. Be responsible for the cleaning and refuse disposal for refuse generated by the operation of the Tenant on the Premises as necessary to keep the appearance of the entire facility in good order and condition. Such cleaning and refuse disposal shall be performed on a daily basis.

f. During the Term, subject to the provisions of this Lease, structural repairs or replacements to the Premises, shall be undertaken by Landlord, unless such repairs or replacement are required due to the wrongful acts, or omissions of Tenant, its employees, agents, contractors, invitees or guests. Tenant shall not cause or permit any penetrations into the roof membrane or otherwise perform any alteration on or about the roof that may void or limit Landlord's roofing warranty. To the extent any roofing penetration is necessary, Tenant shall if required by Landlord, hire Landlord's designated roofing contractor to perform or supervise such roof penetration work so as to prevent any voiding or impairment of Landlord's roofing warranty. Should Landlord be required to make any repairs to which it is obligated, Tenant shall cooperate with Landlord in providing access and adjust its operating schedule and operations to permit such repairs; if major repairs are required, not as a result of wrongful actions or omissions by the Tenant, which require the restaurant to be closed, rent shall be abated during the time needed for repairs as its sole and exclusive remedy.

16.1.1. <u>HVAC System; Maintenance and Repair</u>. Landlord represents that there is an HVAC system serving the Premises, but makes no representation as to its operating condition. Tenant shall be responsible for all repairs and maintenance to the HVAC system, at Tenant's sole cost and expense, and replacement of the HVAC System during the Term. Tenant shall maintain, at Tenant's expense, an HVAC service contract with a vendor acceptable to Landlord for periodic servicing of the HVAC. Any replacement of the HVAC will require that the units be at a minimum of 14 SEERS, be connected to an energy saving meter, and be consistent with the LEED certification requirements.

16.2 <u>Pest Control</u>. Tenant shall be responsible for providing regular monthly extermination of insects and rodents in the Premises, at Tenant's expense. Tenant's pest control activities must be sufficient to keep the Premises free from insect and rodent infestation, to Landlord's reasonable satisfaction.

16.3 Janitorial Services.

a. Tenant shall be responsible for the leased area's janitorial services and trash and garbage removal. It is encouraged that the Tenant implement a recycling plan to reducethe amount of materials entering the City's solid waste stream. The Tenant shall also be mindful of the litter produced by its customers around the immediate area of the leased area and assist the Landlord to the greatest extent possible in cleaning-up suchlitter.

b. Tenant shall comply with all applicable safety and health laws, codes, and regulations,including OSHA regulations, and shall maintain the Premises in accordance with such laws, codes, and regulations. All hazardous materials including spent grease and cooking oil shall be kept out of public sight at all times. Any incident relating to hazardous materials shall be reported to the Landlord immediately.

c. All Maintenance required to be performed by Tenant under this Lease shall be at the sole expense of the Tenant. The Premises will be subject to general inspection by the Landlord to insure quality of maintenance, appearance, and physical condition.

d. In the event that the leased area is not kept to the required minimum standards, , the Landlord may take such action as deemed appropriate by the Landlord and allowable by the Lease up to and including termination of the Lease (provided that for termination at least 10 days prior written notice to Tenant and the right to cure is provided). The Tenant shall be liable for any remedial expenses incurred by Landlord.

16.4 **LEED Certification / Green Building Maintenance.** The Pier Restaurant Building is designed and constructed in line with the sustainable development goals in achieving the LEED Certification. The following Green Practices are required to be employed by the Tenant:

- Use green, non-toxic products for restrooms cleaning.
- Use green, non-toxic products for pest control.
- Any other green environmentally conscious efforts committed to by the Tenant in their Proposal

16.5 Utilities. From and after the Possession Date, Tenant shall pay when due all water, wastewater, electric, telephone, solid waste, recycling, cable, and all other utility and other costs of anyand all types whatsoever, which are now or hereafter charged or assessed with respect to operations at the Premises. Tenant shall pay all fees or charges relative to the foregoing promptly prior to delinquency. Landlord represents and warrants that the aforesaid utilities that will be provided to the Premises are or will be separately metered and will not include any such utilities consumed on any other portion of the Pier.

16.5.1 Water Meter. If a separate water meter is necessary, Tenant shall pay for the cost of the installation of separate water meter to service the Premises, and shall be responsible for the payment of all water consumption and bills for the Premises.

16.5.2. Electrical Capacity. Tenant will be responsible for ascertaining that the electrical capacity is sufficient to operate the Premises without any adverse impact to the portions of the Building used by Landlord. Tenant shall not install in the Premises any equipment which requires a substantial amount of electrical current beyond normal restaurant operations without Landlord's approval. If necessary, Tenant shall pay for the cost of the installation of a separate electric meter(s) to service the Premises, and shall be responsible for the payment of all electrical service and bills for the Premises.

16.5.3. Propane Tanks. Tenant, at its sole cost and expense, shall install all propane gas tanks required by Tenant for gas service to the Premises. The gas tanks shall be installed above ground or underground in a location to be approved by Landlord.

16.5.4 Telephone Lines. If Tenant desires to obtain, at Tenant's expense, telephone, internet, satellite, cable, burglar alarm or signal service in the Premises, Landlord shall direct where and how the connections and all wiring for such services shall be introduced and run. No boring, cutting or installation of wires or cables shall be permitted without Landlord's approval. Tenant shall be responsible for maintaining any existing telephone lines serving the Premises and for installing any additional telephone lines if desired by Tenant. Any such additional lines shall be installed in areas designated by the Landlord. Tenant hereby agrees to indemnify and hold Landlord harmless from any liability or damage to any other telephone lines or Building systems resulting from Tenant's installation or maintenance of its telephone lines.

16.5.5 Connection, Distribution and Maintenance. Tenant shall be responsible for the connection, distribution, maintenance, and repair of all utilities within the Premises, including, without limitation, water, electrical, telephone, internet, satellite, and cable service.

16.5.6 Utility Payments. Commencing on the Possession Date and at all times during the Term thereafter, Tenant shall pay when due all water, wastewater, electric, telephone, solid waste, recycling, cable, and all other utility and other costs of any and all types whatsoever, which are now or hereafter charged or assessed with respect to operations at the Premises. Tenant shall pay all fees or charges relative to the foregoing promptly prior to delinquency. Landlord represents and warrants that the aforesaid utilities that will be provided to the Premises are or will be separately metered and will not include any such utilities consumed on any other portion of the Pier that is not part of the Premises or otherwise occupied by Tenant. If Tenant fails to pay any utility charges on a timely basis, Landlord shall have the right, but not the obligation, to pay same, and all sums advanced by Landlord on Tenant's behalf shall be deemed Additional Rent and become immediately due and payable by Tenant, with interest at the maximum legal rate.

16.5.7 Interruption of Utility Service. Landlord does not warrant that any utility services to the Premises shall be free from interruptions caused by war, acts of terrorism, insurrection, civil commotion, riots, acts of God, enemy or government action, repairs, renewals, strikes, lockouts, picketing (whether legal or illegal), accidents, or any other causes beyond the reasonable control of Landlord. Under no circumstances shall any interruption of utility services be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, or render Landlord liable to Tenant for damages, or relieve Tenant from performance of Tenant's obligations under this Agreement, unless the interruption is caused by Landlord's negligence or intentional acts.

16.6 Licenses and Permits; Standard for Operation of Premises and Pier Restaurant Operations. It will be the responsibility of the Tenant, at Tenant's sole cost and expense, to secure and renew all necessary licenses and certificates and to keep and maintain the Premises (including without limitation the Furniture, Fixture and Equipment) throughout the Term of this Agreement and Renewal Terms, in good order, repair and condition including, without limitation, performing maintenance, and making necessary repairs, replacements, improvements, and substitutions so that (i) the Premises will be operated in compliance with the applicable provisions of the Agreement and (ii) throughout the Term of this Agreement and Renewal Terms, the restaurant café and Pier Restaurant Operations will be managed, operated and performed by Tenant, and maintained and repaired, in a first class manner consistent with the quality, amenities and service provided in other comparable first class restaurants and facilities in Broward County and Deerfield Beach .

16.7 Tenant's Failure to Maintain. If Tenant fails to maintain or repair the Premises, the HVAC System, the grease trap or the septic tank, as required by this Agreement, upon 20 days prior written notice to Tenant (except for conditions that affect the structural integrity of the Building or the public health, safety and welfare, which shall only require written notice to the Tenant that includes a reasonable period of time to respond under the circumstances as to whether Tenant shall cure, which time shall not exceed 24 hours), Landlord shall have the right, but not the obligation, to undertake all maintenance and repairs that may be required, and to charge Tenant for all costs of such maintenance and repair. Any repair or maintenance costs incurred by Landlord shall be deemed Additional Rent and if not paid by Tenant within five (5) business days after demand shall bear interest at the highest rate permitted by law. In addition, failure of Tenant to maintain shall allow Landlord the right to termination this Agreement.

16.8 Emergency Events and Wind Events. Tenant shall be responsible for securing all property owned by the Tenant to include furniture to avoid such property becoming damaged or becoming a projectile that would cause or potentially cause harm to both property and life. Further, Tenant shall be responsible for taking precautions on and about the lease Premises as would be reasonable under the circumstances in order to protect the leased Premises from the effects of the hurricane or other storm or wind event. The Tenant shall comply with all federal, state, or local evacuation notices, and pier closings. The Tenant and Landlord shall work in cooperation to ensure a safe and expedient proactive response to emergency events, both natural and man-made.

17. MECHANICS' LIENS.

Tenant represents, warrants, and covenants to Landlord that the Premises shall be at all times kept free and clear of all liens, claims and encumbrances created by or through Tenant (other than those created or consented to by Landlord). If any claim of lien or notice of lien shall be filed against the Premises created by or through Tenant, Tenant shall promptly cause the same to be discharged of record by payment, deposit, transfer bond, or order of a court of competent jurisdiction, but in no event more than fifteen (15) calendar days after notice of any such filing. Tenant shall not be deemed to be Landlord's agent so as to confer upon any contractor or subcontractor providing labor or services to the Premises (whether in connection with Tenant's Improvements or otherwise) a construction lien, mechanic's lien or both against Landlord's estate under the provisions of Chapters 255 and 713, Florida Statutes, as amended from time to time. The foregoing shall be contained in a notice or memorandum disclaiming such liability on the part of Landlord and shall be recorded in the Public Records of Broward County in accordance with Chapters 255 and 713, Florida Statutes.

Tenant further agrees to indemnify and hold harmless Landlord against all expenses, costs and charges, including bond premiums for release of liens and attorneys' fees and costs reasonably incurred in and about the defense of any suit in discharging the Premises or any part thereof from any liens, judgments, or encumbrances caused or suffered by Tenant. It is understood and agreed between the parties hereto that the expenses, costs and charges above referred to shall be considered as Additional Rent due from Tenant to Landlord and shall be included in any lien for Rent.

The Tenant shall not have any authority to create any liens for labor or material on the Landlord's interest in the Premises and all persons contracting with the Tenant for the construction or removal of any facilities or other improvements on or about the Premises, and all material men, contractors, subcontractors, mechanics, suppliers and laborers are hereby charged with notice that they must look only to the Tenant and to the Tenant's interests in the Premises to secure the payment of any work done, material furnished or equipment installed at the request or instruction of Tenant regardless of whether Landlord has approved or consented to such work or improvements. Tenant hereby agrees to notify such persons or entities in writing of the provisions hereof prior to the commencement of any such work or improvements.

18. LOSS; DAMAGE.

Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, gas, electricity, water, rain or leaks or from the pipes, appliances or plumbing works or from the roof, street or sub-surface or from any other place or by radon, mold, dampness, humidity or by any other cause or nature whatsoever, nor shall Landlord or its agents be liable for any such damage caused by other tenants or persons in or on or adjacent to the Premises, or caused by construction of any private, public or quasi-public work; nor shall Landlord be liable for any latent defect in the Premises. Tenant shall give immediate notice to Landlord in case of fire or accidents occurring in the Premises or of defects therein or in any fixtures or equipment located therein. Landlord shall not be responsible or liable for the theft, loss or damage to person or property in, on or about the Premises. The above limitation shall not apply to any negligent or willful act by Landlord.

19. ASSIGNMENT AND SUBLETTING.

Tenant shall not, directly or indirectly, sell, convey, transfer, or assign, or mortgage, sublease, pledge or otherwise encumber or dispose of all or any portion of its interest in this Agreement. The Landlord shall have a right to approve or disallow any proposed sale of more than 50% of the assets of Tenant or the entity that constitutes the Tenant, or the entity that owns or is the managing member of the Tenant (or more than 50% of the beneficial interests thereof), and may specifically disapprove such sale if the new Tenant cannot demonstrate that the purchaser meets the qualifications in the ITN to the same extent as Tenant. In the event Purchaser meets the qualifications set forth in the ITN and is approved by the Landlord and agrees to be subject to all the terms and conditions of this Agreement (including but not limited to providing the Letter of Credit to the Landlord) via execution of an assignment agreement in a form approved by the Landlord's attorney, Tenant shall be released from all further liability under the Lease and Landlord shall release any collateral then being held to secure the Tenant's performance under the Lease upon Landlord's consent to the assignment.

Tenant shall not sublet the Premises, or any portion thereof, or grant licenses or concessions in connection with Premises. All such attempts being null and void and shall subject the Agreement to cancellation and termination by Landlord.

20. INDEMNIFICATION OF LANDLORD.

20.1. Indemnification by Tenant.

a. Tenant shall indemnify, defend, and hold harmless Landlord (including its elected officials, officers, employees and agents) from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of architects, attorneys, and other professionals, and all court or other dispute resolution costs), liabilities, expenditures, or causes of action of any kind (including negligent, reckless, or willful or intentional acts or omissions of Tenant, any Subtenant, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any work or anyone for whose acts any of them may be liable), arising from, relative to, or caused in connection with this Lease except, and only to the extent, if such claim is directly caused by Landlord's negligence or misconduct (subject to Landlord's applicable sovereign immunity). This indemnity includes, but is not limited to, claims attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible property, including the Improvements, and including the loss of use resulting from them. Payment of any amount due pursuant to this Section shall, after receipt of Notice by Tenant from Landlord that such amount is due, be paid by Tenant if Landlord becomes legally obligated to pay same, or Tenant agrees that it is responsible for such claim, or in the alternative, Landlord, at Landlord's option, may make payment of an amount so due and Tenant shall promptly reimburse Landlord for same. Where the basis for a claim for damages brought against Landlord by a third party is that Landlord has breached a contract or other duty to the third party, and the action or inaction which constitutes the breach was a result of the negligent or wrongful act or omission of Tenant, then Tenant agrees, at Tenant's expense, after written notice from Landlord to defend any action against Landlord that falls within the scope of this Section, or Landlord, at Landlord's option, may elect instead to secure its own attorney to defend any such action. If the claimant prevails in a lawsuit on the basis that the breach was a result of the negligent or wrongful act or omission of Tenant, then the reasonable costs and expenses of Landlord incurred in defending such action shall be payable by Tenant. If either Landlord or Tenant is required to incur attorney fees or costs to enforce this Section, the prevailing party in any litigation shall recover all of its attorney fees and costs at both trial and appellate levels.

b. Tenant agrees to also indemnify, defend, save and hold harmless Landlord (including its elected officials, officers, employees and agents), from all damages, liabilities, losses, claims, fines and fees and from any and all suits and actions of every type and description that may be brought against Landlord, its officers, agents and employees on account of any claims, fees, royalties, or costs for any infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.

20.2 <u>Indemnification by Tenant's Contractors</u>. Tenant shall require any contractor performing any work in connection with the Tenant Improvements, or any other improvements proposed by Tenant, to indemnify and hold harmless the Landlord, its elected officials, officers, employees and agents, from and against any and all loss, damage, cost or expense, including but not limited to, attorney fees and court costs through all trial and appellate levels with respect to personal injury, property damage or both caused by such contractor, its subcontractors, agents or employees in connection with performing such work.

20.3. <u>Limitation of Landlord Liability</u>. Landlord shall not be liable to Tenant for any damages, losses or injuries to the employees, agents, contractors, invitees, guests or patrons of Tenant or property of Tenant which may be caused by the acts, omissions, neglect or fault of Tenant or any persons or entities. All personal property placed or moved into the Premises, including the Furniture, Fixtures and Equipment, shall be at the sole risk of Tenant or the owner thereof, and Landlord shall not be liable to Tenant for any damage to said personal property. Tenant agrees to waive any rights of subrogation against Landlord for any such injury or damage to persons or property.

20.4. Landlord Party to Litigation. In the event that Landlord shall be made a party to any litigation commenced against Tenant or otherwise solely by reason of its Landlord status and not as a result of the Landlord's negligent acts or willful misconduct, then Tenant shall defend, protect and hold Landlord harmless (with counsel reasonably acceptable to Landlord) and shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by Landlord in connection with such litigation and any appeal thereof.

20.5. Indemnification; Breach of Environmental Laws. In the event any such claim, cost or damage results from the breach, violation or alleged violation of any Environmental Laws, the foregoing indemnification and hold harmless agreement shall include, without limitation, indemnification against all costs in law or in equity of removal, response, investigation, or remediation of any kind, and disposal of such Hazardous Substances as necessary to comply with Environmental Laws, all costs associated with any corrective action work, all costs associated with claims for damages to persons, property, or natural resources, any loss from diminution in the value of the Landlord's interest in the Premises, and Landlord's reasonable attorneys' fees and consultants' fees, court costs, and expenses incurred in connection therewith. This shall exclude any pre-existing conditions identified or known to Landlord as of the Possession Date of this Agreement.

20.6. No Waiver of Sovereign Immunity. Landlord is a political subdivision as defined in Section 768.28, Florida Statutes. Nothing in this Agreement shall be deemed or treated as a waiver by the Landlord or the City of any immunity to which it is entitled by law, including but not limited to the City's sovereign immunity as set forth in Section 768.28, Florida Statutes.

20.7. Survival of Provisions. The provisions of this Section 20 shall survive the expiration or termination of this Agreement.

21. DAMAGE TO OR DESTRUCTION OF PREMISES.

21.1. Notice Requirement. Tenant shall give immediate written notice to Landlord in case of any fire, casualty or other damage to the Premises ("Casualty").

21.2 Removal of Debris/Repair to Ensure Safety. If the Improvements located on the Premises or any part of them shall be damaged by fire, the elements, or other casualty, Tenant shall promptly remove, or cause to be promptly removed, all debris resulting from such damage from the Premises. Tenant shall promptly take such actions and cause such repairs to be made to the Premises as will ensure the safety of persons entering upon the Premises. To the extent, if any, that the removal of debris under such circumstances is covered by Tenant's insurance, the proceeds shall be paid to Tenant for such purpose.

21.3 Minor Damage. If Improvements located on the Premises or any part of them shall be damaged by fire, the elements, or other casualty but not rendered wholly untenantable or unusable, Rent shall continue unabated; provided however that in the event either the Observation Deck or the first floor Restaurant location is rendered wholly unusable or untenantable (but not both), Rent shall be abated as to that portion of the Premises that are untenantable or unusable for such period as it remains untenable or unusable, and the Rent payment due, and the natural breakpoint for Percentage Rent, shall be prorated based on the square footage of the portion of the Premises that is not untenable of unusable. Except as otherwise provided in Section 21.4 below, the Premises shall be repaired and restored promptly to the condition they were in prior to such casualty by Landlord and by Tenant and to the extent that such damage is covered by Landlord's and Tenant's insurance, the proceeds shall be made available for that purpose.

21.4 Damage to or Destruction of Premises. If the Premises, or any part thereof shall be destroyed or so damaged by fire, the elements, or other casualty as to render either or both untenantable or unusable, nothing in this Lease shall be deemed or construed to require or obligate Landlord to repair, rebuild, replace or restore either or both or any portion of the Premises. If Landlord elects to repair, rebuild, restore or reconstruct the Premises, it shall only be obligated to do so to the extent of the insurance proceeds available therefore. In the event of damage to the Premises which renders more than 30% of the Premises untenantable or unusable, and Landlord elects not to repair, rebuild, replace or restore the Premises pursuant to a written notice to Tenant, which Landlord shall give no later than thirty (30) days after such casualty, then the Lease shall be terminated effective as of the date of such casualty, unless otherwise agree to by the parties in writing. Provided the casualty resulting in the damage or destruction was not caused by the negligence or wrongful act or omission of Tenant, all insurance proceeds payable to Tenant under its policies shall be retained by Tenant without any obligation to pay any portion thereof to Landlord. Upon termination, Tenant shall surrender the Premises and all fixtures (including but not limited the equipment provided by City on the Occupancy Date) to Landlord immediately and the parties will have no further obligations to each other hereunder, except as otherwise provided to the contrary in this Lease.

22. CONDEMNATION.

In the event that the Premises or any material part thereof is taken for any public or quasi-public use by condemnation or by right of eminent domain, or purchase in avoidance or settlement of a condemnation or eminent domain proceeding, by a governmental agency (excluding the City), Landlord and Tenant agree that this Agreement shall be cancelled, and Rent shall abate as of the date of taking.

23. DEFAULT.

23.1. One or more of the following events shall constitute an event of default under this Agreement:

- **a.** Tenant voluntarily abandons the Premises or discontinues its operations on the Premises for a period of five (5) consecutive calendar days in a twelve-month calendar year, other than as a result of casualty, condemnation, major renovation, or one or more acts of Force Majeure; or
- **b.** Any lien, claim or other encumbrance which is filed against Landlord's fee simple title tothe Premises (other than that created by or through Landlord) is not removed, or transferred to bond pursuant to Florida law, within thirty (30) calendar days after Tenantor Landlord, or both have received notice of such lien, claim or encumbrance; or
- **c.** Tenant fails to pay any item constituting Rent when due to Landlord and Tenant continues in its failure to make any such payments for a period of ten (10) calendar days after Notice is given to make such payments; provided however, Landlord shall not be required to provide Notice of non-payment of Rent on more than one (1) occasion in any twelve (12) month period; or
- **d.** Tenant fails to make any other payment required under this Lease when due to Landlord and continues in its failure to make any such other payments required under this Lease for a period of fifteen (15) calendar days after Notice is given to make such payments; or
- **e.** Tenant fails to keep, perform and observe each and every non-monetary promise, covenant and term set forth in this Lease on its part to be kept, including without limitation all rules and regulations in effect from time to time in accordance with the terms of this Lease, performed or observed within thirty (30) calendar days after Noticeof default (except where fulfillment of its obligation requires activity over a greater periodof time and Tenant has commenced to perform whatever may be required for fulfillment within thirty (30) calendar days after Notice and continues such performance without material interruption); provided, however, the foregoing shall not apply if Tenant's failure to perform is due directly to the wrongful acts or omissions of Landlord; or
- **f.** Tenant makes an assignment for the benefit of creditors; or
- **g.** Tenant files a voluntary petition under Title 11 of the United States Code (the "Bankruptcy Code") or if such petition is filed against Tenant and an order for relief is entered and not dismissed within sixty (60) days or if Tenant files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition,readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or anyother present or future applicable federal, state or other statute or law; or
- **h.** If, within sixty (60) days after the appointment of any trustee, receiver, custodian, assignee, sequestrator or liquidator of Tenant, or of all of any of the Premises or any interest of Tenant in the Premises, such appointment is not vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment if not vacated.

i. Tenant submits a Statement which is materially false and misleading (i.e., a misstatement of Gross Sales by more than three percent (3%) as determined by the CPA).

23.1.1 Habitual Default. Notwithstanding the foregoing, in the event that Tenant has committed a monetary breach or default three (3) or more times in a twelve (12) month period, and regardless of whether Tenant has cured each individual monetary breach or default, Tenant may be determined by Landlord to be an "habitual violator." At the time that such determination is made, Landlord shall issue to Tenant a written notice advising of such determination and citing the circumstances therefor. Such notice shall also advise Tenant that there shall be no further notice or grace periods to correct any subsequent monetary breaches or defaults for the balance of such twelve (12) month period and that any subsequent breaches or defaults for the balance of such twelve (12) month period, shall constitute a condition of non-curable default and grounds for immediate termination of this Lease which termination shall be effective upon delivery of the Notice to Tenant.

23.2 Remedies. Upon the occurrence of any event of default set forth in Section 23.1 above, or at any time thereafter during the continuance of such event, Landlord may exercise any of the following rights and remedies:

e. Landlord may, pursuant to written notice to Tenant, terminate this Lease and, pursuant to appropriate legal proceedings, re-enter, retake and resume possession of the Premises for Landlord's own account and, for Tenant's breach of and default under this Lease, recover immediately from Tenant any and all rents and other sums and damages due or in existence at the time of such termination, including without limitation, (i) all Base Rent and Additional Rent; (ii) all other sums, charges, payments, costs and expenses agreed, and required or both to be paid by Tenant to Landlord under this Lease; (iii) all costs and expenses of Landlord in connection with the recovery of possession of the Premises, including reasonable attorney fees and court costs; (iv) all free rent credits and rental abatements, if any, granted to Tenant as concessions in connection with this Lease; and (v) all costs and expenses of Landlord in connection with any reletting or attempted reletting of the Premises or any part or parts of them including without limitation, brokerage fees, attorney fees and the cost of any alterations or repairs which may be reasonably required to so relet the Premises, or any part or parts of them; or

f. Landlord may, pursuant to any prior notice required by law or this Lease, and without terminating this Lease, pursuant to appropriate legal proceedings, re-enter, retake and resume possession of the Premises for the account of Tenant, make such alterations of and repairs to the Premises as may be reasonably necessary in order to relet the same or any part or parts of them and relet or attempt to relet the Premises or any part or parts of them for such Term or terms (which may be for a term or terms extending beyond the Initial Term), at such rents and upon such other terms and provisions as Landlord, in its sole, but reasonable, discretion, may deem advisable. If Landlord relets or attempts to relet the Premises, Landlord shall be the sole judge as to the terms and provisions of any new lease or sublease and of whether or not a particular proposed new tenant or subtenant is acceptable to Landlord. Upon any reletting, all rents, whether Base Rent or Additional Rent received by Landlord from such reletting shall be applied:

(a) first to the payment of all costs and expenses of recovering possession of the Premises; (b) second, to the payment of any costs and expenses of such reletting, including brokerage fees, attorney fees and the cost of any alterations, restorations and repairs reasonably required for such reletting; (c) third, to the payment of any indebtedness, other than Rent, due under this Lease from Tenant to Landlord; (d) fourth,to the repayment of Landlord of all free rent credits and rental abatements, if any, granted to Tenant as concessions in connection with this Lease; (e) fifth, to the payment of all Rents due and unpaid under this Lease; (f) sixth, the residue, if any, shall be held by Landlord and applied to payment of future Rent when the same may become due and payable under this Lease. If the rents received from such reletting during any period shall be less than that required to be paid during that period by Tenant under this Lease,Tenant shall pay any such deficiency to Landlord within ten (10) days after demand therefor and, upon Tenant's failure to do so, Landlord shall immediately be entitled to institute legal proceedings for the recovery and collection of the same. Such deficiency maybe calculated and paid at the time each or any payment of Rent shall otherwise become due under this Lease, or, at the option of Landlord, at any times during or at the end of the Term. Landlord shall, in addition, be immediately entitled to sue for and otherwise recover from Tenant any other damages occasioned by or resulting from any abandonment of the Premises or other breach of or default under this Lease other than a default in the payment of Rent. No such re-entry, retaking or resumption of possession of the Premises by Landlord for the account of Tenant shall be construed as an election on the part of Landlord to terminate this Lease unless a written notice of such intention shall be given to Tenant. Notwithstanding any such re-entry and reletting or attempted reletting of the Premises or any part or parts of them for the account of Tenant without termination, Landlord may, at any time thereafter upon written notice to Tenant, elect toterminate this Lease or pursue any other remedy available to Landlord for Tenant's previous breach of or default under this Lease; and Landlord may, without re-entering, retaking or resuming possession of the Premises, sue for all rents, including Base Rent and Additional Rent, and all other sums, charges, payments, costs and expenses due from Tenant to Landlord under this Lease, either: (i) as they become due under this Lease; or (ii) at Landlord's option, Landlord may accelerate the maturity and due date of the whole or any part of Base Rent and Additional Rent for the entire then-remaining unexpired balance of the Term, together with the amount of all free rent credits and rental abatements, if any, granted to Tenant as concessions in connection with this Lease, as well as all other sums, charges, payments, costs and expenses required to be paid by Tenant to Landlord under this Lease, including without limitation, damages for breach or default of Tenant's obligations under this Lease in existence at the time ofsuch acceleration, such that all sums due and payable under this Lease shall, following such acceleration, be treated as being and, in fact, be due and payable in advance as of the date of such acceleration. For purposes of determining the total amount due fromTenant to Landlord upon any such acceleration, Base Rent (where not specified in this Lease) and Additional Rent shall each be treated as being subject to increase in each remaining Lease Year of the entire then remaining balance of the Lease Term at the rate of three percent (3%) per year. However, all accelerated sums due from Tenant to Landlord pursuant to the foregoing provisions of this paragraph shall be subject to adjustment to the then-present value of such accelerated sums at the time of their actualpayment by Tenant to Landlord based upon a five percent (5%) discount rate, which discount rate is agreed upon by, and acceptable to, each party to this Lease as evidenced by each party's execution of this Lease. Landlord may recover and collect allsuch unpaid Rent and other sums so sued by Tenant by distress, levy, execution or otherwise. Regardless of which of the alternative remedies is chosen by Landlord underthe foregoing provisions of this paragraph, Landlord shall not be required to relet the Premises nor exercise any other right granted to Landlord pursuant to this Lease, nor shall Landlord be under any obligation to minimize or mitigate Landlord's damages or Tenant's loss as a result of Tenant's breach of or default under this Lease.

g. Landlord shall have, receive, and enjoy as Landlord's sole and absolute property, any and all sums collected by Landlord as rent or otherwise upon reletting the Premises after Landlord shall resume possession of the Premises as provided by this Lease, including, without limitation, any amounts by which the sum or sums so collected shall exceed the continuing liability of Tenant under this Lease. If Landlord shall have accelerated Rent payments and collected same from Tenant, and subsequently shall have relet the Premises, then Landlord, after deducting all costs related to reletting, including those described or anticipated in this Section shall pay to Tenant the net amount remaining at the end of the Term, which shall have actually been collected as net rent from third parties, to the extent Landlord shall have previously received theapplicable Rent from Tenant.

23.2.2 Additional Remedy. In addition to the remedies specified above, Landlord shall have the right of injunction and shall have and may exercise the right to invoke any other remedies allowed at law or in equity as if the remedies of re-entry, unlawful detainer proceedings and other remedies were not provided in this Lease. Accordingly, the mention in this Lease of any particular remedy shall not preclude Landlord from having or exercising any other remedy set forth in this Lease or at law or in equity. Nothing contained in this Lease shall be construed as precluding the Landlord from having or exercising such lawful remedies as may be and become necessary in order to preserve the right or the interest of the Landlord in the Premises and in this Lease.

23.3 No Waiver. If Landlord shall institute proceedings against Tenant and a compromise or settlement of it shall be made, the same shall not constitute a waiver of the future breach of the same or of any other covenant, condition or agreement set forth in this Lease, nor of any of Landlord's rights under this Lease, unless expressly set forth in such settlement. Neither the payment by Tenant of a lesser amount than the installments of Base Rent, Additional Rent or of any sums due under this Lease nor any endorsement or statement on any check or letter accompanying a check for payment of Rent other sums payable under this Lease be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or other sums or to pursue any other remedy available to Landlord. No re-entry by Landlord, and no acceptance by Landlord of keys from Tenant shall be considered an acceptance of a surrender of this Lease.

23.4 Landlord may Cure Tenant's Defaults. If Tenant defaults in the making of any payment or in the doing of any act required in this Lease to be made or done by Tenant, then Landlord may, but shall not be required to, make such payment or do such act. If Landlord elects to make such payment or do such act, all costs and expenses incurred by Landlord, plus interest on them at the highest rate allowable under the laws of the State from the date paid by Landlord to the date of payment of them by Tenant, shall be immediately paid by Tenant to Landlord, provided, however, that nothing contained in this Lease shall be construed as permitting Landlord to charge or receive interest in excess of the maximum legal rate then allowed by law. The taking of such action by Landlord shall not be considered as a cure of such default by Tenant or bar Landlord from pursuing any remedy to which it is otherwise entitled on account of such default.

23.5 Landlord's Lien. Landlord shall have a lien upon, and Tenant grants to Landlord a security interest in, all personal property and equipment of Tenant located in the Premises, and all accounts receivable rents, monies, or other consideration paid or to be paid to Tenant with respect to any sublease, assignment, transfer or encumbrance of Tenant's interest in this Lease or the Premises or any portion of them (no consent to the same by Landlord being implied), as security for the payment of all Rent and the performance of all other obligations of Tenant required by this Lease; provided however, that the lien shall not attach to the proceeds of any sale of the Tenant's interest in connection with a permitted Assignment of this Lease. The provision of this Section relating to such lien and security interest shall constitute a security agreement under and subject to the laws of the Florida so that Landlord shall have and may enforce a security interest on all property of Tenant now or hereafter placed in or on the Premises, in addition to and cumulative of Landlord's liens and rights provided by law or by the other terms and provisions of this Lease. Tenant agrees to execute as debtor such UCC-1 financing statement or statements as Landlord may now or hereafter request. Landlord may at its election at any time file a copy of this Lease or any part of it or reference to it as a financing statement. Tenant agrees that said lien may be enforced by distress, foreclosure or otherwise, at the election of the Landlord. Tenant shall not place a lien, mortgage, encumbrance or other form of security interest on the Tenant Improvements, Furniture, Fixture and Equipment (FF&E), improvements, furniture, fixtures, equipment, goods and chattels of Tenant which shall or may be brought or put on or into the

Premises, all of which shall be free and clear of liens, mortgages, encumbrances or other security interests.

23.6 Non-exclusive Remedies. All rights and remedies of the parties under this Lease or at law or in equity are cumulative, and the exercise of any right or remedy shall not be taken to exclude or waive the right to the exercise of any other, subject to the express limitations set forth in this Lease, if any. Upon termination or expiration of this Lease, Tenant shall remain liable for all obligations and liabilities that have accrued prior to the date of termination or expiration.

24. WAIVER OF DEFAULT.

Failure of Landlord to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive such default, but Landlord shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, at law and/or in equity.

No waiver of any term, provision, condition or covenant of this Agreement by Landlord shall be deemed to imply or constitute a further waiver by Landlord of any other term, provision, condition or covenant of this Agreement and no acceptance of Rent or other payment shall be deemed a waiver of any default hereunder.

25. RIGHTS OF ENTRY.

25.1. Access Landlord, by its officers, employees, agents, representatives and contractors, shall have the right at all reasonable times and upon forty-eight (48) hours advance notice (except in the event of an emergency, to be determined in Landlord's reasonable discretion, in which event no notice shall be required) to enter upon the Premises for the purpose of inspecting the same, for observing the performance by Tenant of its obligations under this Lease and for the doing of any act or thing for which Landlord may be obligated or have the right to do under this Lease or otherwise, subject to the provisions of this Lease, provided that, in connection with such access, such party shall use reasonable efforts to minimize disruption to the operations being conducted upon the Premises. Said right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations, or additions which do not conform to this Agreement. Landlord and Tenant agree that to the extent there is any restriction on Landlord's right of entry to the Premises, said shall apply solely to Landlord in its capacity as a landlord and do not apply to Landlord in its capacity as a municipality with jurisdiction over the Premises where it is located. During the last Lease Year preceding the Lease expiration (provided that the Lease is not renewed as provided herein), Landlord may place and maintain on the Premises (in locations reasonably acceptable to Landlord and Tenant) “To Let” or similar signs, which signs Tenant shall permit to remain without molestation.

25.2. Maintenance of Utilities. Without limiting the generality of the foregoing, Landlord, by its officers, employees, agents, representatives, contractors and furnishers of utilities and other services, shall have the right upon reasonable advance notice (except in case of emergency, in which case no notice is necessary), at its own cost and expense, for its own benefit or for the benefit of others than Tenant, to maintain existing utility systems and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations as may, in the reasonable opinion of Landlord, be deemed necessary or advisable and from time to time to maintain such systems or parts of them and in connection with such maintenance.

25.3 No eviction. The exercise of any or all of the rights specified in this Section 25 by Landlord or others to the extent permitted by this Lease shall not be or be construed to be an eviction of Tenant nor be made the grounds for any abatement of Rent nor any claim or demand for damages, consequential or otherwise, unless Landlord breaches its covenants with respect to such access as provided in this Lease.

25.4 Police Powers. Nothing contained in this Lease shall be deemed to in any way limit Landlord and City in the exercise of their police and regulatory powers or their powers of eminent domain.

25.5 Possession and Control. Tenant is and shall be in exclusive control and possession of the Premises, and Landlord shall not, in any event whatsoever, be liable for any injury or damage to any property or to any person happening in, on or about the Premises, nor for any injury or damage to any property of Tenant, or of any other person or persons contained therein, unless caused by the negligence or willful intentional act of the Landlord. Notwithstanding the foregoing, however, Landlord is expressly permitted to enter and inspect the Premises at all reasonable times and upon reasonable notice pursuant to this Section. Such entering and inspections rights are, however, made for the sole and express purpose of enabling Landlord to be informed as to whether Tenant is complying with the agreements, terms, covenants and conditions of this Agreement and if Landlord so desires, to do such acts as Tenant shall have failed to do after notice from Landlord as otherwise required herein. Such access and inspection rights shall not in any event impose upon Landlord any obligations not expressly set forth herein.

26. RELEASE AND CONDITION OF THE PREMISES.

26.1. Sole Reliance. Tenant is relying solely upon its own inspections, investigations and analyses of the Premises and is not relying in any way upon the representations, statements, agreements, warranties, studies, reports, descriptions, guidelines or other information or material furnished by the Landlord or its representatives, whether oral or written, express or implied, of any nature whatsoever regarding the Premises.

26.2 As-Is, Where-Is.

26.2.1. TENANT ACKNOWLEDGES AND AGREES THAT THE PREMISES, AND ALL COMPONENTS THEREOF, ARE BEING LEASED IN AN "AS-IS," "WHERE-IS" CONDITION, "WITH ALL FAULTS" RELATING TO THE PHYSICAL CONDITION OF THE PREMISES AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTIES AS TO THE PHYSICAL CONDITION OF THE PREMISES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE, OR TYPE WHATSOEVER FROM OR ON BEHALF OF THE LANDLORD.

26.2.2. TENANT ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SET FORTH IN THIS AGREEMENT, THE LANDLORD HAS NOT, DOES NOT AND WILL NOT MAKE ANY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, WITH RESPECT TO ANY WARRANTY OF CONDITION, MERCHANTABILITY, HABITABILITY, OPERABILITY OR FITNESS FOR A PARTICULAR USE, OR WITH RESPECT TO THE VALUE, PROFITABILITY OR MARKETABILITY OF THE PREMISES.

26.2.3. TENANT ACKNOWLEDGES AND AGREES THAT, LANDLORD HAS NOT, DOES NOT AND WILL NOT MAKE ANY REPRESENTATION OR WARRANTY WITH REGARD TO COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS INCLUDING BUT NOT LIMITED TO, THOSE PERTAINING TO THE HANDLING, GENERATING, TREATING, STORING OR DISPOSING OF ANY HAZARDOUS WASTE, MATERIAL OR SUBSTANCE.

Tenant acknowledges that, the As-Is and Where-Is condition and faults of the Premises for purposes of this Section include the following: (i) the quality, nature, adequacy or physical condition of the Premises including, but not limited to, the structural elements, foundation, roof, appurtenances, access, landscaping, or the electrical, mechanical, HVAC, or sewage at the Premises, if any; (ii) the quality, nature, adequacy or physical condition of soils, sub-surface support or ground water at the Premises; (iii) the existence, quality, nature, adequacy or physical condition of any utilities serving the Premises, or access thereto; (iv) the qualification or feasibility of the Premises; (v) the zoning classification, use or other legal status of the Premises; (vi) the Premises' compliance with any applicable building codes and setback requirements; or (vii) the quality of any labor or materials relating in any way to the Premises.

27. NOTICE; APPROVALS.

27.1. Notices. All notices required under this Agreement shall be in writing and shall be delivered either (i) personally with a receipt obtained; (ii) by certified mail, postage prepaid, return receipt requested; (iii) by nationally recognized overnight courier service; or (iv) by facsimile transmission or electronic mail with a hard copy sent by regular mail on the date of the facsimile transmission. Any notice required or permitted under this Agreement shall be properly addressed as follows.

TO LANDLORD:	City of Deerfield Beach David Santucci, City Manager 150 NE 2nd Avenue Deerfield Beach, Florida 33441 DSantucci@Deerfield-Beach,com
With a Copy to:	Anthony C. Soroka, Esq. Weiss Serota Helfman Cole & Bierman 2255 Glades Road, Suite 200-E Boca Raton, Florida 33431 ASoroka@wsh-law.com
TO TENANT:	Deerfield Beach Café, LLC Danielle Rosse 245 NE 21st Avenue Deerfield Beach, Florida 33341
With a Copy to:	Joel Koeppel, Esq. Koeppel Law Group 1515 N Flagler Dr Ste 220 West Palm Beach, FL 33401

27.2. Whenever this Agreement provides for Landlord's approval or consent, said approval or consent shall be in writing, absent which any alleged approval or consent shall not be binding on Landlord.

27.3. Whenever Landlord's or Tenant's approval or consent is required pursuant to this Agreement, it shall not be unreasonably withheld or delayed, except as may otherwise be expressly provided herein.

27.4. Either party, from time to time, by such notice, may specify another address to which subsequent notice shall be sent. Any notice given by mail shall be deemed given three (3) days following the date of certified mailing.

28. SURRENDER OF PREMISES.

28.1. Condition of Premises at Termination of Agreement. Tenant covenants and agrees to yield and deliver peaceably and promptly to Landlord, possession of the Premises at the end of the Term of this Agreement or upon any cancellation or early termination of this Agreement. Tenant shall surrender the Premises in good condition, including all Furniture, Fixtures and Equipment, as required pursuant to this Lease, so that it can continue to operate, fully equipped, reasonable wear, tear, casualty and condemnation excepted. All maintenance and repairs shall be completed prior to surrender.

28.2. Holding Over. Without limiting Landlord's rights and remedies, if Tenant holds over in possession of the Premises after the expiration of the Term or cancellation or earlier termination thereof, Tenant shall pay Landlord two hundred percent (200%) of the amount of Rent then applicable.

28.3. Acceptance of Surrender. No agreement of surrender or to accept a surrender of this Lease shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of Landlord and of Tenant in a document of equal dignity and formality as this Lease. Except as expressly provided in this Lease, neither the doing of nor any omission to do any act or thing by any of the officers, agents or employees of Landlord shall be deemed an acceptance of a surrender of letting under this Lease.

29. MISCELLANEOUS.

29.1. Interpretation; Section Headings. The terms Landlord and Tenant as herein contained shall include singular and/or plural, masculine, feminine and/or neuter, heirs, successors, personal representatives and/or assigns wherever the context so requires or admits. The terms and provisions of this Agreement are expressed in the total language of this Agreement and the Section headings are solely for the convenience of the reader and are not intended to be all-inclusive and shall not be deemed to limit or expand any of the provisions of this Agreement.

29.2 Addendums; Exhibits; No Recording. Any amendment or addendum to this Agreement shall be in writing and formally executed by both parties in the same manner as this Agreement, and shall be expressly deemed incorporated by reference herein unless a contrary intention is clearly stated therein. All exhibits attached to this Agreement are hereby incorporated in and made a part hereof. Neither this Agreement nor any memorandum or short form thereof shall be recorded in the Public Records of Broward County, Florida.

29.3 Brokerage Commissions. Tenant represents and warrants that it has dealt with no broker, salesman, agent or other person in connection with this Agreement and that no broker, salesman agent or other person brought about this transaction, and Tenant agrees to indemnify and hold Landlord harmless from and against any claims by any broker, salesman, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.

29.4 Force Majeure and Unavoidable Delays. Landlord and Tenant shall be excused from performing any term, condition or covenant in this Lease for so long as such performance is delayed or prevented by “Force Majeure”, which shall mean labor controversies, strikes and lockouts (whether lawful or not) either industry-wide or with third parties other than Landlord and Tenant, respectively, acts of God, inability to obtain fuel or power, national or local emergencies, restrictions imposed by any governmental authority, civil riots, floods, and any other causes not reasonably within the control of

Landlord or Tenant and which by the exercise of due diligence, Landlord or Tenant, respectively, is unable, wholly or in part, to prevent or overcome. Notwithstanding the foregoing, and other than as specifically provided for in paragraph 4.4 of this Lease, the provisions of this paragraph shall not operate to excuse Tenant from the prompt payment of rent, percentage rent, additional rent or any other payments required herein.

29.5 Tenant's Corporate Status and Representations. Tenant is a limited liability company organized and existing under the laws of the State of Florida and its current registration status is active and in good standing. Attached hereto as Exhibit "E" are a true, complete and correct copy of Tenant's Articles of Incorporation and the names of the owners/members and the percentage ownership or membership interest of the Tenant owned by each owner.

29.6 RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT.

29.7 Entire Agreement. This Agreement contains the entire agreement between the parties hereto and all previous negotiations leading thereto and it may be modified only by an agreement in writing signed by Landlord and Tenant. No surrender of the Premises or of the remainder of the Term of this Agreement shall be valid unless accepted by Landlord in writing. Tenant acknowledges and agrees that Tenant has not relied upon any statement, representation, prior written or prior or contemporaneous oral promises, agreements or warranties except such as are expressed herein.

29.8 Authorized Representatives. Tenant designates Danielle Rosse as its authorized representative to Landlord on all matters in connection with this Agreement. Landlord designates the City Manager of the City of Deerfield Beach (or his/her designee) as Landlord's authorized representative to Tenant on all matters in connection with this Agreement. Each party shall have the right to rely upon the authority of the authorized representative of the other party to take any and all action pursuant to this Agreement. Either party shall have the right to change its designated representative upon written notice. All requests for action or approvals by the Landlord shall be sent to the City Manager for decision as to who within the Landlord, including the City Commission, must act or approve the matter on behalf of the Landlord.

29.9 No Discrimination. Tenant agrees that, in the performance of its obligations hereunder, neither it nor its employees or agents will discriminate (nor will they permit to occur any discrimination) as to race, color, creed, handicap, sexual orientation or national origin in any aspect of the Pier Restaurant Operations or in the performance by Tenant (or its employees, operator, or agents) of its obligations under this Agreement.

29.10 Drug Free Workplace Policy. Tenant agrees that, during the Term of this Agreement, it will implement a Drug Free Workplace policy, and will take such steps as may be necessary with regard to the hiring, disciplining and firing of its employees, agents, servants and contractors, as will insure that the Pier Restaurant Operations are operated in a drug free fashion.

29.11 Right of Quiet Enjoyment to Premises. Notwithstanding anything herein to the contrary, Landlord covenants that Tenant upon fulfilling its obligations hereunder, may peaceably and quietly possess, manage, and operate the Premises.

29.12 Florida and Local Laws Prevail; Compliance with Laws. This Agreement shall be governed by the laws of the State of Florida. This Agreement is subject to and shall comply with the Charter and Code of Ordinances of the City of Deerfield Beach. Any conflicts between the provisions of this Agreement and the aforementioned laws and Charter shall be resolved in favor of the latter. Venue for any litigation involving this Agreement shall be in Broward County, Florida.

29.13 Severability. If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstances shall to any extent be illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity or becomes unenforceable because of judicial construction, the remaining terms, covenants and conditions of this Agreement, or application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

29.14 Conflicts of Interest: Landlord Representatives Not Individually Liable. No member, official, representative, or employee of Landlord shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, representative or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. No member, official, elected representative or employee of Landlord shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. No member, official, elected representative or employee of Landlord shall be personally liable to Tenant or any successor in interest in the event of any default or breach by Landlord or for any amount which may become due to Tenant or successor or on any obligations under the terms of this Agreement.

29.15 Non-Subordination of Landlord's Interest in Premises. Landlord's fee interest in and ownership of the Premises shall not be subject or subordinate to or encumbered by any lien or encumbrances affecting Tenant's interest in this Agreement or Premises or by any action or conduct of Tenant hereunder. Notwithstanding the provisions of this section, as well as sections 5.5 and 17, and any other reference that provides that the Premises may not be encumbered, Landlord shall have no objection to Tenant entering into financing or leasing agreements that are secured by Tenant's personal property and Landlord agrees to execute any such documents verifying that fact as may be required by Tenant's lender or lessor.

29.16 No Personal Liability of City Commission Members, Administrative Officials or Representatives of Landlord. Tenant acknowledges that this Agreement is entered into by a municipal corporation as landlord and Tenant agrees that no individual City Commissioner, administrative official or representative of Landlord shall have any personal liability under this Agreement or any document executed in connection with the transactions contemplated by this Agreement.

29.17 Prevailing Party; Attorneys' Fees. In the event of any controversy, claim or dispute between the parties arising from or relating to this Agreement (including, but not limited to, the enforcement of any indemnity provisions), the prevailing party shall be entitled to recover reasonable costs, expenses and attorneys' fees including, but not limited to, court costs and other expenses through all appellate levels.

29.18 Waiver of Jury Trial. It is mutually agreed by and between Landlord and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters arising out of or in any way connected with this Agreement, the relationship of Landlord and Tenant, and Tenant's use or occupancy of the Building. Tenant further agrees that the provisions for payment of Rent herein are independent covenants of Tenant and Tenant shall not interpose any noncompulsory counterclaim or counterclaims in a summary proceeding or in any action based upon nonpayment of Rent or any other payment required of Tenant hereunder.

29.19 Time of Essence. It is understood and agreed between the parties hereto that time is of the essence in all the terms and provisions of this Agreement.

29.20 Successors and Assigns. All terms and provisions of this Agreement to be observed and performed by Tenant shall be applicable to and binding upon Tenant's respective heirs, personal representatives, successors and assigns, subject, however, to the restrictions as to assignment and subletting by Tenant as provided herein.

29.21 Police/Regulatory Powers. City cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations of general applicability which may govern the Premises, any improvements thereon, or any operations at the Premises. Nothing in this Agreement shall be deemed to create an affirmative duty of City to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules and regulations, federal laws and regulations, state laws and regulations, and grant agreements. In addition, nothing herein shall be considered zoning by agreement.

29.22 Negotiated Agreement. The parties have substantially contributed to the drafting and negotiation of this Agreement and this Agreement shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other. The parties hereto acknowledge that they have thoroughly read this Agreement, including all exhibits and attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

29.23 Public Entity Crimes Act. Tenant represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133 of the Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to Landlord and may not submit bids on leases of real property to Landlord for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement. Tenant represents that there has been no determination that it has committed an act defined by Section 287.133, Florida Statutes, as a “public entity crime” and that it has not been formally charged with committing an act defined as a “public entity crime” regardless of the amount of money involved or whether Tenant has been placed on the convicted vendor list.

29.24 Ownership and Access to Records; Right to Audit. All books, records, documents, deliverables, papers and financial information (the “Records”) that result from this Agreement and the Tenant leasing the Premises and providing the Pier Restaurant Operations pursuant to this Agreement or in any manner related to this Agreement shall be maintained by the Tenant in accordance with the Florida’s “Public Records Act”, and in accordance with the requirements of applicable Florida Law. The City shall, during the term of this Agreement, and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Tenant pursuant to this Agreement or in any manner related to this Agreement. The City may cancel and terminate this Agreement immediately for refusal by the Tenant to allow access by the City to any Records pertaining to the lease of the Premises and the Pier Restaurant Operations or in any manner related to this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement effective as of the last date of execution shown below.

LANDLORD

CITY OF DEERFIELD BEACH, a municipal corporation of the State of Florida

ATTEST:

By: ______________________
Bill Ganz, Mayor
Date: ____________________

____
HEATHER MONTEMAYOR, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE OF AND RELIANCE BY THE CITY OF DEERFIELD BEACH, FLORIDA, ONLY:

____
ANTHONY C. SOROKA, CITY ATTORNEY

STATE OF FLORIDA)

)

COUNTY OF __________)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ___ day of ___________, 2023 by _________________, the __________________ of CITY OF DEERFIELD BEACH, a Florida municipal corporation, who executed the foregoing Lease Agreement on behalf of the said municipal corporation. He/she is personally known to me or has produced ____________________ as identification.

____
(Signature of person taking acknowledgment)

____
(Name typed, printed or stamped)

My Commission expires: _________________

My Commission Number: ________________

TENANT

WITNESSED

____
Corporate Secretary

DEERFIELD BEACH CAFÉ, LLC

By: ________________________
Signature
Print Name: ________________
Title: _______________________

STATE OF FLORIDA)

)

COUNTY OF __________)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ___ day of ___________, 2023 by _________________, the __________________ of DEERFIELD BEACH CAFÉ, LLC, a Florida Limited Liability Company, who executed the foregoing Lease Agreement on behalf of the said limited liability company. He/She is personally known to me or has produced ____________________ as identification.

____
(Signature of person taking acknowledgment)

____
(Name typed, printed or stamped)

My Commission expires: _________________

My Commission Number: ________________

EXHIBIT "A"

PREMISES

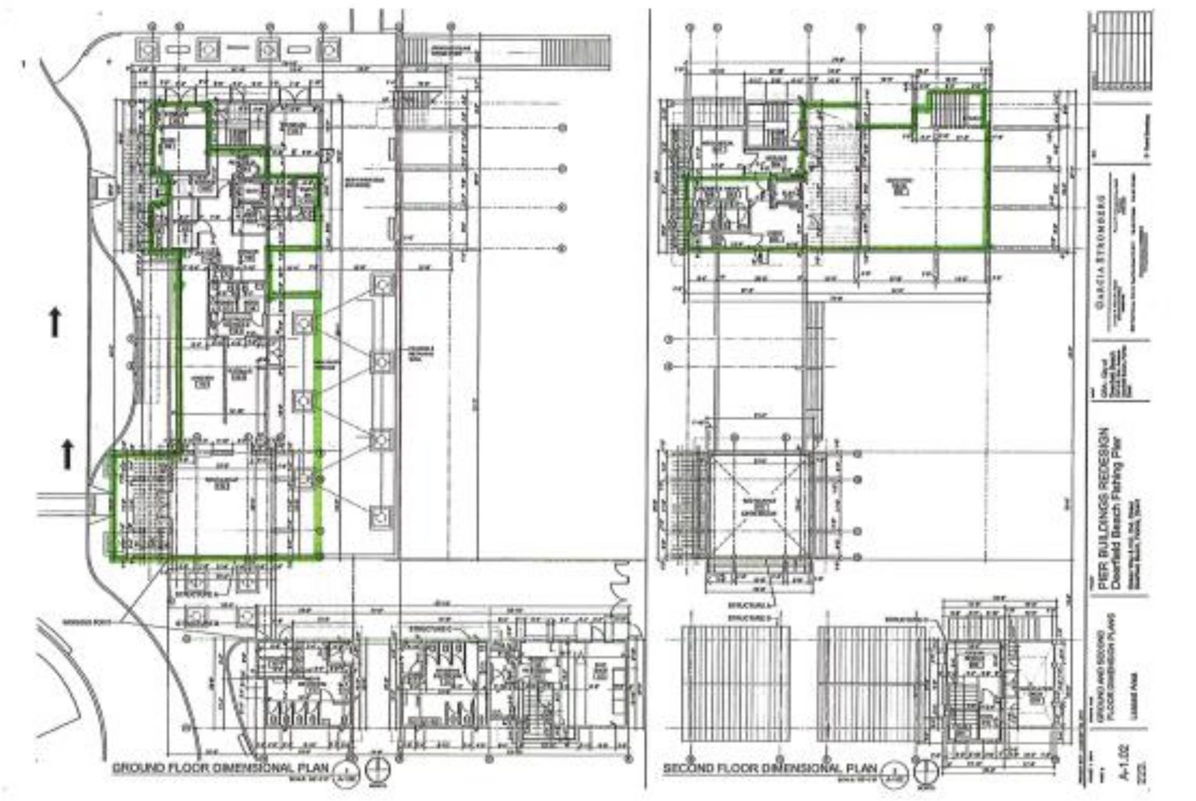

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EXHIBIT "B"

TENANT IMPROVEMENTS AND INITIAL CAPITAL INVESTMENT; ESTIMATED COSTS

Tenant anticipates the hard and soft costs of the Tenant Improvements to the Premises to be $2,433,850.10 including furniture, fixtures and equipment and startup costs and start-up reserves.

The following are the proposed Tenant Improvements and estimated costs:

[SEE THE FOLLOWING PAGE]

Acquisition Costs		
City of DFB - Cost revocery fee (lease negotiation)	$	7,500.00
ITN Deposit	$	15,000.00
Lease Security Deposit (6 months rent)	$	105,000.00
Total Acquisition	**$**	**127,500.00**
Architecture Design		
Architect, ID, Kitchen Design, MEP	$	40,000.00
Expeditor	$	5,000.00
Permit & Licensure Fees	$	15,000.00
Total Architecture design	**$**	**60,000.00**
Construction Costs		
Signage	$	15,000.00
Awning	$	75,000.00
HVAC	$	60,000.00
Construction Costs	$	689,581.00
GC Fee/General Conditions	$	196,500.00
Total Construction Costs	**$**	**1,036,081.00**
FF&E		
Audio visual equipment, cameras	$	15,000.00
Kitchen & Bar Equipment	$	300,000.00
Tables/Chairs/Barstools	$	73,500.00
Art & Décor	$	40,000.00
Computer/Office Equipment	$	5,000.00
POS Equipment	$	20,000.00
Patio Heaters	$	3,500.00
Display menu screens (grab & go area)	$	10,000.00
Total FF&E	**$**	**467,000.00**
Pre-Opening Expenses		
Supplies/Plates/silverware/Glassware, misc	$	30,000.00
Table Lights	$	3,510.00
Opening Merchandise	$	15,000.00
Uniforms	$	7,500.00
Menus	$	3,000.00
Opening F&B Inventory	$	40,000.00
Pre Opening Payroll & Training	$	40,000.00
F&B For training	$	20,000.00
Attorney & Accountant Fees	$	25,000.00
Builders Risk Insurance	$	5,000.00
Opening PR & Marketing	$	60,000.00
Website & Brand Creation	$	40,000.00
Utilities Deposit	$	10,000.00
Pre opening Utilities	$	20,000.00
All Business & Liquor licenses	$	3,000.00
Opening Capital	$	200,000.00
Total Pre-Opening Expenses	**$**	**522,010.00**
	$	**2,212,591.00**
Contingency 10%	**$**	**221,259.10**
TOTAL	**$**	**2,433,850.10**

EXHIBIT "C"
RENT SCHEDULE

Base Rent. Starting upon the date that is six (6) months after the Occupancy Date, Base Rent shall be due and payable from Tenant to Landlord in the amounts and in the manner set forth in this Rent Schedule. Base Rent for the first Rental Year of the Term shall be $210,000.00 per year ($17,500.00 per month) payable on the first day of each month, plus sales tax, as applicable. The Base Rent for each successive Rental Year of the initial Term shall escalate at 2.0% annually.

The Rent Schedule set forth below shall be controlling over any language description of the amount of Base Rent.

Year	Monthly Base Rent	Annual Base Rent	% Rent	Annual Breakpoint Sales
1	$ 17,500.00	$ 210,000.00	5% of Gross Sales over Breakpoint	$ 4,200,000.00
2	$ 17,850.00	$ 214,200.00	5% of Gross Sales over Breakpoint	$ 4,284,000.00
3	$ 18,207.00	$ 218,484.00	5% of Gross Sales over Breakpoint	$ 4,369,680.00
4	$ 18,571.14	$ 222,853.68	5% of Gross Sales over Breakpoint	$ 4,457,073.60
5	$ 18,942.56	$ 227,310.75	5% of Gross Sales over Breakpoint	$ 4,546,215.07
6	$ 19,321.41	$ 231,856.97	5% of Gross Sales over Breakpoint	$ 4,637,139.37
7	$ 19,707.84	$ 236,494.11	5% of Gross Sales over Breakpoint	$ 4,729,882.16
8	$ 20,102.00	$ 241,223.99	5% of Gross Sales over Breakpoint	$ 4,824,479.80
9	$ 20,504.04	$ 246,048.47	5% of Gross Sales over Breakpoint	$ 4,920,969.40
10	$ 20,914.12	$ 250,969.44	5% of Gross Sales over Breakpoint	$ 5,019,388.79
11	$ 21,332.40	$ 255,988.83	5% of Gross Sales over Breakpoint	$ 5,119,776.56
12	$ 21,759.05	$ 261,108.60	5% of Gross Sales over Breakpoint	$ 5,222,172.10
13	$ 22,194.23	$ 266,330.78	5% of Gross Sales over Breakpoint	$ 5,326,615.54
14	$ 22,638.12	$ 271,657.39	5% of Gross Sales over Breakpoint	$ 5,433,147.85
15	$ 23,090.88	$ 277,090.54	5% of Gross Sales over Breakpoint	$ 5,541,810.80
16	$ 23,552.70	$ 282,632.35	5% of Gross Sales over Breakpoint	$ 5,652,647.02
17	$ 24,023.75	$ 288,285.00	5% of Gross Sales over Breakpoint	$ 5,765,699.96
18	$ 24,504.22	$ 294,050.70	5% of Gross Sales over Breakpoint	$ 5,881,013.96
19	$ 24,994.31	$ 299,931.71	5% of Gross Sales over Breakpoint	$ 5,998,634.24
20	$ 25,494.20	$ 305,930.35	5% of Gross Sales over Breakpoint	$ 6,118,606.92
		$ 5,102,447.66		

Percentage Rent. In addition to Base Rent, commencing in the second Rental Year of the initial Term and continuing throughout the Term of the Agreement (including any and all Renewal Terms), Tenant shall pay to Landlord Percentage Rent ("Percentage Rent") in an amount equal to five percent (5.0%) of Gross Revenues for the Rental Year in question, solely to the extent that the Percentage Rent amount exceeds the Base Rent, adjusted annually. Percentage Rent shall be payable on the first day of each quarter of the Term, plus sales tax, as applicable.

EXHIBIT "D"
INSURANCE REQUIREMENTS

A. Coverages Required. In accordance with Paragraph 12 of this Agreement, Tenant shall provide the required insurance policies, placed only with carries carrying on A.M. Best or equivalent rating of A-VII or better as set forth below:

1. Comprehensive General Liability Insurance to protect against bodily injury, death and property damage in an amount of not less than One Million Dollars ($1,000,000.00) peroccurrence and Two Million Dollars ($2,000,000.00) annual aggregate. Coverage mustbe afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Florida Insurance Services Office and must include: Premises and Operations, Independent Contractors and Broad Form Contractual Coverage covering all liability arising out of the terms of this Lease.

2. Business Automobile Liability Insurance in an amount not less than One Million Dollars ($1,000,000.00) combined single limit. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: Owned, Non-owned and Hired vehicles.

3. Workers' Compensation and Employer's Liability Insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws with no less than One Hundred Thousand Dollars ($100,000.00)in employer liability.

4. Rental Loss (Business Interruption) Insurance in an amount equal to twelve (12) monthsof not less than eighty percent (80%) of the then applicable Base Rent, taxes, insuranceand utility charges.

5. Renter's or Contents Insurance in an amount not less than 100% of the insurable replacement value of all furnishings, fixtures and equipment owned by Tenant and located at the Premises including but not limited to the Improvements.

6. Liquor Liability Policy in an amount of not less than One Million Dollars ($1,000,000.00)per occurrence and Two Million Dollars ($2,000,000.00) annual aggregate.

7. Builder's Risk Insurance with respect to all Improvements and alterations undertaken by Tenant during the Term.

8. Hazard Insurance. Insurance covering the Premises and Tenant Improvements, and all FF&E, merchandise and other items of Tenant's property or any other property in the Premises, against all loss or damage for hazards under an "all risk" or "special form" property insurance policy including, but not limited to, the perils of fire, lightning, water, sprinkler leakage, bursting or stoppage of pipes, wind, vandalism, malicious mischief, theft, explosion, and perils typically provided under an Extended Coverage Endorsement or Special Property Coverage Form, in an amount equal to 100% of the full replacement value of such property, and business interruption coverage for the actual loss sustained with respect to business interruption.

B. Tenant acknowledges and agrees that all insurance policies provided by Tenant shall be deemed primary coverage. Additionally, Tenant acknowledges and agrees that the monetary coverages specified above are the minimum acceptable coverages applicable solely to the Premises without regard to any other business operations or locations insuredby Tenant. In particular, the specified "aggregate" coverages shall apply solely to the Premises.

C. Cancellation. Coverage is not to case and is to remain in full force (subject to cancellation notice) throughout the Term. All policies must be endorsed to provide Landlord with at least 30 calendar days' notice of cancellation, restriction or both. If any of the insurance coverages will expire prior to the termination of this Lease, copies of renewal policies shall be furnished at least 60 calendar days' prior to the date of their expiration.

D. Deficiencies. When such policies or certificates have been delivered by Tenant to Landlord as aforesaid and at any time thereafter, Landlord may notify Tenant in writing that, in the reasonable opinion of Landlord the insurance represented does not conform with the requirements set forth in this Exhibit either because the amount or because the insurance company or for any other reason does not comply, and Tenant shall have 30 calendar days to cure such defect to the extent required pursuant to the Lease Agreement.

E. Review of Coverage. The aforesaid minimum limits of insurance shall be reviewed from time to time by Landlord (but no more frequently than every five (5) Lease Years) and may be adjusted if Landlord reasonable determines that such adjustments are necessary to protect Landlord's interest provided such coverages shall not exceed the amount of coverage required at the time of such review by similar quality projects in Broward County, Florida.

F. Service of Process. The insurance shall be written by companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in the State.

EXHIBIT “E”
ARTICLES OF INCORPORATION OF TENANT

L23000157246

Florida Department of State

Division of Corporations

Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

(((H23000128416 3)))

H230001284163ABC.

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

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To:
        Division of Corporations
        Fax Number     : (850)617-6381

From:
        Account Name   : CORPORATE CREATIONS INTERNATIONAL INC.
        Account Number : 110432003053
        Phone          : (561)694-8107
        Fax Number     : (561)214-8442
```

Enter the email address for this business entity to be used for future annual report mailings. Enter only one email address please.

Email Address: ____________________

2023 APR -5 AM 2:36

SECRETARY OF STATE
TALLAHASSEE, FL

FILED

FLORIDA LIMITED LIABILITY CO.

Deerfield Beach Cafe, LLC

Certificate of Status	1
Certified Copy	0
Page Count	04
Estimated Charge	$130.00

Electronic Filing Menu   Corporate Filing Menu   Help

ARTICLES OF ORGANIZATION

Article I. Name

The name of this Florida limited liability company is:
Deerfield Beach Cafe, LLC

Article II. Address

The street address of the Company's initial principal office is:
Deerfield Beach Cafe, LLC
1080 SW 17th Street
Boca Raton FL 33486

The mailing address of the Company's initial principal office is:
Deerfield Beach Cafe, LLC
1080 SW 17th Street
Boca Raton FL 33486

Article III. Registered Agent

The name and street address of the Company's registered agent is:

Associated Corporate Services, LLC
6111 Broken Sound Parkway NW, Suite 200
Boca Raton FL 33487

Article IV. Transferability of Membership Interests

No members shall have the right to assign their membership interests in the Company without the written agreement of all of the membership interests, unless otherwise provided in the Company's Operating Agreement. If the assignment is not approved by all of the membership interests, the assignee shall have no right to become a member, to participate in the management of the Company, or to exercise any other rights or powers of a member. The assignee shall merely be entitled to receive the share of profits and other distributions and the allocation of income, gain, loss deduction, credit or similar item to which the assignor was entitled, to the extent assigned.

Computershare Governance Services Inc.
d/b/a Corporate Creations International
801 US Highway 1
North Palm Beach FL 33408
(561) 694-8107

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SECRETARY OF STATE
TALLAHASSEE, FL

Article V. Distribution of Profits

Unless otherwise provided in the Company's Operating Agreement, there shall not be any distribution of profits unless each separate distribution is approved by the affirmative vote of members who own more than 50% of the voting interest in the Company. The voting members shall have complete discretion on when and if to approve any distribution of profits.

Article VI. Management

This will be a manager-managed company. The name and address of each manager is:

The Danielle Rosse Revocable Trust
1080 SW 17th Street
Boca Raton FL 33486

Article VII. Company Existence

The Company's existence shall begin effective as of April 5, 2023.

The undersigned authorized representative of a member executed these Articles of Organization on 4/5/2023.

COMPUTERSHARE GOVERNANCE SERVICES INC.
D/B/A CORPORATE CREATIONS INTERNATIONAL

By: John Perez, Attorney-in-Fact

Computershare Governance Services Inc.
d/b/a Corporate Creations International
801 US Highway 1
North Palm Beach FL 33408
(561) 694-8107

STATEMENT OF REGISTERED AGENT

LIMITED LIABILITY COMPANY:
Deerfield Beach Cafe, LLC

REGISTERED AGENT/OFFICE:
Associated Corporate Services, LLC
6111 Broken Sound Parkway NW, Suite 200
Boca Raton FL 33487

I agree to act as registered agent to accept service of process for the company named above at the place designated in this Statement. I agree to comply with the provisions of all statutes relating to the proper and complete performance of the registered agent duties. I am familiar with and accept the obligations of the registered agent position.

ASSOCIATED CORPORATE SERVICES, LLC
By: John Perez, Attorney-in-Fact

Date: April 5, 2023.

Computershare Governance Services Inc.
d/b/a Corporate Creations International
801 US Highway 1
North Palm Beach FL 33408
(561) 694-8107

SECTION VII - LEASE SUMMARY

1. **General**

This is a summary of some of the major business points, substantially as they appear below, that will be included in the Lease, subject to the negotiations provided for in the ITN. THIS IS NOT THE COMPLETE LEASE. The Successful Restaurateur will be required to accept these business points as part of the lease to be executed by the City and the successful proposer, subject to the negotiations provided for in the ITN. The City Commission and City Attorney shall approve the final Lease agreement. The successful Restaurateur shall be required in the Lease to comply with all other provisions contained within their response to the ITN and as required in the ITN, subject to the negotiations provided for in the ITN.

a. **Demise**

Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord upon the terms and conditions of this Lease. The Premises are depicted in Attachment "B". Tenant has inspected the premises and the Restaurant plans and finds both acceptable.

b. **Required Use**

Tenant agrees to operate the Premises solely for a restaurant that complies with the provisions contained within their response to the ITN and as required in the ITN.

c. **Premises**

The Premises shall be the Restaurant located at the Deerfield Beach Fishing Pier, 202 N.E. 21 Avenue, Deerfield Beach, Florida. It is a 4,283 square foot restaurant consisting of 1,738 square feet of interior space, a 1,311 second story observation deck, 494 square feet of second story restroom and storage space and a 740 square foot outdoor seating area overlooking the Atlantic Ocean. The interior space includes a dining room with a maximum occupancy of 44 seats, pick-up area with seating counter, restaurant storage room, office, kitchen, janitor room, walk-in cooler, and restrooms all as depicted in Attachment "B". The second-floor observation deck is included in this this Lease. The Premises and all components constituting the same are leased in "AS IS CONDITION"**.**

2. **Commencement of Term**

The term ("Initial Term") of this Lease shall be a minimum of ten (10) years from the date City tender's possession of the Leased Premises to the Tenant (Tender Date). Tender date is anticipated to be within 60 days of execution of the Lease.

3. **Lease Term**

a. **Initial Lease and Renewal Options**

The initial lease term shall be for a minimum of ten (10) years from the Tender Date. It is also the City's intent that the initial lease payments shall be due within sixty (60) days of the Tender Date. The length of the initial term (provided it is a minimum of ten year) and the lease payment commencement date are subject to negotiation.

The Landlord reserves the right, in its sole and absolute discretion, to offer to extend the lease for two (2) additional five (5) year renewal terms thereafter providing all terms conditions and specifications remain the same, with the exception of potential Lease payment enhancements for the Landlord. If the Landlord offers a renewal, and the Tenant wishes to renew, the parties shall execute a renewal agreement extending the Lease under substantially the same terms (except for any new terms based upon changed circumstances, which are consistent with the material terms of this Lease and upon which both parties agree).

b. Lease Extension
In the event services are scheduled to end because of the expiration of the lease, the Tenant shall continue the service upon the written request of the City Manager or designee. The extension period shall not extend for more than one hundred and eighty (180) days beyond the expiration date of the existing lease. The Landlord shall be compensated for the service at the rate in effect when this extension clause is invoked by the City.

4. Irrevocable Letter of Credit

a. An Irrevocable Standby Letter of Credit (ISLC) in the amount of six (6) months of the proposed base rent shall be required of the successful Restaurateur. The ISLC shall be delivered to the City within five (5) business days of execution of the Lease.

b. Upon the one-year anniversary date of the Lease Agreement, the ISLC shall be reduced to three (3) months base rent per the executed Lease Agreement and shall remain in effect for the duration of the lease term. The ISLC shall secure the faithful performance of the Tenant's obligations under the Lease Agreement.

c. The ISLC shall be in a form approved by the City Attorney, drawn on a local Broward, Dade or Palm Beach County bank or bank branch and issued in favor of the City of Deerfield Beach, Florida and stating that the City may draw on the letter if the City Manager certifies that the Tenant is in default under any provision of the Lease.

d. Acknowledgment and agreement is given by both parties that the amount herein set for the ISLC is not intended to be nor shall it be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Tenant to the City in the event of a material breach of the Lease Agreement by the Tenant. The purpose is to secure Tenant's obligations hereunder. The failure to provide an ISLC in a form acceptable to the City thirty (30) days prior to the expiration of the outstanding ISLC document shall be a breach of the Lease Agreement and entitle the City to demand payment under the outstanding document. Demand by the City under the ISLC does not act as a waiver of any other rights or remedies which the City may have.

e. In the event the Lease Agreement is breached, canceled, or terminated other than by mutual agreement prior to its normal expiration date, the City may apply the ISLC as required by the Lease Agreement to be held against outstanding Tenant obligations and asan offset against expenses incurred by the City until a new Vendor is contracted. In the caseof any breach whereby Tenant is removed from the Premises and no longer a Tenant, the City will diligently pursue a new Tenant with the understanding that said process must comply with applicable City requirements and may include a new competitive solicitation if the Landlord deems it in its best interest.

f. The Restaurateur may substitute a cash bond, in a form acceptable to the City, in lieu of required letter of credit; all other conditions shall apply to the cash bond and be documented in the acceptance of the cash bond.

5. Rent and Other Financial Obligations of Tenant

a. Base Rent

The Rent Commencement Date shall be the Occupancy Date. Tenant shall pay to Landlord the Base Rent, which Base Rent shall be paid in at least equal monthly installments on or before the first day of each month in advance. Commencing on the first anniversary of the Occupancy Date, and continuing for the remainder of the initial term and any renewal terms, the Base Rent Payment shall increase annually during the initial term and any renewal terms by at least 4%.

b. Other Revenue

[If the Tenant proposes to pay a percentage of gross revenues or other revenues in addition to the Base Rent, the response should clearly identity the revenues proposed and the methodology for calculating the additional revenues, timing of the revenues, frequency and increases, and this provision of the Lease shall apply, subject to negotiation.] .

c. Licenses, Fees and Taxes

Tenant shall pay, on or before their respective due dates, to the appropriate collecting authorities, all federal, State, County, and City taxes, licenses, permits, assessments, and fees, which are now or may subsequently be levied upon or apportioned to the Premises or the leasehold estate granted by this Lease, or upon Tenant, or upon any of Tenant's property used in connection with this Lease, or upon any rentals or other sums payable under this Lease, including, but not limited to any applicable ad valorem, sales or excise taxes, and shall maintain in current status all federal, State, County and City licenses and permits, now or subsequently required for the operation of the business conducted by Tenant including, but not limited to, occupational licenses.

d. Proration

Rent, including all taxes, assessments and other expenses in connection with the Premises shall be prorated for any partial Lease Year. If the Occupancy Date is on a day other than the first day of a month, rent for such partial month shall be prorated based on a thirty (30) day month, regardless of the actual amount of days in such month.

e. Utilities

From and after the Occupancy Date, Tenant shall pay when due all water, wastewater, electric, telephone, solid waste, recycling, cable, and all other utility and other costs of any and all types whatsoever, which are now or hereafter charged or assessed with respect to operations at the Premises. Tenant shall pay all fees or charges relative to the foregoing promptly prior to delinquency. Landlord represents and warrants that the aforesaid utilities that will be provided to the Premises are or will be separately metered and will not include any such utilities consumed on any other portion of the Pier.

f. Late Payments – Interest

Landlord shall be entitled to collect interest at the rate of 18% from the date any sum is due to Landlord until the date paid on any amounts that are not paid within ten (10) days of their due date under this Lease. The right of Landlord to require payment of such interest and the obligation of Tenant to pay same shall be deemed to be Additional Rent and shall not be in lieu of the right of Landlord to enforce other provisions in this Lease and to pursue other remedies provided by law.

g. Place of Payments

All payments of Rent required to be made by Tenant to Landlord under this Lease shall be made payable to "City of Deerfield Beach – Finance Department" and shall be paid to Landlord at 150 N.E. 2nd Avenue, Deerfield Beach, Florida, 33441, Attn: Finance Department, or to such other office or address as may be substituted by Landlord for such address. All Rent (together with sales tax) shall be payable without demand, offset or deduction, other than as set forth in this Lease.

h. Proration for Mandatory Closure

In the event of closure due to a natural disaster, such as a tropical storm or hurricane, or other act of nature beyond the reasonable control of Tenant, the Lease Payment shall be prorated for the period of closure in accordance with the Base Rent per Month provided that any closure is specifically due to the act of nature and not through the fault of the Tennant. Please also see Section VI(2)(a) of the ITN which may be applicable under certain circumstances.

6. Cuisine and Dining Operations

a. The Tenant shall offer a menu that it believes will foster satisfaction and success. The selected operator will also manage the restaurant and its employees in a manner that fosters satisfaction and success.

b. The Tenant shall offer take-out service at all times, and table service as deemed appropriate by Tenant. Orders shall be prepared to-go or dine-in at the customer's option.

7. Observation Deck

The second story observation deck is part of this Lease. The Tenant shall have rights in providing regular food and beverage service, catering services for special events or private parties on the second story observation deck by virtue of its Lease. The restaurateur will be responsible for the maintenance, security and use of this area under the lease. The City reserves the right to negotiate a public access arrangement for the periodic public use of this space. This use may include arranged days of public use for special events, or other public use as negotiated in the lease.

8. Rights and Uses of Tenant

a. Permitted Use

Tenant shall, commencing as of the Occupancy Date, subject only to the duration of a Force Majeure, continuously use and operate the entire Premises for the Required Use only.

b. Specifically Prohibited Uses

For the purposes of emphasis, Tenant shall be expressly prohibited from using thePremises for the following:

- **i.** Adult arcade, adult bookstore/adult video store, adult booth, adult dancing establishment, adult entertainment establishment, adult motel, or adult theater, as such terms are defined in City Ordinances, as may be amended from time to time.
- **ii.** Live entertainment of any kind, except with prior authorization through the City's special event application process.
- **iii.** Any use that requires the storing of hazardous substances, materials or both at the Premises in violation of Applicable Law.
- **iv.** Any use of the Premises for any residential purposes.

v. Any use which is not a Required Use.
vi. Any use prohibited by any applicable law or regulation of any government entity with jurisdiction.

9. Improvements and Furnishings

a. Interior Improvements

Tenant shall make interior and exterior improvements, including any authorized structural changes, (collectively, the “Improvements”) as set forth in Tenant’s response to the ITN, which shall include the purchase of furnishings to be placed in the existing restaurant, and decorative treatments that are consistent with the theme set forth in the response to the ITN. Tenant shall be responsible for providing all tables, chairs, and other furnishings and decorative treatments which shall be consistent with the theme as presented in its response to the ITN. All restaurant equipment and other restaurant items that are not specifically stated in this Lease as being supplied by Landlord shall be supplied by Tenant. All structural changes will require Tenant to comply with all applicable permitting, Building Code requirements, laws and regulations of applicable jurisdictions.

b. Ownership of Improvements

Landlord shall own all Improvements other than hanging artwork, decorations, or furnishings installed by the Tenant that are not permanently attached to the structure provided that they can be removed without material damage to the structure.

c. Encumbrances

Tenant represents, warrants, and covenants to Landlord that the Premises shall be at all times kept free and clear of all liens, claims and encumbrances created by or through Tenant (other than those created or consented to by Landlord). If any claim of lien or notice of lien shall be filed against the Premises created by or through Tenant, Tenant shall, within thirty (30) calendar days after notice of any such filing, cause the same to be discharged of record by payment, deposit, transfer bond, or order of a court of competent jurisdiction. Tenant shall not be deemed to be Landlord’s agent so as to confer upon any contractor or subcontractor providing labor or services to the Premises (whether in connection with Tenant’s Improvements or otherwise) a construction lien, mechanic’s lien or both against Landlord’s estate under the provisions of Chapters 255 and 713, Florida Statutes, as amended from time to time. The foregoing shall be contained in a notice or memorandum disclaiming such liability on the part of Landlord and shall be recorded in the Public Records of Broward County in accordance with Chapters 255 and 713, Florida Statutes.

d. Required Governmental Approvals

Tenant, at its sole cost and expense, shall obtain all required governmental approvals from all governmental agencies having jurisdiction over the Premises for any Improvements constructed or to be constructed by Tenant, or any operations undertaken by Tenant, including but not limited to departments, divisions or offices of the State, County, City, and the federal government.

e. Contractor Indemnity

In the event Tenant is permitted to make Improvements requiring a building permit, Tenant shall require any contractor performing any work in connection with its Improvements to indemnify and hold Landlord (including its elected officials, officers, employees and agents) harmless from any and all loss, damage, cost, or expense, including, but not limited to, attorney fees and court costs through all trial and appellate levels with respect to personal injury, property damage or both caused by such contractor, its subcontractors, agents and employees in connection with performing such work.

f. Contractor Insurance

In the event Tenant is permitted to make Improvements requiring a building permit, Tenant shall require any contractor performing work on the Premises to provide, pay for and maintain in force, during the time such work is being performed, the following insurance policies: (i) comprehensive general liability with minimum limits of One Million Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000.00) annual aggregate; (ii) a minimum of One Million Dollars ($1,000,000.00) combined single limit automotive liability; (iii) Workers' Compensation and employer's liability insurance in the amounts specified in Section V. With respect to the insurance to be obtained, Tenant shall provide to Landlord not less than thirty (30) calendar days prior to commencement of the construction of the Improvements at the Premises, certificates of such applicable insurance evidencing the insurance coverage as specified above and expressly including Landlord (including its elected officials, officers, employees and agents) as an additional named insured as its interests may appear. If the initial insurance expires prior to the completion of the improvements, renewal certificates of insurance shall be furnished thirty (30) calendar days prior to the date of their expiration. Insurance shall not be canceled, modified, or restricted, without thirty (30) calendar days' prior written notice to Landlord, and policies must be endorsed to provide the same. Carriers shall meet the insurance ratings specified herein.

g. Alterations During the Term

Tenant shall not cut, drill into, disfigure, deface, or injure any part of the Premises or perform or undertake any alteration, addition, improvement or construction to or in the Premises, other than minor or cosmetic alterations that are interior and nonstructural in nature, without Landlord's prior written consent, which consent shall neither be unreasonably withheld nor delayed except, however, that Landlord may withhold or delay consent at Landlord's sole discretion, for any alteration or Improvement that (i) will alter or affect any portion of the plumbing, heating, ventilating, air conditioning, mechanical, electrical, or other building systems, installations, and facilities of the Premises or structure, façade, wall, roof, or foundation of the Premises, the Pier, or both; (ii) will detract from the use or character of the Premises or be visible from the exterior of the Premises; (iii) will require amendment of any certificate of occupancy for the Premises; (iv) will require the consent of any insurer under any of Landlord's or Tenant's policies of insurance covering the Premises; (v) void or otherwise adversely impair any applicable roofing guaranty in effect or (vii) violate the spirit and intent of the Lease. Any replacement of the A/C system will require that the units be at a minimum of 14 SEERs, be connected to an energy saving meter, and be consistent with the LEED certification requirements. All such alterations and Improvements by Tenant shall be performed at the sole cost of Tenant.

10. Operational Requirements of Tenant; Parking

a. Name

The Premises, when operational, shall be identified by the trade name of ________________________________(Business). Tenant shall conduct its business at the Premises under such name throughout the Term and shall file all necessary documentation required to do so in accordance with Applicable Laws required to do so including, but not limited to, fictitious name registration with the Florida Secretary of State.

b. Operating Schedule

(1) The Restaurant shall be open on a regular schedule seven days a week as specified in the Restaurateur's proposal. After finalization of the lease, a change in the hours of operations requires City's approval, which may be given in the City Manager's sole and absolute discretion.

(2) The Tenant shall use its best efforts to maintain consistent hours of operations, but reserves the right to make seasonal or other commercially necessary adjustments.

c. Quality of Services

Tenant shall conduct its operations in a first class, neat, sanitary, and professional manner and in accordance with and subject to the terms and conditions of this Lease and all Applicable Laws. The atmosphere shall be suitable for families with young children. Tenant shall ensure at all times that its standards of operation are of high quality when compared to similar operations in Broward and Palm Beach counties. All personnel shall dress in a manner appropriate for a family restaurant and shall be courteous to the public. All employees shall be fully trained in the tasks they are asked to undertake and said training and performance shall be of a high quality when compared to similar operations in Broward and Palm Beach Counties. Personnel shall wear attire appropriate to the theme and of a family restaurant. Tenant shall control the conduct, demeanor, performance and appearance of its officers, members, employees, agents, volunteers, independent contractors, representatives, guests, and invitees consistent with the operation of a first-class restaurant establishment and otherwise in accordance with Applicable Laws. Tenant shall post and enforce strict behavior and usage policies on and about the Premises, which policies, at a minimum, shall prohibit fighting, reckless actions, abusive language, and misbehavior.

d. Parking

i. Landlord shall provide two designated parking spaces in the Pier parking lot to the west of the Restaurant; these parking spaces are for restaurant staff and a delivery / unloading area, both of which have been reviewed by Tenant and found acceptable. Other than the two designated spaces described, no other designated parking shall be provided for the Restaurant.

ii. Parking, Fees, and Hours of Operation

The following is subject to change at the discretion of the City Commission.

1. Current Parking Fees

Pier metered parking is $3.00 per hour Monday through Friday 6am-4pm and $4.00 per hour Friday at 4 pm Sunday 11:59pm.

2. Current Pier Hours of Operation

Open 6:00 a.m. to 11:00 p.m. daily

3. Current Beach Parking Hours

- Kirk Cottrell Pavilion to Hillsboro Blvd.
  - Monday – Sunday (No parking Midnight to 6:00 a.m.)
- Hillsboro Blvd. to South City Limits
  - Monday – Sunday (No parking 11:00 p.m. to 6:00 a.m.)

- Pier Building Parking Lot
    - 24 hours a day, 7 days a week

11. Other Obligations of Tenant

a. Garbage

i. Tenant shall remove from the Premises or otherwise dispose of all garbage, debris and other waste materials (whether solid or liquid) arising out of the use and occupancy of the Premises or out of any operations conducted within or upon the Premises in accordance the highest standards of sanitary practice and at all times in accordance with Applicable Laws. When removing such waste, Tenant shall comply with all Applicable Laws relating to sanitation and waste disposal. Any items shall be kept in suitable garbage and waste receptacles, as approved in writing by Landlord.

ii. The Tenant shall be responsible for all solid waste and recycling fees arising from the Premises or out of any operations conducted within or upon the Premises. Additional waste produced by the Tenant, including, but not limited to, spent grease and oil, hazardous and bio-hazardous materials, and any other waste restricted from entering the solid waste and recycling stream, or not in compliance with the use of the Somat Trash System or LEED certification, shall be the sole responsibility of the Tenant.

iii. Tenant shall be responsible for daily cleaning of paver patio and walkways surrounding the leased space and regular pressure cleaning of said area on a weekly basis.

b. Odor
Tenant shall not create nor permit to be caused or created upon the Premises any obnoxious odors or smoke or noxious gases or vapors which would constitute a nuisance; provided, however, that fumes resulting from normal business operations shall be excepted from this provision, unless same constitutes a legal nuisance or as otherwise prohibited by applicable laws.

c. Signs

i. Tenant shall not affix or attach (or permit the attachment of) any flags, placards, signs, poles, wires, aerials, balloons antennae or fixtures to the outside of the building, without the prior written consent of the City. Any and all flags, placards, signs, poles, wires, aerials, antennae or fixtures that the City, has given permission to attach, to the outside of the premises, must be done so in accordance with all City sign and building codes, and all County and State laws, ordinances, rules and regulations.

ii. “A west-facing monument will be provided by the City within the landscape area at the intersection of NE 21 Ave and NE 2nd Street, set back approximately 10’ from A1A and 15’ feet from NE 2nd Street. The restaurant tenant will be provided approximately 15 square feet of sign space on the face of that monument for its name/logo in channel letters. The final location and configuration of the sign shall be in the sole discretion of the City.

iii. The conformance of any particular sign proposal with the City’s Land Development Code, or the City Commission’s discretion on any proposed sign code variance, will be a determining factor. In general, a wall sign and a monument sign are allowed by the

Code. Pole signs are not allowed. The west, east, and south walls of the restaurant seating area have been equipped to support signage on the interior of the glass.

d. Hood System and Grease Traps

Tenant agrees to utilize and maintain the hood system and all grease traps. Failure to properly maintain the hood system and grease traps shall be considered a wrongful act of negligence. The grease interceptor is located west of the restaurant within the first parking space of the parking lot.

e. Drainage

In no event shall Tenant permit any drainage to occur from the east side of the Premises on to the adjacent beach area.

12. Compliance with Governmental Requirements

Tenant shall comply with all applicable federal, State, County, and City statutes, laws, ordinances, resolutions, and governmental rules, regulations and orders as may be in effect now or at any time during the Term (collectively "Applicable Laws"), all as may be amended, which are applicable to Tenant, the Premises, or the operations conducted at the Premises. A violation of any such Applicable Laws, not cured within any applicable notice and cure period shall constitute a material breach of this Lease, and in such event, Landlord shall be entitled to exercise any and all rights and remedies provided in this Lease and available at law and in equity.

13. Maintenance and Repair

Tenant shall throughout the Term assume the entire responsibility and shall relieve Landlord from all responsibility for all repair, maintenance, replacements (except as provided below with respect to equipment) and capital improvement and the Restaurant generally, with the exception of the roof, and structural repairs to the building (not necessitated by the negligence or default of Tenant).

Tenant shall perform all maintenance, repairs, replacements and capital improvements in a good and workmanlike manner in accordance with all Applicable Laws. All materials utilized in any repairs or replacements shall be of a quality and grade comparable or superior to that in existence in the Premises as of the Occupancy Date. Except as otherwise set forth in this Lease, Tenant shall be required to keep the Premises in good, tenantable, useable condition throughout the Term (subject to casualty, condemnation and the other provisions of this Lease with regard to development and the redevelopment of the Premises), and without limiting the generality of the foregoing, Tenant shall:

a. Keep and maintain the Premises at all times in a clean and orderly condition and appearance.

b. Provide and maintain all lights and similar devices, HVAC system, elevator, ceiling (except repairing leaks not caused by Tenant, or its agents, contractors and employees), fire protection and safety equipment and all other equipment of every kind and nature required by Applicable Laws in good working order and condition.

c. Be responsible for the maintenance and repair of all utilities servicing the Premises including but not limited to, service lines for the supply of water, gas service lines, electrical power and telephone conduits and lines, sanitary sewers and storm sewers which are now or which may be subsequently located upon any portion of the Premises which are controlled by Tenant.

d. Provide adequate security measures for the Premises and all portions of them as would be reasonable for the purposes of protecting persons and property. This is not to be construed as requiring dedicated security personnel.

e. Be responsible for the cleaning and refuse disposal for refuse generated by the operation of the Tenant on the Premises as necessary to keep the appearance of the entire facility in good order and condition. Such cleaning and refuse disposal shall be performed on a daily basis.

f. During the Term, subject to the provisions of the lease, structural repairs or replacements to the Premises, shall be undertaken by Landlord, unless such repairs or replacement are required due to the wrongful acts, or omissions of Tenant, its employees, agents, contractors, invitees or guests. Tenant shall not cause or permit any penetrations into the roof membrane or otherwise perform any alteration on or about the roof that may void or limit Landlord's roofing warranty. To the extent any roofing penetration is necessary, Tenant shall if required by Landlord, hire Landlord's designated roofing contractor to perform or supervise such roof penetration work so as to prevent any voiding or impairment of Landlord's roofing warranty. Should Landlord be required to make any repairs to which it is obligated, Tenant shall cooperate with Landlord in providing access and adjust its operating schedule and operations to permit such repairs; if major repairs are required, not as a result of wrongful actions or omissions by the Tenant, which require the restaurant to be closed, rent shall be abated during the time needed for repairs as its sole and exclusive remedy.

14. Intentionally Deleted.

15. LEED Certification / Green Building Maintenance

The Pier Restaurant Building is designed and constructed in line with the sustainable development goals in achieving the LEED Certification. The following Green Practices are required to be employed by the Tenant:

- Use green, non-toxic products for restrooms cleaning.
- Use green, non-toxic products for pest control.
- Any other green environmentally conscious efforts committed to by the Tenant in their Proposal

16. Disposition of Equipment

Except as reserved in Section VII.9.b, upon the termination of this Agreement by lapse of time or otherwise (except for Tenant's default), the Tenant shall have the right (or obligation upon direction of the City) to remove, without damage to City property or premises, all personal equipment and property installed within Restaurant by the Tenant. However, this removal does not include pipes, conduit, wiring, walk-in refrigerator, sinks, or other affixed equipment. Tenant shall have a reasonable amount of time, not to exceed fifteen (15) days, to remove such personal property and shall within twenty (20) days, restore the premises to the condition (ordinary wear and tear excepted) of said property before such installations. If any such equipment and personal property is not removed within the said fifteen (15) days (unless the City has granted an extension in writing for this purpose), the City shall conclude that the Tenant has abandoned such equipment and personal property.

17. Rules and Regulations

The Tenant shall observe and obey all rules and regulations applicable to users of the facilities (which may, from time to time during the term of the agreement, be promulgated by the Parks and Recreation Department Director of the City of Deerfield Beach, or designee, or other lawful authority, for the care, operation, maintenance and protection of the facility).

18. Alcoholic Beverages

The sale of beer, wine and alcohol is allowed. Alcoholic beverages shall not be sold in unopened original bottles or cans, or disposable cups which would promote the transport of such beverages off the Leased Area. Tenant shall conspicuously place signage indicating that alcoholic beverages shall not be taken out of the Leased Area. Tenant shall strictly enforce this provision. Tenant is responsible for proper liquor sales licensure with the State of Florida and compliance withapplicable alcoholic beverage laws.

19. Insurance

a. Landlord's Casualty Insurance

Landlord shall, during the Term, insure and keep insured to the extent of not less than 100% of the insurable replacement value, all buildings, structures, fixtures and attached equipment (other than Tenant's equipment which shall be the responsibility of Tenant to insure) on the Premises against such hazards and risks as may now or in the future be included under the Standard Form of Fire and Extended Coverage insurance policy of the State. The insurance coverages to be provided by Landlord shall include full coverage for windstorm and flood. Landlord may meet the foregoing requirement through a program of self-insurance or by adding the Premises to its master policy.

b. Tenant's Insurance

During the Term, Tenant shall pay for and maintain in effect the following types of insurance policies, placed only with carriers carrying an A.M. Best or equivalent rating of A-VII or better:

i. Comprehensive General Liability Insurance to protect against bodily injury, death and property damage in an amount of not less than One Million Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000.00) annual aggregate. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Florida Insurance Services Office and must include: Premises and Operations, Independent Contractors and Broad Form Contractual Coverage covering all liability arising out of the terms of this Lease.

ii. Business Automobile Liability Insurance in an amount not less than One Million Dollars ($1,000,000.00) combined single limit. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: Owned, Non-owned and Hired vehicles.

iii. Workers' Compensation and Employer's Liability Insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws with no less than One Hundred Thousand Dollars ($100,000.00) in employer liability.

iv. Rental Loss (Business Interruption) Insurance in an amount equal to twelve (12) months of not less than eighty percent (80%) of the then applicable Base Rent, taxes, insurance and utility charges.

v. Renter's or Contents Insurance in an amount not less than 100% of the insurable replacement value of all furnishings, fixtures and equipment owned by Tenant and located at the Premises including but not limited to the Improvements.

vi. Liquor Liability Policy in an amount of not less than One Million Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000.00) annual aggregate.

vii. Builder's Risk Insurance with respect to all Improvements and alterations undertaken by Tenant during the Term.

c. Tenant acknowledges and agrees that all insurance policies provided by Tenant shall be deemed primary coverage. Additionally, Tenant acknowledges and agrees that the monetary coverages specified above are the minimum acceptable coverages applicable solely to the Premises without regard to any other business operations or locations insured by Tenant. In particular, the specified "aggregate" coverages shall apply solely to the Premises.

i. Certificates
Tenant shall furnish to Landlord, certificates of insurance or endorsements evidencing the insurance coverages specified by this Article prior to the Occupancy Date. The required certificates of insurance shall name the types of policies provided, refer specifically to this Lease, and state that such insurance is as required by this Lease. All policies of such insurance and renewals of them (except for Workers' Compensation coverage) required to be provided by Tenant shall name Landlord (including its elected officials, officers, employees and agents), as additional named insured as their interests may appear, and shall provide that the loss, if any, shall be adjusted with and payable to Tenant and Landlord (as their interests may appear), except as otherwise provided in Section 20 of this Lease.

ii. Cancellation
Coverage is not to cease and is to remain in force (subject to cancellation notice) throughout the Term. All policies must be endorsed to provide Landlord with at least thirty (30) calendar days' notice of cancellation, restriction or both. If any of the insurance coverages will expire prior to the termination of this Lease, copies of renewal policies shall be furnished at least sixty (60) calendar days' prior to the date of their expiration.

iii. Deficiencies
When such policies or certificates have been delivered by Tenant to Landlord as aforesaid and at any time thereafter, Landlord may notify Tenant in writing that, in the reasonable opinion of Landlord the insurance represented does not conform with the requirements of this Section either because the amount or because the insurance company or for any other reason does not comply, and Tenant shall have thirty (30) calendar days to cure such defect to the extent required pursuant to this Lease.

iv. Review of Coverage
The aforesaid minimum limits of insurance shall be reviewed from time to time by Landlord (but no more frequently than every five (5) Lease Years) and may be adjusted if Landlord reasonably determines that such adjustments are necessary to protect Landlord's interest, provided such coverages shall not exceed the amount of coverage required at the time of such review by similar quality projects in Broward County, Florida.

v. Service of Process

The insurance shall be written by companies authorized to do business in the State and having agents upon whom service of process may be made in the State.

vi. Continued Obligations

Compliance with the foregoing requirements shall not relieve Tenant of its liability and obligations under any other provision of this Lease.

20. Damage To or Destruction of Premises

a. Removal of Debris / Repair to Ensure Safety

If the Improvements located on the Premises or any part of them shall be damaged by fire, the elements, or other casualty, Tenant shall promptly remove, or cause to be promptly removed, all debris resulting from such damage from the Premises. Tenant shall promptly take such actions and cause such repairs to be made to the Premises as will ensure the safety of persons entering upon the Premises. To the extent, if any, that the removal of debris under such circumstances is covered by Tenant's insurance, the proceeds shall be paid to Tenant for such purpose.

b. Minor Damage

If Improvements located on the Premises or any part of them shall be damaged by fire, the elements, or other casualty but not rendered wholly untenantable or unusable, Rent shall continue unabated. The Premises shall be repaired and restored promptly to the condition they were in prior to such casualty by Landlord and by Tenant and to the extent that such damage is covered by Landlord's and Tenant's insurance, the proceeds shall be made available for that purpose.

c. Damage to or Destruction of the Premises

If the Premises, or any part thereof shall be destroyed or so damaged by fire, the elements, or other casualty as to render either or both untenantable or unusable, nothing in this Lease shall be deemed or construed to require or obligate Landlord to repair, rebuild, replace or restore either or both or any portion of the Premises; provided, however, in the event of damage to the Premises which renders the Premises untenantable or unusable, and Landlord elects not to repair, rebuild, replace or restore the Premises pursuant to a written notice to Tenant, which Landlord shall give no later than thirty (30) days after such casualty, then the Lease shall be terminated effective as of the date of such casualty. Provided the casualty resulting in the damage or destruction was not caused by the negligence or wrongful act or omission of Tenant, all insurance proceeds payable to Tenant under its policies shall be retained by Tenant without any obligation to pay any portion thereof to Landlord. Upon termination, Tenant shall surrender the Premises and all fixtures (including but not limited the equipment provided by City on the Occupancy Date) to Landlord immediately and the parties will have no further obligations to each other hereunder, except as otherwise provided to the contrary in this Lease.

21. Assignment and Subletting

a. Assignment

Tenant shall not sell, convey, transfer, or assign (all of the foregoing being deemed as an "Assignment") all or any portion of its interest in this Lease. The Landlord shall have a right to approve or disallow any sale of more than 50% of the assets of Tenant or the entity that constitutes the Tenant and may specifically disapprove if the new Tenant cannot demonstrate that the purchase meets the qualifications in the ITN to the same extent as Tenant.

b. Subletting

Tenant shall not sublet portions or the whole of the Premises, or grant licenses or concessions in any of them.

22. Performance Review Process

The success of the Pier Restaurant is paramount to the City. Furthermore; as this facility is owned by the City of Deerfield Beach, the performance of the restaurant, whether positive or negative, will be perceived by restaurant patrons, and the City's residents, visitors, and businesses as a direct reflection of the City. Therefore, Tenant agrees to cooperate with the City in undertaking an annual review of restaurant performance, which will include a review of the following:

- Patron Feedback
- Third-Party Surveys
- Consumer Reviews
- Food and Lodging Inspection Results
- Conformity to the Restaurateur's Responsibilities
- Compliance with State and Local Law
- Maintenance of Required Licenses and Certifications

Failure to pass a Food or Lodging Inspection shall be reported to the City of Deerfield Beach within 24 hours of failed inspection and shall be considered a Default subject to cure by the Tenant as soon as practicable. Multiple failed inspections within any twelve month period may be considered a default of the Lease by Tenant. In the event of three or more failed inspections in a twelve (12) month period, and regardless of whether Tenant has cured each individual failed inspection, the Tenant shall be considered a "habitual violator" and subject to the provisions set forth in Section 26(a)(x) of this Lease, including the Landlord's remedies as provided in that Section and other provisions of this Lease.

23. Additional Property Management and Responsibilities

a. As to Landlord

i. The Landlord shall operate and manage access to the International Fishing Pier for sightseeing and fishing as well as the bait shop.

ii. The Landlord will maintain the exterior of the restaurant including the electrical lines, exterior piping for electric and water, and HVAC systems.

b. As to Tenant:

i. General

1. The Tenant shall observe and obey all rules and regulations applicable to users of the facilities (which may, from time to time during the term of the agreement, be promulgated by the City or other lawful authority, for the care, operation, maintenance and protection of the facility).

2. Comply with and maintain in full force at all times all required licenses, certifications, and training applicable to the performance of the lease agreement and restaurant operations.

3. The successful Tenant agrees to furnish the City a copy of each Health Department inspection within two (2) business days.

4. Tenant shall not interfere with access to the Deerfield International Fishing Pier.

c. Staff and Personnel

i. Tenant shall ensure restaurant is staffed with sufficient qualified personnel at all times in order to handle the patron demand efficiently.

ii. Tenant shall be responsible for the appearance of all working personnel (clean and appropriately dressed at all times). Personnel must wear visible identification or a uniform while working at all times.

iii. All employees of the Tenant shall be considered to be at all times the sole employees of the Tenant, under the Tenant's sole direction, and not an employee or agent of the City of Deerfield Beach. The Tenant shall supply competent and physically capable employees that are polite, friendly, honest and courteous, the City may require the Tenant to remove any employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose presence on City property is not in the best interest of the City.

iv. Food handling procedures and personnel must meet standards of cleanliness and neatness which meet the required standards of the health department.

d. Janitorial Services and Building Maintenance

i. Tenant shall be responsible for the leased area's janitorial services and trash and garbage removal. It is encouraged that the Tenant implement a recycling plan to reduce the amount of materials entering the City's solid waste stream. The Tenant shall also be mindful of the litter produced by its customers around the immediate area of the leased area and assist the Landlord to the greatest extent possible in cleaning-up suchlitter.

ii. Tenant shall comply with all applicable safety and health laws, codes, and regulations, including OSHA regulations, and shall maintain the Premises in accordance with such laws, codes, and regulations. All hazardous materials including spent grease and cooking oil shall be kept out of public sight at all times. Any incident relating to hazardous materials shall be reported to the Landlord immediately.

iii. All Maintenance required to be performed by Tenant under this Lease shall be at the sole expense of the Tenant. The Premises will be subject to general inspection by the Landlord to insure quality of maintenance, appearance, and physical condition.

iv. In the event that the leased area is not kept to the required minimum standards, the Landlord may take such action as deemed appropriate by the Landlord and allowable by the final lease agreement up to and including termination of the lease agreement.

The Tenant shall be liable for any remedial expenses incurred by the Landlord.

e. Force Majeure Events and Wind Events

The Tenant shall be responsible for securing all property owned by the Tenant to include furniture to avoid such property becoming damaged or becoming a projectile that would cause or potentially cause harm to both property and life. Further, the Tenant shall be responsible for taking such precautions on and about the leased premises as would be reasonable under the circumstances in order to protect the leased premises from the effects of the hurricane or other event. The Tenant shall also strictly comply with all federal, state, or local evacuation notices, and pier closings. The Tenant and Landlord shall work in cooperation to ensure a safe and expedient proactive response to emergency events, both natural and man-made.

24. Indemnity

a. Tenant shall indemnify and hold harmless Landlord (including its elected officials, officers, employees and agents) from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of architects, attorneys, and other professionals, and all court or other dispute resolution costs), liabilities, expenditures, or causes of action of any kind (including negligent, reckless, or willful or intentional acts or omissions of Tenant, any Subtenant, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any work or anyone for whose acts any of them may be liable), arising from, relative to, or caused in connection with this Lease except, and only to the extent, if such claim is directly caused by Landlord's negligence or misconduct (subject to Landlord's applicable sovereign immunity). This indemnity includes, but is not limited to, claims attributable to bodily injury,sickness, disease or death, or to injury or destruction of tangible property, including the Improvements, and including the loss of use resulting from them. Payment of any amount due pursuant to this Section shall, after receipt of Notice by Tenant from Landlord that suchamount is due, be paid by Tenant if Landlord becomes legally obligated to pay same, or Tenant agrees that it is responsible for such claim, or in the alternative, Landlord, at Landlord's option, may make payment of an amount so due and Tenant shall promptly reimburse Landlord for same. Where the basis for a claim for damages brought against Landlord by a third party is that Landlord has breached a contract or other duty to the thirdparty, and the action or inaction which constitutes the breach was a result of the negligent or wrongful act or omission of Tenant, then Tenant agrees, at Tenant's expense, after written notice from Landlord to defend any action against Landlord that falls within the scopeof this Section, or Landlord, at Landlord's option, may elect instead to secure its own attorney to defend any such action. If the claimant prevails in a lawsuit on the basis that thebreach was a result of the negligent or wrongful act or omission of Tenant, then the reasonable costs and expenses of Landlord incurred in defending such action shall be payable by Tenant. If either Landlord or Tenant is required to incur attorney fees or costs toenforce this Section, the prevailing party in any litigation shall recover all of its attorney feesand costs at both trial and appellate levels.

b. Tenant agrees to also indemnify, defend, save and hold harmless Landlord (including its elected officials, officers, employees and agents), from all damages, liabilities, losses, claims, fines and fees and from any and all suits and actions of every type and description that may be brought against Landlord, its officers, agents and employees on account of any claims, fees, royalties, or costs for any infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.

c. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

25. Rights of Entry Reserved

a. Access

Landlord, by its officers, employees, agents, representatives and *contractors shall have the right at all reasonable times and upon reasonable advance notice to* enter upon the Premises for the purpose of inspecting the same, for observing the performance by Tenant of its obligations under this Lease and for the doing of any act or thing for which Landlord may be obligated or have the right to do under this Lease or otherwise, subject to the provisions of this Lease, provided that, in connection with such access, such party shall use reasonable efforts to minimize disruption to the operations being conducted upon the Premises. During the last Lease Year preceding the Expiration Date, Landlord may place and maintain on the Premises (in locations reasonably acceptable to Landlord and Tenant) "To Let" or similar signs, which signs Tenant shall permit to remain without molestation.

b. Maintenance

Without limiting the generality of the foregoing, Landlord, by its officers, employees, agents, representatives, contractors and furnishers of utilities and other services, shall have the right upon reasonable advance notice (except in case of emergency, in which case no notice is necessary), at its own cost and expense, for its own benefit or for the benefit of others than Tenant, to maintain existing utility systems and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations as may, in the reasonable opinion of Landlord, be deemed necessary or advisable and from time to time to maintain such systems or parts of them and in connection with such maintenance.

c. No Eviction

The exercise of any or all of the foregoing rights by Landlord or others to the extent permitted by this Lease shall not be or be construed to be an eviction of Tenant nor be made the grounds for any abatement of Rent nor any claim or demand for damages, consequential or otherwise, unless Landlord breaches its covenants with respect to such access as provided in this Lease.

d. Police Powers

Nothing contained in this Lease shall be deemed to in any way limit Landlord and City in the exercise of their police and regulatory powers or their powers of eminent domain.

26. Default; Remedies

a. Default

If any one or more of the following events shall occur, same shall be an event of default under this Lease:

i. Tenant voluntarily abandons the Premises or discontinues its operations on the Premises for a period of five (5) consecutive calendar days in a twelve-month calendar year, other than as a result of casualty, condemnation, major renovation, or one or more acts of Force Majeure; or

ii. Any lien, claim or other encumbrance which is filed against Landlord's fee simple title to the Premises (other than that created by or through Landlord) is not removed, or transferred to bond pursuant to Florida law, within thirty (30) calendar days after Tenant or Landlord, or both have received notice of such lien, claim or encumbrance; or

iii. Tenant fails to pay any item constituting Rent when due to Landlord and Tenant continues in its failure to make any such payments for a period of ten (10) calendar days after Notice is given to make such payments; provided however, Landlord shall not be required to provide Notice of non-payment of Rent on more than one (1) occasion in any twelve (12) month period; or

iv. Tenant fails to make any other payment required under this Lease when due to Landlord and continues in its failure to make any such other payments required under this Lease for a period of fifteen (15) calendar days after Notice is given to make such payments; or

v. Tenant fails to keep, perform and observe each and every non-monetary promise, covenant and term set forth in this Lease on its part to be kept, including without limitation all rules and regulations in effect from time to time in accordance with the terms of this Lease, performed or observed within thirty (30) calendar days after Notice of default (except where fulfillment of its obligation requires activity over a greater period of time and Tenant has commenced to perform whatever may be required for fulfillment within thirty (30) calendar days after Notice and continues such performance without material interruption); provided, however, the foregoing shall not apply if Tenant's failure to perform is due directly to the wrongful acts or omissions of Landlord; or

vi. Tenant makes an assignment for the benefit of creditors; or

vii. Tenant files a voluntary petition under Title 11 of the United States Code (the "Bankruptcy Code") or if such petition is filed against Tenant and an order for relief is entered and not dismissed within sixty (60) days or if Tenant files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or any other present or future applicable federal, state or other statute or law; or

viii. If, within sixty (60) days after the appointment of any trustee, receiver, custodian, assignee, sequestrator or liquidator of Tenant, or of all of any of the Premises or any interest of Tenant in the Premises, such appointment is not vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment if not vacated.

ix. Tenant submits a Statement which is materially false and misleading (i.e., a misstatement of Gross Sales by more than three percent (3%) as determined by the CPA).

x. **Habitual Default**
Notwithstanding the foregoing, in the event that Tenant has committed a monetary breach or default three (3) or more times in a twelve (12) month period, and regardless of whether Tenant has cured each individual monetary breach or default, Tenant may be determined by Landlord to be an "habitual violator." At the time that such determination is made, Landlord shall issue to Tenant a written notice advising of such determination and citing the circumstances therefor. Such notice shall also advise Tenant that there shall be no further notice or grace periods to correct any subsequent monetary breaches or defaults for the balance of such twelve (12) month period and that any subsequent breaches or defaults for the balance of such twelve (12) month period, shall constitute a condition of non-curable default and grounds for immediate

termination of this Lease which termination shall be effective upon delivery of the Notice to Tenant.

b. Remedies

Upon the occurrence of any event set forth in Section 26(a), above, or at any time thereafter during the continuance of such event, Landlord may exercise any of the following rights and remedies:

i. Landlord may, pursuant to written notice to Tenant, terminate this Lease and, pursuant to appropriate legal proceedings, re-enter, retake and resume possession of the Premises for Landlord's own account and, for Tenant's breach of and default under this Lease, recover immediately from Tenant any and all rents and other sums and damages due or in existence at the time of such termination, including without limitation, (i) all Base Rent and Additional Rent; (ii) all other sums, charges, payments, costs and expenses agreed, and required or both to be paid by Tenant to Landlord under this Lease; (iii) all costs and expenses of Landlord in connection with the recovery of possession of the Premises, including reasonable attorney fees and court costs; (iv) all free rent credits and rental abatements, if any, granted to Tenant as concessions in connection with this Lease; and (v) all costs and expenses of Landlord in connection with any reletting or attempted reletting of the Premises or any part or parts of them including without limitation, brokerage fees, attorney fees and the cost of any alterations or repairs which may be reasonably required to so relet the Premises, or any part or parts of them; or

ii. Landlord may, pursuant to any prior notice required by law or this Lease, and without terminating this Lease, pursuant to appropriate legal proceedings, re-enter, retake and resume possession of the Premises for the account of Tenant, make such alterations of and repairs to the Premises as may be reasonably necessary in order to relet the same or any part or parts of them and relet or attempt to relet the Premises or any part or parts of them for such Term or terms (which may be for a term or terms extending beyond the Initial Term), at such rents and upon such other terms and provisions as Landlord, in its sole, but reasonable, discretion, may deem advisable. If Landlord relets or attempts to relet the Premises, Landlord shall be the sole judge as to the terms and provisions of any new lease or sublease and of whether or not a particular proposed new tenant or subtenant is acceptable to Landlord. Upon any reletting, all rents, whether Base Rent or Additional Rent received by Landlord from such reletting shall be applied: (a) first to the payment of all costs and expenses of recovering possession of the Premises; (b) second, to the payment of any costs and expenses of such reletting, including brokerage fees, attorney fees and the cost of any alterations, restorations and repairs reasonably required for such reletting; (c) third, to the payment of any indebtedness, other than Rent, due under this Lease from Tenant to Landlord; (d) fourth, to the repayment of Landlord of all free rent credits and rental abatements, if any, granted to Tenant as concessions in connection with this Lease; (e) fifth, to the payment of all Rents due and unpaid under this Lease; (f) sixth, the residue, if any, shall be held by Landlord and applied to payment of future Rent when the same may become due and payable under this Lease. If the rents received from such reletting during any period shall be less than that required to be paid during that period by Tenant under this Lease, Tenant shall pay any such deficiency to Landlord within ten (10) days after demand therefor and, upon Tenant's failure to do so, Landlord shall immediately be entitled to institute legal proceedings for the recovery and collection of the same. Such deficiency maybe calculated and paid at the time each or any payment of Rent shall otherwise become due under this Lease, or, at the option of Landlord, at any times during or at the end of the Term. Landlord shall, in addition, be immediately entitled to sue for and otherwise recover from Tenant any other damages occasioned by or resulting from any abandonment of the Premises or other breach of or default under this Lease other than a default in the payment of Rent. No such re-entry, retaking or resumption of possession of the Premises by Landlord for the account of Tenant shall be construed as an election on the part of Landlord to terminate this Lease unless a written notice of such intention shall be given to Tenant. Notwithstanding any such re-entry and reletting or attempted reletting of the Premises or any part or parts of them for the account of Tenant without termination, Landlord may, at any time thereafter upon written notice to Tenant, elect to terminate this Lease or pursue any other remedy available to Landlord for Tenant's previous breach of or default under this Lease; and Landlord may, without re-entering, retaking or resuming possession of the Premises, sue for all rents, including Base Rent and Additional Rent, and all other sums, charges, payments, costs and expenses due from Tenant to Landlord under this Lease, either: (i) as they become due under this Lease; or (ii) at Landlord's option, Landlord may accelerate the maturity and due date of the whole or any part of Base Rent and Additional Rent for the entire then-remaining unexpired balance of the Term, together with the amount of all free rent credits and rental abatements, if any, granted to Tenant as concessions in connection with this Lease, as well as all other sums, charges, payments, costs and expenses required to be paid by Tenant to Landlord under this Lease, including without limitation, damages for breach or default of Tenant's obligations under this Lease in existence at the time of such acceleration, such that all sums due and payable under this Lease shall, following such acceleration, be treated as being and, in fact, be due and payable in advance as of the date of such acceleration. For purposes of determining the total amount due from Tenant to Landlord upon any such acceleration, Base Rent (where not specified in this Lease) and Additional Rent shall each be treated as being subject to increase in each remaining Lease Year of the entire then remaining balance of the Lease Term at the rate of three percent (3%) per year. However, all accelerated sums due from Tenant to Landlord pursuant to the foregoing provisions of this paragraph shall be subject to adjustment to the then-present value of such accelerated sums at the time of their actual payment by Tenant to Landlord based upon a five percent (5%) discount rate, which discount rate is agreed upon by, and acceptable to, each party to this Lease as evidenced by each party's execution of this Lease. Landlord may recover and collect all such unpaid Rent and other sums so sued by Tenant by distress, levy, execution or otherwise. Regardless of which of the alternative remedies is chosen by Landlord under the foregoing provisions of this paragraph, Landlord shall not be required to relet the Premises nor exercise any other right granted to Landlord pursuant to this Lease, nor shall Landlord be under any obligation to minimize or mitigate Landlord's damages or Tenant's loss as a result of Tenant's breach of or default under this Lease.

iii. Landlord shall have, receive, and enjoy as Landlord's sole and absolute property, any and all sums collected by Landlord as rent or otherwise upon reletting the Premises after Landlord shall resume possession of the Premises as provided by this Lease, including, without limitation, any amounts by which the sum or sums so collected shall exceed the continuing liability of Tenant under this Lease. If Landlord shall have accelerated Rent payments and collected same from Tenant, and subsequently shall have relet the Premises, then Landlord, after deducting all costs related to reletting, including those described or anticipated in this Section shall pay to Tenant the net amount remaining at the end of the Term, which shall have actually been collected as net rent from third parties, to the extent Landlord shall have previously received the applicable Rent from Tenant.

c. Additional Remedies

In addition to the remedies specified above, Landlord shall have the right of injunction and shall have and may exercise the right to invoke any other remedies allowed at law or in equity as if the remedies of re-entry, unlawful detainer proceedings and other remedies were not provided in this Lease. Accordingly, the mention in this Lease of any particular remedy shall not preclude Landlord from having or exercising any other remedy set forth in this Lease or at law or in equity. Nothing contained in this Lease shall be construed as precluding the Landlord from having or exercising such lawful remedies as may be and become necessary in order to preserve the right or the interest of the Landlord in the Premises and in this Lease.

d. No Waiver

If Landlord shall institute proceedings against Tenant and a compromise or settlement of it shall be made, the same shall not constitute a waiver of the future breach of the same or of any other covenant, condition or agreement set forth in this Lease, nor of any of Landlord's rights under this Lease, unless expressly set forth in such settlement. Neither the payment by Tenant of a lesser amount than the installments of Base Rent, Additional Rent or of any sums due under this Lease nor any endorsement or statement on any check or letter accompanying a check for payment of Rent other sums payable under this Lease be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or other sums or to pursue any other remedy available to Landlord. No re-entry by Landlord, and no acceptance by Landlord of keys from Tenant shall be considered an acceptance of a surrender of this Lease.

e. Landlord May Cure Tenant's Defaults

If Tenant defaults in the making of any payment or in the doing of any act required in this Lease to be made or done by Tenant, then Landlord may, but shall not be required to, make such payment or do such act. If Landlord elects to make such payment or do such act, all costs and expenses incurred by Landlord, plus interest on them at the highest rate allowable under the laws of the State from the date paid by Landlord to the date of payment of them by Tenant, shall be immediately paid by Tenant to Landlord, provided, however, that nothing contained in this Lease shall be construed as permitting Landlord to charge or receive interest in excess of the maximum legal rate then allowed by law. The taking of such action by Landlord shall not be considered as a cure of such default by Tenant or bar Landlord from pursuing any remedy to which it is otherwise entitled on account of such default.

f. Landlord's Lien

Landlord shall have a lien upon, and Tenant grants to Landlord a security interest in, all personal property and equipment of Tenant located in the Premises, and all accounts receivable rents, monies, or other consideration paid or to be paid to Tenant with respect to any Sublease, Assignment, transfer or encumbrance of Tenant's interest in this Lease or the Premises or any portion of them (no consent to the same by Landlord being implied), as security for the payment of all Rent and the performance of all other obligations of Tenant required by this Lease; provided however, that the lien shall not attach to the proceeds of any sale of the Tenant's interest in connection with a permitted Assignment of this Lease. The provision of this Section relating to such lien and security interest shall constitute a security agreement under and subject to the laws of the State so that Landlord shall have and may enforce a security interest on all property of Tenant now or hereafter placed in or on the Premises, in addition to and cumulative of Landlord's liens and rights provided by law or by the other terms and provisions of this Lease. Tenant agrees to execute as debtor such UCC-1 financing statement or statements as Landlord may now or hereafter request. Landlord may at its election at any time file a copy of this Lease or any part of it or reference to it as a financing statement.

g. Remedies to be Non-Exclusive

i. Cumulative Remedies

All rights and remedies of the parties under this Lease or at law or in equity are cumulative, and the exercise of any right or remedy shall not be taken to exclude or waive the right to the exercise of any other, subject to the express limitations set forth in this Lease, if any.

ii. Survival

Upon termination or expiration of this Lease, Tenant shall remain liable for all obligations and liabilities that have accrued prior to the date of termination or expiration.

27. Surrender

a. Tenant covenants and agrees to yield and deliver peaceably and promptly to Landlord, possession of the Premises, on the Expiration Date or earlier termination of this Lease. Tenant shall surrender the Premises in the condition required pursuant to this Lease, reasonable wear, tear, casualty and condemnation excepted. All maintenance and repairs shall be completed prior to surrender.

b. Acceptance of Surrender of Lease

No agreement of surrender or to accept a surrender of this Lease shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of Landlord and of Tenant in a document of equal dignity and formality as this Lease. Except as expressly provided in this Lease, neither the doing of nor any omission to do any act or thing by any of the officers, agents or employees of Landlord shall be deemed an acceptance of a surrender of letting under this Lease.