



# **Commercial Leasing: Understanding The Basics**

Presented by:  
LEGAL EDUCATION DEPARTMENT  
of  
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# Commercial Leasing – Understanding the Basics

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## COMMERCIAL LEASING: Some Basics

- Unlike residential, no statutory form lease
- Commercial tenancies are addressed in Part I of Florida Statutes, Chapter 83
- Oral leases are enforceable as a tenancy at will, but Florida's Statute of Frauds provides that a lease for longer than one year must be in writing
- Effective July 1, 2020, leases for a term of more than one year are no longer required to be signed in the presence of two subscribing witnesses, Sec. 689.01, F.S.



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## SPACE LEASES

- **Retail**

- Restaurants
- Strip malls

- **Office**

- Low rise
- High rise

- **Industrial**

- Manufacturing
- Warehouse
- Flex (office-industrial hybrid)



## SPACE LEASES: Essential Terms

Contract Terms: Boilerplate Clauses



- Identity of the parties
- Description of the premises
- Term
- Rent
- Landlord's obligations to make improvements
- Security deposit
- Permitted use
- Maintenance and repairs

## SPACE LEASES: Essential Terms

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- Insurance and indemnity
- Tenant alterations and construction liens
- Assignment and subletting
- Defaults and remedies
- Environmental concerns
- Estoppel and subordination

## SPACE LEASES: Essential Terms

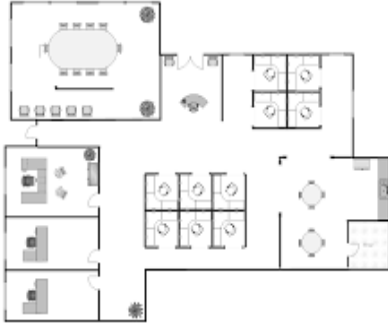
- Entities showing on the lease must actually exist
  - Beware shell corporations
  - Confirm authority of signing parties
- Many commercial landlords demand “full” or “absolute” guarantor of a lease
  - Tenants prefer “limited guaranty” for limited term or amount of lease or “burn off” provisions

## Identity of Parties



## SPACE LEASES: Essential Terms

### Description of the Premises



- Address, suite number
- Square footage

### Rentable & Usable

- usable = space designated solely for tenant
- rentable = usable square footage plus a *load factor* (used in situations where there is common area)



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## SPACE LEASES: Essential Terms

**Load factor** (aka common area factor) = total building rentable square feet divided by building usable square feet

e.g. 100,000 total rentable sq. ft. divided by 85,000 total usable sq. ft. = 1.17 load factor

Then, multiply tenant usable square feet by load factor to get rentable square feet

e.g. 5,000 usable x 1.17 = 5,850 rentable sq. ft.

### Description of the Premises



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## SPACE LEASES: Essential Terms

### Term



**Commencement Date** = date the lease becomes a legally binding obligation

- Will annual increases tie-into this date or some other date?

## SPACE LEASES: Essential Terms

### Term



**Rent Commencement Date** = date Tenant is obligated to begin paying rent (and at times date to open and operate)

Landlord desires a fixed date; Tenant often wants a floating date tied to:

- Delivery of premises
- Completion of Landlord's work
- Landlord's approval of plans
- Receipt of fully signed lease
- Receipt of permits to commence and complete work

- **Expiration/Termination Date**



## SPACE LEASES: Essential Terms

1) **Base Rent** = cost per sq. ft. multiplied by rentable sq. ft., then divided by 12 to get monthly base rent

- initial rate and annual base rent increases (more commonly fixed, at times CPI)
- payable on 1st of the month
- no offset or deduction

2) **Operating Expenses** = real estate taxes, property insurance, structural and exterior repair and maintenance, CAM

### Rent

Rent is typically quoted in two parts



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## SPACE LEASES: Essential Terms

### Sales Tax



Remember: Florida sales tax is due on all rents paid:

Effective June 1, 2024, rate reduced from 4.5% to **2.0%** plus county-by-county surtax (See Sec. 212.031, F.S.)

[Fla. is only state to tax commercial rentals of realty]

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## SPACE LEASES: Essential Terms

### Lease Types

#### Full service gross lease



Tenant pays a base rental rate, and landlord handles all operating expenses (incl. taxes, insurance, maintenance, repairs, utilities and CAM), BUT usually up to an EXPENSE STOP.



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## SPACE LEASES: Essential Terms

Example: 10,000 sq. ft. building with two tenants occupying 5,000 sq. ft. each. Each tenant signs lease for \$25 per sq. ft. with all expenses passed through to landlord, up to \$7 per sq. ft. (\$70,000 per year). Actual operating expenses totals \$100,000 per year. Tenants thus liable for \$30,000 -- or \$15,000 each per year.

#### Expense Stop

**Expense Stop** = the level up to which the Landlord will pay certain operating expenses. Amounts above the expense stop are the Tenant's responsibility



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## SPACE LEASES: Essential Terms

### Lease Types



#### Net leases

- NNN (triple net) lease = Tenant pays all expenses. More common in ground leases, conservative landlords (insurance companies, REITs), or for large, free standing, single tenant (e.g. national restaurant)
- Tenant may wish to negotiate caps on amounts that can be raised annually
- Affords Tenant transparency of expenses



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## SPACE LEASES: Essential Terms

### • Modified gross lease

- Most commonly seen in cases where multiple tenants are occupying the building (office buildings)
- Tenant pays expenses directly related to his unit, including unit maintenance & repairs, utilities, janitorial, while Landlord pays for certain operating expenses, e.g., taxes and insurance, up to a certain amount; then shared among tenants
- Allows for lower base rent but will often provide for escalating clause

### Lease Types



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## SPACE LEASES: Essential Terms

### The “Gross-Up Clause”

If building not fully occupied, Landlord can “gross up” or overstate expenses as if the building is wholly full (Landlord prefers) or nearly full (Tenant prefers 85%) and charge the tenants their pro rate share of that inflated value.

- Only certain operating expenses are to be included, e.g., variable charges
- Exclude fixed costs, e.g., taxes, insurance, security that are not dependent on occupancy rates

### Rent and Gross-Up



Occupancy	Actual Costs	10% Tenant	Other Tenants	Landlord's Portion
100%	\$10.00	10% = \$1.00	90% = \$9.00	\$0.00
50% (without gross up)	\$5.00	10% = \$0.50	40% = \$2.00	\$2.50
50% (with gross up)	\$10.00*	10% = \$1.00	40% = \$4.00	\$0.00

\*The actual cost is \$5.00 grossed up to \$10.00.

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## SPACE LEASES: Essential Terms

- Minimum rent payable and percentage rent kicks in after a certain amount of gross sales are met
- “Breakpoint” = the point at which percentage rent is paid

Artificial = dollar amount of sales both parties agree on

Example: 5% of gross sales over \$750,000

### Percentage Rent

**Percentage Rent** = extra rent due based on a percentage of Tenant's gross sales



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## SPACE LEASES: Essential Terms

- Lease: *In addition to Base/Min. Rent, Tenant shall pay 5% of its gross sales over a “natural breakpoint.”* Assume Min. Annual Rent is \$12,000.
- \$12,000 divided by 0.05 = \$240,000
- Tenant will pay Base Rent plus 5% of all gross sales over \$240k “breakpoint”
- Assume gross sales of \$425,000.
- Subtract breakpoint from gross sales
- Landlord will receive 5% (or \$9,250) in Percentage Rent
- $(\$425k - \$240k = \$185k \times 5\% = \$9,250)$

### Percentage Rent

**Percentage Rent** = extra rent due based on a percentage of Tenant's gross sales



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## Space Leases: Co-Tenancy Clauses

- Allows tenants to reduce their rent if key tenants or certain number of tenants leave the retail space
- Opening co-tenancy & operating co-tenancy clauses
- Heavily negotiated, larger tenants have more power
- Right of Landlord to replace with “suitable tenant” (AMC Theaters replacing Sears)



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### Recent Trends in Commercial Real Estate Leases

**Triple Net Leases:** About **42%** of recently negotiated leases were triple net leases, while gross or full-service leases accounted for **30%**, and modified gross leases made up **28%**.

**Percentage Rent in Retail Leases:** Only **28%** of recently negotiated retail leases required tenants to pay percentage rent.

**Rent Abatement Provisions:** Approximately **46%** of leases surveyed included a rent abatement provision, a significant increase from earlier years during the pandemic.

## SPACE LEASES: Essential Terms

### Landlord's Obligations to Make Improvements



- Tenants often require modifications to a space to fit their specific needs
- Critical aspect of lease negotiations
- Four ways for a Landlord to pay for commercial leasehold improvements:
  - Tenant Improvement Allowance (TIA)
  - Rent Discounts
  - Building Standard Allowance (Build-Out)
  - Turn Key

## SPACE LEASES: Essential Terms

### Landlord's Obligations to Make Improvements

- Tenant Improvement Allowance

Landlord gives a sum certain to Tenant (the TIA) to make improvements. Typical allowance is between \$5 to \$15 per sq. ft.

- Tenant usually oversees the work
- Tenant controls quality & costs issues
- Tenant must deal with the headaches



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## SPACE LEASES: Essential Terms

### Landlord's Obligations to Make Improvements

- Rent Discounts

- Landlord will offer free or discounted rent for a time certain. Tenant will use the money to pay for the improvements, e.g., one free month's rent for each year of lease.

- Tenant usually oversees the work
- Tenant controls quality & costs issues
- Tenant must deal with the headaches



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## SPACE LEASES: Essential Terms

### Landlord's Obligations to Make Improvements

- Building Standard Allowance
- Landlord offers a standard package of improvements (e.g. flooring) from which Tenant makes selections. Tenant may pay for additional improvements not included in the standard build-out.
  - Landlord oversees the work
  - Landlord deals with the headaches
  - Tenant can't do much customization



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## SPACE LEASES: Essential Terms

### Landlord's Obligations to Make Improvements

- Turn-Key
- Tenant delivers design plan for the improvements and cost estimates. Landlord pays for and oversees the work
  - While Tenant can seek customization, there's no control over Landlord doing shoddy work



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## SPACE LEASES: Essential Terms

- Size of TIA will depend on many factors:
  - Current nature of the rental market
  - Length of the lease
  - Amount of rent being paid
  - Nature of the business and value to Landlord
  - Location of the business

### Landlord's Obligations to Make Improvements



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## SPACE LEASES: Essential Terms

- Tenant needs to take extreme care in second generation leases: Is HVAC working? Any ADA issues?
- How will Landlord fund the improvements? Progress payments?
- In some cases, Landlord will do some work, Tenant other work (grey “cold” shell, or vanilla “warm” shell)

### Landlord's Obligations to Make Improvements



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## SPACE LEASES: Essential Terms

### Security Deposit



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Trend towards using Letters of Credit not cash deposits – esp. for larger deposits and risky new businesses.

- BK court unlikely to deem LOC part of bankrupt tenant's estate

Security deposit burn down strategy.

FL: Security deposit may be commingled & may be held in non-interest bearing account.

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## SPACE LEASES: Essential Terms

### Use Clauses

- While not complicated in office and industrial leases, important in retail leases
- Impact on tenant mix in shopping center
- Landlord's prefer narrow use clause and control over use
- Tenant may focus on exclusive use, change of use, assignability
- Environmental and other use limitation (dry cleaners, check cashing)
- Landlord may seek language disallowing a change of use for any or no reason

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## SPACE LEASES: Essential Terms

- Lease need spell out Landlord's and Tenant's obligations
- Unlike residential leases, Florida law imposes no obligations on the Landlord or Tenant to make certain repairs
- Beware of Tenant's repair obligations under a triple net lease!

### **Maintenance and Repairs**



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## SPACE LEASES: Essential Terms

- See Sec. 83.201, F.S. – provides procedure, where none in lease exists, where lease affirmatively imposes repair or maintenance obligation on Landlord and such failure to repair or maintain renders the premises wholly untenable
- “Wholly untenable” may be akin to constructive eviction
- Interruption of services need be considered: elevators, bathrooms, security guards, janitorial services

### **Maintenance and Repairs**



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## SPACE LEASES: Essential Terms

### Insurance and Indemnity



- Involve the experts
- “Commercial” not Comprehensive General Liability Insurance (CGL)
- Mutual waiver of claims and waiver of subrogation – each party insures their own property
  - Eliminates fault as a factor
  - Waiver of claims as to property, not to person

## SPACE LEASES: Essential Terms

- Kinds of insurance:
  - Contents insurance – replacement cost under Special Form coverage (no longer referred to as “all-risk” insurance)
  - Property insurance on the building
    - multitenant (landlord carries the insurance) vs. single tenant (tenant carries the insurance)
    - office buildings - paid by Landlord and treated as operating expense

### Insurance and Indemnity

## SPACE LEASES: Essential Terms

- Proceeds available to rebuild – but will depend on terms of mortgage on the building
  - See SNDA discussion
- Rent insurance
  - Will cover Landlord if rent is abated during time that premises are untenable
- Business income insurance
  - Will cover Tenant if premises are rendered untenable, the lease does not terminate, and the rent is not abated

## Insurance and Indemnity



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The screenshot displays the Fund Assembly On-Demand website. The top navigation bar includes links for Schedule, Speakers, Hotel, Expo, Accreditation, and Register. The main content area is divided into two sections. On the left, a 'Watch On-Demand' banner promotes earning CLE credits anytime, anywhere, with a 'Demand Your Credits!' button. Below this, there are links for 2024, 2023, and 2022 Fund Assembly Attendees. On the right, a 'Sessions Manual CLE' sidebar lists various sessions with 'Watch Now' links. The main video player area shows a session titled 'What Transactional Lawyers Need to Know About Property Insurance' by Charles Connorsky and Scott Pence. The video player includes a description, supporting materials, and a 'Need Support' section.



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## SPACE LEASES: Essential Terms

### Tenant Alterations and Construction Liens



- What types of alterations will require Landlord approval?
- What standard to be employed?
  - reasonableness v. within Landlord's discretion
  - Non-structural & interior (e.g. carpeting, paint)

## SPACE LEASES: Essential Terms

- Contractors can lien interests of both Landlord and Tenant if work Tenant is required to do under terms of lease goes unpaid
- But under Sec. 713.10, F.S., Landlord can prevent lien if:
  - Lease must include express “no-lien language” stating that Landlord's interest not subject to lien
  - Landlord must record, prior to recordation of Notice of Commencement, (i) copy of the lease, (ii) a short form memorandum of lease which includes the express no-lien language, or (iii) a “713.10 notice” complying with Sec. 713.10(b)(2), F.S.

### Construction Liens





## SPACE LEASES: Essential Terms

- Absent restrictive language, Tenant free to assign or sub-let
- In assignment, Tenant typically fails to retain reversionary interest; opposite is true in sublease
- In assignment, Landlord and assignee have privity of contract
  - Absent written agreement, Landlord and sublessee not in privity
- Non-assignable clause in lease does not prevent Tenant from mortgaging its leasehold interest

## Assignment & Subleasing



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## SPACE LEASES: Essential Terms

Issues presented:

- Will Landlord consent to transfer?
  - Standard applied (reasonableness)
  - Define grounds for reasonable denial
    - Creditworthiness of transferee
    - Tenant mix/exclusivity
    - Suitability of premises

## Assignment and Subleasing



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## SPACE LEASES: Essential Terms

### Assignment and Subleasing

- Residual liability of Tenant/assignor
  - Privity of estate and privity of contract in assignment vs. sublease
    - In sublease, no privity between Landlord and sub-tenant, thus sub-tenant will want a non-disturbance agreement from Landlord
- Examples of “Permitted Transfers” not requiring Landlord’s consent:
  - Intra-corporate assignments, mergers, assignments in connection with all or substantially all of Tenant’s assets

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## SPACE LEASES: Essential Terms

### Assignment and Subleasing

Issues presented:

- Time for Landlord to respond
- Recapture rights
- Sublease profits
- Rights of transferee to exercise options
- Assignment by Landlord
  - Release of assigning Landlord
  - Assignment of security deposit

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## SPACE LEASES: Essential Terms

### Defaults and Remedies

#### Monetary Defaults

- Notice and cure period
  - Sometimes none for monetary, but law provides minimum three-day notice
- Grounds
  - Failure to pay Base Rent
  - Failure to pay CAM/Additional Rent

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## SPACE LEASES: Essential Terms

#### Non-Monetary

### Defaults and Remedies

- Notice and cure period
  - Fifteen days' notice required by statute
  - Most leases: 15-30 days to cure upon notice, longer if cannot reasonably be cured within time provided
    - Grounds: abandonment, failure to open, failure maintain insurance, improper assignment/sublease, appointment of receiver; going dark
      - Disfavored by courts. Need show material prejudice to non-defaulting party and no unjust result



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## SPACE LEASES: Essential Terms

### Defaults and Remedies

- Landlord's remedies
  - Re-take possession of premises for account of Landlord
    - Serves to release Tenant of all further obligations
  - Re-take possession of premises for Tenant's account
    - Tenant remains liable for all lease obligations until premises re-let

## SPACE LEASES: Essential Terms

### Defaults and Remedies

- Do nothing and sue for rents; acceleration clause
  - No self-help allowed, can't normally change locks
  - No mitigation of damages required in Florida
- Attorney's fees
- Appointment of Receiver to collect rents if lease provides

## SPACE LEASES: Essential Terms

### Defaults and Remedies

- Tenant's remedies
  - Notice and cure period
  - Limited or all remedies available at law and equity?
  - Tenant's ability to recover lost profits impacted by lack of earnings record
    - But may be able to recover out-of-pocket expenses in preparing premises for a specified use

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## SPACE LEASES: Essential Terms

### Defaults and Remedies

- Landlord's liability may be limited to interest or equity in the project
  - Common for Landlord to set up single purpose entity
- Tenant self-help limited to matters within own space

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## SPACE LEASES: Essential Terms

### Environmental Concerns



- Serious concern in industrial and warehouse leases; less so office and retail
  - Mold is large exception
- Use/storage/transport of hazardous materials
  - Gas stations & auto repairs
  - Underground storage tanks
  - Dry cleaning
- Lease will typically require Tenant to indemnify Landlord against claims arising from Tenant's violation of environmental requirements

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**Thank you**  
**for your time and attention**

For more information please contact:

**Michael Rothman**

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## COMMERCIAL PROPERTY LEASE

**THIS AGREEMENT** (the "Lease"), entered into this \_\_\_\_ day in \_\_\_\_\_, between \_\_\_\_\_, a \_\_\_\_\_, hereinafter called "Landlord", whose address is \_\_\_\_\_ and \_\_\_\_\_, a \_\_\_\_\_, hereinafter called "Tenant", whose address is \_\_\_\_\_.

**WITNESSETH:** In consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord does this day lease unto Tenant the premises, comprised of a commercial building, located at \_\_\_\_\_ (the "Premises") having an approximate usable interior square footage of 1,458 sq./ft. By taking possession of the Premises and paying the first month's Base Rent, the Tenant waives any objections to the square footage, configuration and other physical features of the Premises, and Tenant hereby acknowledges and agrees that, except as expressly set forth herein, the amount of Base Rent and all other charges due hereunder for the Lease of said Premises does not depend upon the floor area of the Premises. Tenant shall also have the right to use the exterior patio, having approximately 1,142 sq./ft., provided said use in accordance with the terms herein and in accordance with all local, building, zoning and municipal ordinances.

**TO HAVE AND TO HOLD** said premises for the term of \_\_\_\_ years, beginning on \_\_\_\_\_, 20\_\_ ("Lease Commencement Date") and ending \_\_\_\_\_, 20\_\_ ("Lease Expiration Date"), at and for the agreed Base Rent, Additional Rent & CAM charges, in addition to Florida sales tax, shall be paid by Tenant to the Landlord on or before the first day of each month as defined herein.

Provided that Tenant is in good standing and is not in default in the performance of this Lease, Tenant shall have the option to renew this Lease for one (1) additional term(s) of five (5) years. All of the terms and conditions of this Lease, including the annual Base Rent adjustment of three percent (3%) over the previous year's Rent, shall apply during the option terms. Such option must be exercised at least 180 days prior to the expiration of the initial lease term by giving Landlord Notice in accordance with the terms herein. If notice is not given in the manner provided herein within the time specified, this option shall automatically expire.

**IT IS FURTHER AGREED** and covenanted by and between the parties hereto as follows:

1. **BASE RENT, ADDITIONAL RENT, CAM CHARGES, TAXES & INSURANCE.**

**BASE RENT.** The Base Rent during for the first year of the initial term of this Lease shall be \$\_\_\_\_\_ per year (\$\_\_\_\_.00 per interior sq./ft.), which equates to \$\_\_\_\_\_ per month during the first year under the original term of this Lease, which amount is exclusive of Additional Rent, as defined below, and applicable Florida Sales Taxes, each payable in advance on the first day of each month throughout the term. The Base Rent shall increase annually by 3%, over the previous year's Base Rent, during the term(s) of this Lease. By way of example, the Base Rent for Year 2 under this Lease shall be \$60,069.60 per year, which equates to \$5,005.80 per month, which amount is exclusive of Additional Rent, as defined below, and applicable Florida Sales Taxes, each payable in advance on the first day of each month throughout the term. This annual 3% increase shall remain in effect through the entire term(s) of this Lease, including any renewals thereof. The parties hereby agree that 30 days prior to the fifth anniversary of this Lease, the parties shall determine in good faith the fair market value of the rent for the Premises on such date, provided that if the fair market value of such rent is five percent (5%) more, or less, than the what the Base Rent will be on the first month of Year 6, then the Base Rent shall be adjusted accordingly and such

new rent shall become the Base Rent and shall be subject to the annual 3% rent increases, for years 7 thru 10, including any renewals granted to Tenant herein, as set forth under this Lease. It is the intention of the parties that the Base Rent, as adjusted, on the fifth anniversary of the Effective Date, shall not increase or decrease by more than five percent (5%) of the amount of the Base Rent on the fifth anniversary of this Lease. By way of example, the Base Rent for Year 5 under this Lease shall be \$65,639.64 per year, which equates to \$5,469.97 per month, which amount is exclusive of Additional Rent and applicable Florida Sales Taxes. In the event the market rate for the Premises, as determined by the parties in good faith 30 days prior to the end of Year 5, increases, or decreases, by an amount not to exceed \$273.50 (\$5,469.97 x 5%), then the Base Rent for Year 6 shall be increased, or decreased, proportionately, subject to the five percent (5%) ceiling or floor, which new rent payment shall be subject to the annual 3% rent increases as set forth under this Lease, for years 7 thru 10, including any renewals granted to Tenant herein, until the expiration or termination of this Lease.

The first rent payment due under this Lease ("Rent Commencement Date") shall commence one hundred twenty (120) days after the Lease Commencement Date. Furthermore, the Landlord hereby agrees to provide the Tenant with a credit of 50% off the base rent due and owing by the Tenant, solely for the first month following the expiration of the Rent Commencement Date, which amount is exclusive of Additional Rent, as defined below, and applicable Florida Sales Taxes.

Should the term of the Lease commence on a day other than the first day of a month, the first monthly installment of Rent and Additional Rent, plus applicable Florida sales tax, shall be prorated on the basis of a thirty (30) day month and shall be paid on the Rent Commencement Date and the next Rent payment shall be due on the first day of the month for the remainder of the term(s) of this Lease.

If any payment of rent or other payments are not paid when due, the Tenant, as a penalty for such delinquency is to pay Landlord a \$100.00 per day late charge if payment is not received within five (5) days of the due date. This provision shall not be construed to relieve Tenant from any default hereunder arising through the failure on the part of the Tenant to make any payment at the time and in the manner specified. If during the term of this Lease more than two (2) of Tenant's checks are so dishonored by Tenant's bank or if in the event any payment is received late more than two times, then Landlord, in Landlord's sole discretion, may require all future payments of Tenant to be paid via wire transfer, cashier's check, bank check, certified check or money order only. In addition, any sum accruing to Landlord under the terms and provisions of this Lease which shall not be paid when due shall bear interest at the rate of one and one-half percent (1-1/2%) per month or the highest rate permitted by law. This service charge is to defray the administrative and accounting costs that accrue as a result of Tenant's failure to make payments in a timely manner and is not interest, and shall not be construed to postpone any event of default by Tenant, and shall be cumulative with any of Landlord's remedies upon Tenant's default.

A. OTHER CHARGES PAYABLE BY TENANT. All charges payable by Tenant other than Base Rent are called "Additional Rent." Unless this Lease provides otherwise, all Additional Rent shall be paid with the next monthly installment of Base Rent. The term "rent" shall mean Base Rent and Additional Rent.

B. Additional Rent. Upon the Rent Commencement Date, the Tenant agrees to pay to Landlord, as Additional Rent, with payment to be made simultaneously with the respective monthly payments of Base Rent, 1/12th of the charges incurred by the Landlord for the real property taxes and casualty and wind insurances, as determined by the Landlord or Landlord's Lender, if any, in connection with use and occupancy of the Premises. The Tenant shall be responsible for the payment of the real property taxes, casualty and wind insurances (which insurance does not include any Insurances required to be maintained by the Tenant in accordance with the terms herein) and maintenance. Real property taxes are

estimated in the amount of \$\_\_\_\_\_. Casualty and wind insurance is estimated in the amount of \$\_\_\_\_\_. Tenant shall have the right, subject to prior approval from Landlord, or Landlord's lender, if any, to obtain casualty and wind insurance for the Premises, provided that the terms and conditions of such policy are the same usually hired by Landlord and that the insurance company is acceptable to Landlord and/or Landlord's lender, if any. The aggregate of real property taxes and casualty and wind insurance obtained by Landlord shall be included as Additional Rent and paid in twelve installments at the same time that Base Rent is due and payable. Tenant shall have the right to dispute any appraisal made by the county clerk with respect to the real property taxes assessed on the premises at its own expense and risk and before penalties would otherwise attach. Notwithstanding the Tenant's right to dispute the Landlord's real property tax liability on Landlord's behalf, the Tenant hereby agrees and understands that Landlord shall be allowed to pay all, or a portion of the property tax liability, so as to avoid the accrual of any late fees, charges or interest, or avoid being in default of any loan documents if Landlord has obtained a loan, which loan is secured by a mortgage encumbering the Premises, or lose any discounts for pre-payment of these real property taxes. In the event the Tenant is successful in obtaining a reduction on the real property tax liability, the Landlord hereby agrees to credit the Tenant for these amounts, after receiving payment from the tax collector, and re-adjust the monthly payments collected from the Tenant prospectively in accordance with the terms herein.

C. Special Assessments: In the event there are any special assessments passed by local taxing authorities in connection with the Demised Premises, Tenant shall be responsible for these special assessment amounts in their entirety.

D. Personal Property Taxes: Tenant shall pay any taxes charged against the trade fixtures, furnishings, equipment or any other personal property belonging to Tenant during the term of this Lease.

E. Utilities: Tenant shall pay, directly to the appropriate supplier, the cost of all natural gas, heat, light, power, sewer service, telephone, water, garbage disposal and other utilities and services supplied to the Premises. Furthermore, Tenant shall pay for any improvements needed to be made to the electrical system of the Premises, in accordance with Tenant's work as stated herein, which improvements shall remain property of the Landlord upon the termination or expiration of this Lease. The Landlord hereby agrees to assist Tenant, provided Landlord incurs no cost in assisting the Tenant in obtaining said utilities.

Upon execution of this Lease, Tenant shall deliver to Landlord the payment, in the amount of \$\_\_\_\_\_, representing payment of the first month's rent + Sales Tax of \$\_\_\_\_\_, together with last month's Rent of \$\_\_\_\_\_ (Base Rent of \$\_\_\_\_\_ + Additional Rent of \$\_\_\_\_\_ + Sales Tax) and Security Deposit of \$\_\_\_\_\_ ("Security Deposit"), to be held by the Landlord in accordance with the terms herein. Should the term of the Lease commence on a day other than the first day of a month, the first monthly installment of Rent and Additional Rent, plus applicable Florida sales tax, shall be prorated on the basis of a thirty (30) day month and shall be paid on the Rent Commencement Date. The next Rent payment shall be due on the first day of the month. The Security Deposit is to be held as collateral security for the payment of any rent and other sums of money payable by Tenant under this Lease, and for the faithful performance of all other covenants and agreements of Tenant under this Lease. The Security Deposit, without interest, will be repaid to Tenant after the term of this Lease, within 30 days of the Tenant vacating and delivering possession of the Premises to the Landlord in accordance with the terms herein, provided Tenant shall not be in Default under this Lease. Upon any Default by Tenant under this Lease, all or part of the Security Deposit may, at Landlord's sole option, be applied on account of such Default, and thereafter Tenant shall promptly restore the resulting deficiency in the Security Deposit. Tenant hereby waives the benefit of any provision of law requiring the Security



Deposit to be held in escrow or in trust, and the Security Deposit shall be deemed to be the property of Landlord and may be commingled by Landlord with its own funds.

Triple Net. This Lease is what is commonly known as a “triple net” lease. It is the intention of Landlord and Tenant that Tenant shall be solely responsible for payment of all expenses and costs relating to the Premises accruing during the Lease Term, including but not limited to real estate taxes and insurance (even if such expenses and costs are not specifically identified herein as the responsibility of Tenant), such that the rent payable to Landlord hereunder shall be absolutely net of any and all such expenses and costs which otherwise would reduce Landlord’s net return hereunder. This Section shall control in the event of any conflict or inconsistency with any provision of this Lease and any law, ordinance or regulation now or hereafter enacted. Landlord’s only obligations related to the maintenance and repair of the Premises shall be as expressly stated in this Lease.

F. Insurance:

(i) Liability Insurance: During the term of this Lease, Tenant shall maintain a policy of comprehensive public liability insurance at Tenant’s expense, insuring Landlord and Tenant against liability rising out of the ownership, use, occupancy or maintenance of the Premises. Initial amount of such insurance shall be at least \$2,000,000.00. The policy shall contain cross-liability endorsements, if applicable. Tenant may, at Tenant’s expense, maintain such other liability insurance as Tenant deems necessary to protect Tenant.

(ii) Payment of Premiums; Insurance Policies: Tenant shall pay all premiums for the insurance policies covering the Premises as described in sub-paragraphs (i) and (ii). If the Lease term expires before the expiration of the insurance policy, Tenant’s liability for insurance premiums shall be prorated on an annual basis. All insurance shall be maintained with companies holding a general Policyholder’s Rating of A+ or better as set forth in the most current issue of Best’s Insurance Guide or company that is currently providing insurance. Tenant shall deliver to Landlord copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with loss payable clauses as required herein. Furthermore, no such policy shall be cancelled or be subject to reduction in coverage or other modification without providing the Landlord with a minimum of 30 days’ written notice.

(iii) Liquor Liability Insurance - If at any time Tenant shall sell or serve alcoholic beverages in, at or from the Premises, Tenant shall at all times during the term hereof at its sole cost and expense maintain in effect a policy or policies of insurance insuring Landlord (as additionally named insured) and Tenant against loss, cost, or expense by reason of bodily injury or property damage for which Landlord and/or Tenant may be held liable by or because of the violation of any statute, ordinance or regulation pertaining to the sale, gift, distribution, or use of any alcoholic beverage, by reason of the selling, serving, or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person, or as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or as an owner or lessor of the premises used for such purposes. The liquor liability insurance shall be written with minimum limits of coverage as reasonably required by Landlord from time to time, but not less than Two Million and 00/100 US Dollars (\$2,000,000.00) per occurrence. Tenant shall deliver to Landlord copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with loss payable clauses as required herein. Furthermore, no such policy shall be cancelled or be subject to reduction in coverage or other modification without providing the Landlord with a minimum of 30 days’ written notice.

2. ASSIGNMENT. Without the written consent of Landlord first obtained in each case,

which shall not be unreasonably withheld, Tenant shall not assign, transfer, mortgage, pledge, or otherwise encumber or dispose of this lease or the term hereof, or underlet the demised premises or any part thereof or permit the premises to be occupied by other persons. If this lease be assigned, or if the demised premises or any part thereof be underlet or occupied by anybody other than the Tenant, the Landlord may, after default by the Tenant, collect rent from the assignee, undertenant, or occupant and apply the net amount collected to the rent herein reserved, but no such collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, undertenant, or occupant as Tenant or a release of the Tenant from the further observance and performance by the Tenant of the covenant herein contained. An assignment of the lease shall be deemed to have occurred when more than 50% of the ownership interest in the Tenant, if an entity, has been transferred to another person or entity, without the Landlord's consent. Tenant shall have the right to assign his rights and delegate his duties under the Lease to any company which is a wholly-owned affiliate of the Tenant, the interests of which are solely owned by Mr. \_\_\_\_\_, without obtaining the Landlord's approval.

3. EXAMINATION OF PREMISES & NOTICE OF UNAVAILABLE ONSITE PARKING.

The Tenant hereby accepts the Premises and every part thereof in its present condition, in an absolutely "AS IS" and "WHERE IS" condition. Landlord shall not be required to make any alterations, repairs or improvement of any kind whatsoever for Tenant except as expressly provided in this Lease. The Tenant hereby acknowledges and understands that the Premises does not have any attached parking and the Landlord shall not be required to provide parking for the Tenant, Tenant's customers, invitees or patrons. The entry into possession by Tenant shall constitute unqualified acceptance of the Premises by Tenant and constitutes recognition that the Premises are tenantable, in good condition and repair, and the taking of possession by Tenant shall constitute an acknowledgment by Tenant that the Premises are in the condition called for by this Lease, that Landlord has performed all of the Landlord's Work with respect thereto, if any, and that all preliminary conditions prerequisite to Tenant's obligation to pay the Rent and all Additional Rent and any other payments called for by this Lease, if any, have been met. This Lease is subject to covenants, conditions, reservations, restrictions, easements, rights, right of way and other matters of record if any, and any such future matters and encumbrances which are, or may be recorded by Landlord, in the office of the Clerk of the County in which the Premises are located, unless Landlord (at his sole option) or this Lease state otherwise. This Lease is expressly entered into and executed subject to the matters recited herein, both the Landlord and Tenant respectively agree to perform each and all of the covenants, conditions, rules and regulations contained herein. Tenant acknowledges that Landlord makes no representations concerning whether Tenant's proposed use of the Premises is permitted under applicable Laws. Should Tenant's proposed use of the Premises be prohibited, Tenant shall be obligated to comply with applicable Law and this Lease shall nevertheless remain in full force and effect. Furthermore, Tenant shall be required to provide Landlord, within 90 days from execution of this Lease, copies of all of the licenses and certificates required by the municipal and governmental agencies evidencing that the Tenant is authorized to open and operate its business in the Premises.

4. LANDLORD'S LIEN. Landlord shall have a valid first lien for all rent due hereunder, upon all property of Tenant and of all persons entering or holding this Lease, which may at any time be in or upon the premises. All merchandise, inventory, furniture, equipment and other personal property left on the premises upon termination or expiration of this Lease shall be deemed to have been abandoned by Tenant. Tenant hereby grants to Landlord a security interest in all furniture, fixtures, merchandise, equipment, inventory and other tangible personal property where the proceeds therefrom, belonging to Tenant and which shall or may be brought or put upon the premises, and in all accounts receivable of Tenant, security for the payment of rent and all other obligations of Tenant hereunder, and all such property shall become the property of Landlord immediately upon an uncured default hereunder, after the Tenant has been provided written notice of same and an opportunity to cure. Tenant agrees that this security interest at Landlord's

option, may be enforced as provided herein or otherwise pursuant to law, or in the manner provided in the Uniform Commercial Code, and for the purposes of perfecting this security interest, the parties hereto agree that this Lease shall constitute a security agreement pursuant to the Uniform Commercial Code, and Tenant agrees to execute such financing and continuation statements as may be requested by Landlord. The law does not allow and the Landlord's Lien specifically does not cover and/or pertain to any license of Tenant which shall always remain free from any lien of Landlord.

5. USE. The premises will be used by Tenant as a restaurant, operating under the trade name of \_\_\_\_\_, in accordance with the terms herein and for no other use. Tenant agrees to reimburse, indemnify and hold Landlord harmless for any fine or penalty which may be imposed upon Landlord by any Court or other governmental body by reason of any violation of any law or regulation upon the premises. Tenant will not change the trade name or business operated in the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld by the Landlord, provided Tenant is not in default under the terms herein and said business is allowed under any and all municipal or governmental rules, regulation or ordinances covering the Premises and/or regulating Tenant's business.

6. ALTERATIONS & MAINTENANCE.

Tenant's Alterations. Tenant will make no alterations, additions or improvements in or to the premises, apart from the Tenant's work as defined herein or included in the Tenant work letter attached hereto as Exhibit "A", without the written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned, and all additions, fixtures, or improvements, shall be and remain a part of the premise at the expiration of this lease.

Tenant's Maintenance. The Tenant will be responsible, at Tenant's sole cost and expense, for all maintenance, repairs and replacements in, on or about the Premises and all equipment and property thereon shall be maintained in good condition, and in substantially the same condition as same now exists, reasonable wear and tear excepted. Tenant's responsibilities hereunder include, but are not limited to, the replacement, repair and maintenance of all interior improvements, sewage, sewer line, awnings, fixtures, appliances, equipment, and systems, including but not limited to, air conditioning, water towers, heating, plumbing, electrical systems, and plate glass; and all of the foregoing shall be maintained in good operating condition at all times, free of dirt, rubbish and other obstructions, and shall be kept in good clean condition. All replacements, repairs and maintenance shall be performed by licensed contractors or workman designated or reasonably approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall not commit nor allow waste or damage to be committed on any portion of the Premise. Tenant shall be responsible for the sanitation, storage and daily removal of all garbage generated by Tenant. Tenant shall perform the aforesaid maintenance, repairs, replacements and services and shall otherwise use the Premises in a respectable and prudent manner.

Landlord's Improvements. The Landlord hereby agrees to perform the work as defined herein, if any, or included in the Landlord's work letter attached hereto as Exhibit "B" within 30 days after the Tenant has obtained and delivered to Landlord copies of all necessary permits covering the scope of the work outlined in Exhibit "A" & Exhibit "B". The Tenant hereby agrees to allow the Landlord's agent access to the Premises, in order to complete the scope of the work referenced in Exhibit "B." The Tenant hereby agrees to pull all necessary permits required for the work to be performed on the Premises by the Landlord, as defined in "B", within 30 days after the Effective Date. Provided the Tenant has pulled the necessary permits needed for the completion of Landlord's work on the Premises, the Landlord hereby agrees to complete the Landlord's work, as listed in Exhibit "B", within 45 days of receiving copies of the permits containing the scope of work being performed by the Landlord. In the event the Tenant delivers the necessary permits to the Landlord, within the time frames herein, and the Landlord has not completed with

Landlord's work, which causes a delay in the Tenant opening for business after the expiration of the 120-day rent concession period, the Landlord hereby agrees to provide the Tenant with a daily rent concession, for each day, after the 120th day in which the Landlord's work is not completed and said failure is causing a delay in the Tenant opening up for business. The Landlord and Tenant hereby agree to work diligently and in good faith to obtain all necessary permits and conclude the work being called for herein by the respective parties.

Landlord's Maintenance. The Landlord's maintenance requirements shall be limited to the structure, exterior walls, foundations, roof and roof systems of the Premises and any pipes or conduits located outside of the Premises.

Tenant's Indemnity with Respect to Certain Repairs. In the event that if any such damage arises to the Premises or with respect to such areas of the Premises which are subject to maintenance by Landlord as a result of from (i) repairs, installations, alterations, or improvements by, or for, the Tenant or any subtenant, concessionaires, or their respective employees, agents, invitees, licensees or contractors, or (ii) any act, omission or negligence of Tenant or any subtenant, concessionaires, or their respective employees, agents, invitees, licensees or contractors, or (iii) default under the Lease by Tenant, then the Tenant shall make any such repairs or replacements upon receiving a demand from Landlord; provided, however, that if Tenant fails to immediately act upon said demand from Landlord and commence making said repairs, Landlord may elect to perform said work on Tenant's account and Tenant shall reimburse Landlord for expenses incurred, within fifteen (15) days after receipt of a bill therefor at cost, along with a charge of twenty percent (20%) for overhead and supervision, which shall be paid for by Tenant, which amounts may be deemed as Additional Rent owed under the terms herein.

7. EXTERIOR. If any part of the interior of the Premises is injured or damaged by any breaking and/or entering said Premises, or by and attempt to break and/or enter said Premises, by any third person or persons, and such damages are not covered by insurance, Tenant agrees to promptly cause all necessary repairs to be made at Tenant's expense so as to promptly restore said premises to its condition immediately prior to said breaking and/or entering or said attempt to break and/or enter. Tenant shall be responsible for insuring, maintaining security for, repairing and maintaining the outside patio area in a neat, clean condition on a continual basis as fully and effectively as though the same were a part of the Premises. Tenant shall remove any tabletop umbrellas, if any, and secure the tables and chairs and other exterior furnishings, if any, with a cable at the end of each day or earlier in the event of hazardous outdoor conditions including foul weather or other dangerous conditions, and shall store the umbrellas in the interior non-retail portion of the Premises. Furthermore, Tenant shall be responsible for any damage and/or theft to any such exterior furnishings, whether owned by Landlord or Tenant. For all purposes under this Lease, including insurance and indemnity obligations, the outside patio area shall be to be deemed included in the Premises, although Landlord shall not charge Tenant any extra rent, or fee, for the use of the outside patio, aside from any insurances the Tenant is required to obtain in connection with the use of the outside patio in accordance with the terms herein. Tenant shall not permit any music, live entertainment, excessive noise or nuisance in the outside patio area, which causes any disruptions to the tenants and/or owner of the surrounding properties and will indemnify and hold the Landlord harmless from any and all damages in connection with same.

8. INTERIOR. Tenant agrees to keep the interior of said premises, all windows, screens, awnings, doors, interior walls, pipes, machinery, plumbing, electric wiring, and other fixtures and interior appurtenances, in good and substantial repair and clean condition at Tenant's own expense: fire, windstorm or other act of God, alone excepted. All glass, both interior and exterior, is at the sole risk of Tenant and Tenant agrees to replace, at Tenant's own expense, any glass broken during the term of this lease and Tenant agrees to insure and keep insured all plate glass in the demised premises and furnish Landlord with

certificate of said insurance.

9. REGULATIONS. Tenant shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and City Government, and of any and all their Departments and Bureaus, applicable to said premises for the correction, prevention, and abatement of nuisances or other grievances, in, upon, or connected with said premises, during said term.

10. ABANDONMENT. If Tenant shall abandon or vacate said premises before the end of the term of this lease, or shall suffer the rent to be in arrears, Landlord may, at Landlord's option, cancel this lease, in the manner stated in paragraph 20 hereof, or Landlord may enter said premises as the agent of Tenant, by force or otherwise, without being liable in any way therefore, and relet the premise with or without any furniture or equipment that may be therein, as the agent of Tenant, at such price and upon such terms and for such duration of time as Landlord may determine, and receive the rent therefor, applying the same to the payment of the rent due by these presents, and if the full rental herein provided shall not be realized by Landlord over and above the expenses to Landlord in such reletting, Tenant shall pay any deficiency.

11. ATTORNEYS' FEES. Tenant agrees to pay all cost and expenses of enforcement of this lease, collection and reasonable attorneys' fees, including at all appellate levels, for the enforcement of this lease or on any part of said rental that may be collected by an attorney, suit, distress, or foreclosure. In the event any litigation arises in connection with this Lease, the prevailing party shall be entitled to an award for the reimbursement of all the costs, expenses, attorneys' fees, including all appellate levels, from the non-prevailing party.

12. ASSIGNMENT OF CHATTELS. Tenant hereby pledges and assigns to landlord all the furniture, fixtures, goods and chattels of Tenant which shall or may be brought or put on said premises as security for the payment of said rent, and Tenant agrees that said lien may be enforced by distress, foreclosure or otherwise, at the election of Landlord. It is understood and agreed that any merchandise, fixtures, furniture or equipment left in the premises when Tenant vacates shall be deemed to have been abandoned by Tenant and by such abandonment Tenant automatically relinquishes any right or interest therein. Landlord is authorized to sell, dispose of or destroy same.

13. FIRE. In the event the premises shall be destroyed or so damages or injured by fire or other casualty, during the life of this agreement, whereby the same shall be rendered wholly or partially untenable, then Landlord shall have the right to render said premises tenantable by making the necessary repairs within 90 days therefrom, provided that the Landlord actually receives such insurance proceeds, the Landlord shall commence the repair of such damage within ninety (90) days after the date of occurrence of such damage and this Lease shall continue in full force and effect. There shall be a fair and equitable proportionate abatement of all Rent during that period based on the proportion of the Leased Premises rendered untenable. If the Premises are destroyed or damaged and either (i) such damage was caused by a casualty not required to be insured against per the terms hereunder then Landlord, at its sole option, shall either commence the repair of such damage at Landlord's expense, in which event this Lease shall continue in full force and effect, or cancel and terminate this Lease as of the date of the occurrence of such damage by giving Tenant written notice of its election to do so within sixty (60) days after the date of occurrence of such damage. Upon Landlord providing Tenant written notice of the completion of any repairs, Tenant shall diligently restore Tenant's property and promptly reopen for business and commence the payment of all Rent required hereunder. Tenant shall use the proceeds of any recovery on Tenant's insurance policies for restoration of improvements made by Tenant to the Leased Premises damage (including all permanent leasehold improvement and betterments and for restoration and/or replacement of Tenant's equipment, trade fixtures and inventory, and to cover any business interruption loss.

14. PERSONAL PROPERTY. All personal property placed or moved in the premises above-described shall be at the risk of Tenant or the owner thereof, and Landlord shall not be liable to Tenant for any damages to said personal property unless caused by or due to gross negligence of Landlord, Landlord's agents or employees.

15. CHARGES FOR SERVICE. It is understood and agreed between the parties hereto that any charges against Tenant by Landlord for services, utilities or for work done on the premises by order of Tenant or otherwise accruing under this lease, shall be considered as Additional Rent due and shall be included in any lien for rent.

16. SIGNS, AWNINGS. Tenant shall have the right to install signage on the Premises, without necessitating the Landlord's consent, provided the signage is installed in accordance with all local, building, zoning and municipal ordinances. Furthermore, the Tenant hereby agrees to be responsible for the costs of installing (including the costs of any drawings, permits, inspections, etc.) repairing and maintaining the signage during the term of this Lease. Tenant hereby agrees to indemnify the Landlord from any damages arising from the installation and maintenance of any signage.

17. RIGHT OF ENTRY. Landlord, or any of landlord's agents, shall have the right to enter said premises during normal business hours, after providing Tenant with 48 hours' notice, to examine the same or to make such repairs, additions, or alterations as may be deemed necessary for the safety, comfort, or preservation thereof, or of said building, Or to exhibit said premises, and to put or keep upon the doors or windows thereof a notice "FOR RENT" at any time within sixty (60) days before the expiration of this lease. 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.

18. TIME. It is understood and agreed between the parties hereto that time is the essence of all of the terms and provisions of this lease.

19. NOTICES. It is understood and agreed between the parties hereto that written notice addressed to Tenant and mailed by certified or registered mail to the address set forth below shall constitute sufficient notice to the Tenant, and written notice addressed to Landlord and mailed by certified or registered mail to the address set forth below shall constitute sufficient notice to the Landlord, to comply with the terms of this lease.

If to Landlord: \_\_\_\_\_

With copy to: \_\_\_\_\_

If to Tenant: \_\_\_\_\_

20. DEFAULT.

Any one of the following shall be a default by Tenant: (a) Tenant fails to pay Rent when due hereunder; (b) Tenant fails to perform or observe any agreement, obligation or covenant of this Lease (other than the payment of Rent) and such failure continues for ten (10) days after notice from Landlord (or if same cannot reasonably be cured within ten (10) days, if Tenant fails to commence to cure within ten (10)

days and/or fails to diligently prosecute such cure to completion provided such cure period shall not exceed thirty (30) days; (c) Tenant becomes bankrupt or insolvent or makes an assignment for the benefit of creditors or takes the benefit of any insolvency act, or if any debtor proceedings are taken by or against Tenant; (d) a receiver or trustee in bankruptcy is appointed for Tenant's property and such appointment is not vacated within ninety (90) days from the date of appointment; (e) Tenant leasehold interest or right to possession of the Leased Premises, or both, passes to one other than Tenant, by assignment, operation of law or otherwise (except as otherwise expressly permitted hereunder), without written consent of Landlord; (f) Tenant ceases doing business at the Leased Premises as determined by Landlord for more than fifteen (15) consecutive days (except for temporary closures due to casualty or condemnation, provided Tenant is not in default of any rent payments due hereunder during the temporary closure); (g) Tenant vacates or abandons possession of the Leased Premises; and/or (h) the Leased Premises are used for purposes other than any permitted use hereunder.

In the event of a default by Tenant hereunder, Landlord may, at its option and without further notice, in addition to all other remedies available at law or in equity: (a) terminate the Lease but Tenant shall remain liable as hereinafter provided; (b) repossess the Leased Premises without terminating the Lease, (c) obtain injunctive and declaratory relief and/or specific performance of any term, covenant or condition of the Lease; or (d) declare the entire balance of all Rent due under the Lease for the remainder of the Term to be immediately due and payable discounted to present value, (e) institute a distress for rent action and obtain a distress writ under Section 83.11 through 83.19, Florida Statutes, and (f) apply any funds being held by the Landlord, as security for the performance of Tenant's obligations hereunder, in accordance with the terms herein.

The exercise by Landlord of any right granted hereunder shall not relieve Tenant from the obligation to make all payments of Rent and to fulfill all other obligations and covenants required by this Lease, at the time and in the manner provided herein. Further, notwithstanding any repossession or termination of the Lease, Tenant shall (a) remain liable for all Rent accruing under the Lease; (b) be liable to Landlord for all costs and expenses included in connection with repossession (including attorney's fees), entering into a new lease with another tenant, and preparing the Leased Premises for reletting (including repairing, improving, altering and remodeling the Leased Premises), regardless of whether Landlord relets the Leased Premises or any part thereof for a term less or more than the balance of the Term or grants concessions, allowances or free rent or other inducements to a new tenant; and (c) for each month which would have otherwise constituted the balance of the unexpired Term, pay the deficiency between the Rent that would have been payable, less the net amount of rents actually collected by Landlord from a new tenant, if any. Tenant shall not be entitled to any surplus rents.

21. WRITTEN AGREEMENT. This lease 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 and sealed by Landlord and Tenant. No surrender of demised premises, or of the remainder of the terms of this lease, shall be valid unless accepted by landlord in writing.

22. INDEMNIFY LANDLORD. In consideration of said premises being leased to Tenant for the above rental, Tenant agrees that Tenant, at all times, will indemnify and keep harmless Landlord from all losses, damage, liabilities and expenses, which may arise or be claimed against Landlord and be in favor of any person, firm or corporation, for any injuries or damages to the person or property of any person, firm or corporation, consequent upon or arising from the use or occupancy of said premises by Tenant, or consequent upon or arising from any acts, omissions, neglect or fault of Tenant (its agents, servants, employees, licensees, customers or invitees), or consequent upon or arising from Tenant's failure to comply with the aforesaid laws, statutes, ordinances or regulations; that Landlord shall not be liable to Tenant for any damage, losses or injuries to the person or property of Tenant which may be caused by the acts,

negligent, omissions or faults of any person, firm or corporation, and that Tenant will indemnify and keep harmless Landlord from all damages, liabilities, losses, injuries, or expenses, which may arise or be claimed against Landlord and be in favor of any person, firm or corporation, for any injuries or damages to the person or property of any person, firm or corporation, where said injuries or damages arose about or upon said premises, except in the event of the gross negligence and intentional acts of the Landlord, its principals, agents and employees, which Landlord shall be and remain liable

23. BANKRUPTCY. It is agreed between the parties hereto that: if Tenant shall be adjudicated a bankrupt or an insolvent or take the benefit of any federal reorganization or composition proceeding or make a general assignment or take the benefit of any insolvency law, or if Tenant's leasehold interest under this lease shall be sold under any execution or process of law, or if a trustee in bankruptcy or a receiver be appointed or elected or had for Tenant (whether under federal or state laws), or if said premise shall be abandoned or deserted, or if Tenant shall fail to perform any of the covenants or conditions of this lease on Tenant's part to be performed, or if this lease or the term thereof be transferred or pass to or devolve upon any person, firm, officer of corporation other than Tenant, then and in any of such events, this lease and the term of this lease, at Landlord's option, shall expire and end seven days after Landlord shall give Tenant written notice (in the manner hereinabove provided) of such act, condition or default and Tenant hereby agrees immediately to then quit and surrender said premises to Landlord; but this shall not impair or affect Landlord's right to maintain summary proceedings for the recovery of the possession of the demised premises in all cases provided for by law. If the term of this lease shall be so terminated, Landlord may immediately or at any time thereafter re-enter or re-possess the premises and remove all persons and property therefrom without being liable for trespass or damages.

24. WAIVER. No waiver of any condition or covenant of this lease by Landlord shall be deemed to imply or constitute a further waiver by Landlord of any other condition or covenant of this lease. The rights and remedies created by this lease are cumulative and the use of one remedy shall not be taken to exclude or waive the right to the use of another.

25. PEACEFUL POSSESSION. Subject to the terms, conditions and covenants of this lease, Landlord covenants that Tenant shall and may peaceably have, hold and enjoy the premises above described, without hindrance or molestation by Landlord. At the expiration of this lease, Tenant shall, without demand, quietly and peaceably deliver up possession of the demised premises in as good condition as they now are, normal wear and decay and damage by the elements only excepted.

26. RIGHT TO MORTGAGE, LEASE, OR TRANSFER BY LANDLORD. Tenant's rights shall be subject to any bona fide mortgage which now covers said premises and which may hereafter be placed on said premises by Landlord, or underlying lease now or later covering the entire property. In the event Landlord conveys or transfers its interest in the Premises or in this Lease, except as collateral security for a loan, upon such conveyance or transfer, Landlord (and in the case of any subsequent conveyances or transfers, provided that the transferee assumes all of Landlord's obligations hereunder, the then guarantor or transferor) shall be entirely released and relieved from all liability with respect to the performance of covenants and obligations on the part of Landlord to be performed hereunder from and after the date of such conveyance or transfer, provided that any amounts then due and payable to Tenant by Landlord (or by the then grantor or transferor) or any other obligation then to be performed by Landlord (or by the then grantor or transferor) for Tenant under any provisions of this Lease shall either be paid or performed by Landlord (or by the then grantor or transferor or such payment or performance assumed by the grantee or transferee) it being intended hereby that the covenants and obligations on the part of Landlord to be performed hereunder shall, subject as aforesaid, be binding on Landlord, its successors and assigns only during and in respect of their respective periods of ownership of an interest in the Premises and/or in this Lease. This provision shall not be deemed, construed or interpreted to be or constitute an agreement, express or implied, between



Landlord and Tenant that Landlord's interest hereunder and in the Premises shall be subject to imposition of an equitable lien or otherwise. In the event of a sale or transfer of the title to Premises to an unrelated third party ("Buyer"), the Landlord agrees that it shall credit the Buyer at closing, or transfer said funds to the new Buyer, the monies the Landlord is holding in Security Deposits in connection with the terms of this Lease. Furthermore, these amounts shall be included on a Tenant Estoppel form, to be executed by the Tenant within (15) days after receipt, putting the Buyer on notice of the amounts it will be holding and responsible to account for, in accordance with the terms of this Lease, as a successor in interest to the Landlord. Furthermore, the parties may elect to record a memorandum of lease, stating the fact that the Landlord is holding monies, the actual amount of which shall not be included in the form, but rather a representation of the number of months said amounts would cover.

27. HEIRS AND ASSIGNS. This lease and all provisions, covenants and conditions thereof shall be binding upon and inure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto, except that no person, firm, corporation, or court officer holding under or through Tenant in violation of any of the terms, provisions or conditions of this lease, shall have any right, interest or equity in or to this lease, the terms of this lease or the premises covered by this lease.

28. BEYOND LANDLORD'S CONTROL. None of the acts, premises, covenants, agreements or obligations on the part of the Tenant to be kept, performed or not performed as the case may be, nor the obligation of the Tenant to pay rent and/or additional rent or other charge or payment shall be in anywise waived, impaired, excused or affected by reason of the Landlord being unable at any time or times during the term of this lease to supply, or being prevented from, or delayed in supplying heat, light, elevator service, or any other service expressly or implied on the part of the Landlord to be supplied, or by reason of the Landlord being unable to make any alterations, repairs or decorations or to supply any equipment or fixtures, or any other promise, covenant, agreement or obligation on the part of the Landlord to be performed, if the Landlord's inability or delay shall arise by reason of any law, rule or regulation of any Federal, State, municipal or other governmental department, agency or subdivision thereof, or by reason of conditions of supply and demand due to national emergency or other conditions or causes beyond the Landlord's control.

29. EMINENT DOMAIN. In the event a taking of all of the Premises, if in the reasonable opinion of Landlord, substantially interfere with Landlord's operation thereof, the Landlord may terminate this Lease upon thirty (30) days' written notice to Tenant given at any time within sixty (60) days following the date of such taking. In the event there is a taking of any portion of said leased premises by any condemnation or eminent domain proceedings, the monthly rental herein specified to be paid shall be ratably reduced according to the area of the leased premises which is taken unless the Tenant terminates the Lease according to the terms in this paragraph. If, in the Tenant's reasonable opinion, the portion of the Premises which remains after a partial taking has occurred, has an adverse effect on the Tenant's business and makes it less economically viable to continue operating its restaurant on the Premises, the Tenant may terminate this Lease upon thirty (30) days' written notice to Landlord at any time within sixty (60) days following the date of such taking. If the Tenant fails to terminate the Lease after a partial taking, pursuant to the terms herein, this Lease shall remain in full force and effect during the remaining term hereunder. For purposes of this Lease, the date of taking shall be the earlier of the date of transfer of title resulting from such taking or the date of transfer of possession resulting from such Taking.

30. SURRENDER PREMISES. Tenant agrees to surrender to Landlord, at the end of the term of this lease and/or upon any cancellation of this lease, said leased premises in as good condition as said premises were at the beginning of the term of this lease, ordinary wear and tear and damage by fire and windstorm or other acts of God excepted. Tenant agrees that if Tenant does not surrender to Landlord, at the end of the term of this lease, or upon any cancellation of the term of this lease, said leased premises, then

Tenant will pay to Landlord all damages that Landlord may suffer on account of Tenant's failure to so surrender to Landlord possession of said leased premises, and will indemnify and save Landlord harmless from and against all claims made by any succeeding tenant to said premises against Landlord on account of delay of Landlord in delivering possession of said premises to said succeeding tenant so far as such delay is occasioned by failure of Tenant to so surrender said premises.

31. LIENS. Tenant further agrees that Tenant will pay all liens of contractors, subcontractors, mechanics, laborers, materialmen, and other items of like character, and will indemnify Landlord against all legal costs and charges, bond premiums for release of liens, including counsel fees reasonably incurred in and about the defense of any suit in discharging the said 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 costs and charges above-referred to shall be considered as rent due and shall be included in any lien for rent.

No person furnishing labor, services or materials in connection with repairs or improvements to the premises shall have interest in the premises unless such person has a direct contract with Landlord. All laborers, mechanics and materialmen may be put on notice of this provision by the recordation of a memorandum of this lease in the \_\_\_\_\_ County Public Records, and Landlord and Tenant agree to execute such memorandum. Tenant shall and when and as required by the Florida Mechanics' Lien Law or any other Statute by reason of an alleged contract with Tenant, Tenant shall indemnify and hold Landlord harmless against such alleged claim, including all costs and reasonable attorneys' fees. Tenant shall be given by Landlord fifteen (15) day written notice to remove any lien from Property, including transferring to a bond in the event of a dispute. Nothing contained in this lease shall authorize the Tenant to do any act which shall in any way encumber the title of the Landlord in and to the leased premises. The interest and estate of the Landlord therein shall be in no way subject to any claim by way of lien or encumbrance, whether claimed by operation of law or by virtue of any express or implied contract by the Tenant. Any claim to a lien upon the premises arising from any act of omission of the Tenant, shall accrue only against leasehold estate of the Tenant, and shall in all respects be subject to the paramount title and rights of the Landlord in and to said premises.

32. RADON GAS. Radon gas is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, it may present health risks to persons who are exposed to it over a period of time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

33. AMERICAN WITH DISABILITIES ACT (ADA). Tenant shall, at Tenant's expense, comply with the Americans With Disabilities Act (42 U.S.C §12101 et. seq.) ("ADA") and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto and any other such state or federal statute, rule or ordinance relating thereto, as amended from time to time and agrees to indemnify and hold Landlord harmless for any claim, including but not limited to attorney's fees at all appellate levels and costs, brought against Landlord by any person, entity or governmental agency during the term of this Lease, arising from Tenants failure to abide by the terms hereunder and failure to c keep the Premises in compliance with the ADA. Tenant agrees to make any repairs and/or upgrades to the Premises, which are necessary to come into compliance with the ADA and agrees to indemnify and hold the Landlord harmless from any and all actions related to the Premises, including the outside patio area.

35. RECORDING. The parties shall be allowed to record a memorandum of Lease, in a form acceptable to the Landlord, in its sole and absolute discretion, in the Public Records of the county in Florida in which the Property is located containing a summary of the terms contain herein, during the term(s) of this

Lease.

34. ENVIRONMENTAL. Tenant shall not cause or permit any Hazardous Substances, as defined below, to be brought upon or kept or used in or about the Leased Premises or the Shopping Center by Tenant, its agents, employees, contractors, or invitees, unless (i) such Hazardous Substances are necessary for Tenant's business (and such business is a Permitted Use under this Lease) and (ii) Tenant first obtains the written consent of Landlord.

(b) Tenant shall at all times and in all respects comply with all local, state and federal laws, ordinances, regulations and orders (collectively "Hazardous Substances Laws") relating to industrial hygiene, environmental protection, or the use, analysis, generation, manufacture, storage, disposal or transportation of any Hazardous Substances.

(c) Tenant shall at its own expense procure, maintain in effect, and comply with all conditions of any and all permits, licenses, and other governmental and regulatory approvals required for Tenant's use of the Premises, including, without limitation, discharge of (appropriately treated) materials or wastes into or through any sanitary sewer serving the Premises. Except as discharged into the sanitary sewer in strict accordance and conformity with all applicable Hazardous Substances Laws, Tenant shall cause any and all Hazardous Substances removed from the Premises (if at Tenant's direction), to be removed and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes. Tenant shall in all respects handle, treat, deal with and manage any and all Hazardous Substances in, on, under, or about the Premises in total conformity with all applicable Hazardous Substances Law and prudent industry practices regarding management of such Hazardous Substances. Upon expiration, or earlier termination, of the term(s) of this Lease, Tenant shall cause such Hazardous Substances located in the Premises to be transported for use, storage, or disposal in accordance and compliance with all applicable Hazardous Substances Laws; provided, however, that Tenant shall not take any remedial action in response to the presence of any Hazardous Substances in or about the Premises, nor enter into any settlement agreement, consent decree, or other compromise in respect to any claims relating to any Hazardous Substances in any way connected with the Premises, without first notifying Landlord of Tenant's intention to do so and affording Landlord ample opportunity to appear, intervene, or otherwise appropriately assert and protect Landlord's interest with respect thereto.

(d) If at any time Tenant shall become aware, or have reasonable cause to believe, that any Hazardous Substance has come to be located on or beneath the Land upon which the Premises is located, Tenant shall, immediately upon discovering such presence or suspected presence of the Hazard Substance, give written notice of that condition to Landlord. In addition Tenant shall immediately notify Landlord in writing of (i) any enforcement, clean-up, completed, or threatened pursuant to any Hazardous Substances Laws, (ii) any claim made or threatened by any person against Landlord or the Premises relating to damage, contribution, cost recovery, compensation loss or injury resulting from or claimed to result from any Hazardous Substances and (iii) any reports made to any local, state, or federal environmental agency arising out of or in connection with any Hazardous Substances in or removed from the Premises, including any complaints, notices, warnings, or assorted violations in connection therewith. Tenant shall also supply to Landlord as promptly as possible, and in any event within five (5) business days after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings, or assorted violations relating in any way to the Premises, or Tenant's use thereof. Tenant shall promptly deliver to Landlord copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Substances removed from the Premises.

(e) As used herein. "Hazardous Substances or Substances" means any hazardous or toxic

substances, materials or wastes, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Tables (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyl, (iv) defined as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1251, at seq. (33 U.S.C. § 1321), (v) listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317), (vi) defined as a "hazardous waste" pursuant to Section 7004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, at seq. (42 U.S.C. § 6903), or (vii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, at seq. (42 U.S.C. § 9601).

(f) Tenant shall indemnify, defend (by counsel acceptable to Landlord), protect and hold harmless Landlord, and each of Landlord's partners, directors, officers, employees, agents, attorneys, successors and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, including, without limitation, diminution in the value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, costs, or expenses (including reasonable attorneys' fees, consultant fees, and expert fees) for the death of or injury of any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by (i) the presence in, on, under, or about the Premises, or any discharge or release in or from the Leased Premises or the Real Property, of any Hazardous Substances or Tenant's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Substances to, in, on under, about, or from the Premises, or (ii) Tenant's failure to comply with any Hazardous Substances Law. Tenant's obligations under this section shall include, without limitation, and whether foreseeable or unforeseeable, any and all costs incurred in connection with any investigation of site conditions, and any and all costs of any required or necessary repair, cleanup, detoxification, or decontamination of the Premises (including, without limitation, the soil and ground water on or under the land upon which the Premises is located), and the preparation and implementation of any closure, remedial action, or other required plans in connection therewith. Tenant's obligations under this section shall survive the expiration or earlier termination of the Term of the Lease. For purposes of the release and indemnity provisions hereof, any actions or omissions of Tenant, or by employees, agents, assignees, contractors, or subcontractors of Tenant or other acting for or on behalf of Tenant (whether or not they are negligent, intentional, willful, or unlawful), shall be strictly attributable to Tenant.

**IN WITNESS WHEREOF**, Landlord and Tenant have signed, sealed and delivered this Lease at \_\_\_\_\_ County, Florida, on the day and year first above written.

**LANDLORD:**

\_\_\_\_\_, LLC a Florida limited liability company

Witness: \_\_\_\_\_

By: \_\_\_\_\_ as Manager

Witness: \_\_\_\_\_

**TENANT(S):**

\_\_\_\_\_ a Delaware corporation

\_\_\_\_\_  
Witness: \_\_\_\_\_

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

\_\_\_\_\_  
Witness: \_\_\_\_\_

**Exhibit “A” – Tenant Work Letter**

All work by Tenant in the demised premises shall be performed by contractors approved in advance by Landlord and all work referenced herein will be performed in accordance with the building code. As one of the conditions for approval, Landlord may require the contractor to procure a Payment and Performance Bond for the benefit of the Tenant and Landlord. Tenant’s Work will be performed at Tenant’s expense and includes, but is not limited to, the following:

Main Floor:

- Clean out main floor and remove all debris
- Paint
- Replace or install new walls
  - all in accordance with the current code, necessary for the operation of Tenant’s business in the Premises

Plumbing:

- Replace all interior plumbing.
  - all in accordance with the current code, necessary for the operation of Tenant’s business in the Premises

Electrical:

- Provide New Wiring for all appliances on Main floor.
- Apply and Upgrade the current system.
  - Including but not limited to installing new distribution panels, conduits, raceways, panels, receptacles and the like, all in accordance with the current code, necessary for the operation of Tenant's business in the Premises.
  - Including but not limited to installing the wiring, necessary to provide electricity for, and installing the smoke detectors, fire exits, fire exit signs and lights, general and emergency lighting and security lighting on the interior, or exterior of the Premises, all in accordance with the current code, necessary for the operation of Tenant's business in the Premises.

HVAC:

- Furnish and Install a New Air conditioning system for the Premises.
  - Including any and all ductwork, vents and the like, all in accordance with the current code, necessary for the operation of Tenant's business in the Premises

Smoke Extraction System:

- Install new system as required by local Fire Department.
  - Including but not limited to the smoke detectors, fire exits, fire exit signs, general and emergency lighting and security lighting on the exterior of the building
- Kitchen:
- Install new Kitchen and Bar.
  - all in accordance with the current code, necessary for the operation of Tenant's business in the Premises.

Rear Windows:

Install rear door(s) and/or window(s), or enclose the rear of the property, all of which shall be done in accordance with the current code.

**Exhibit "B" – Landlord's Work Letter**

Landlord shall be making the following improvements to the Premises, once the Landlord has approved the plans delivered by the Tenant, including all of the permits containing the scope of the work included in Exhibit "A" herein and received copies of all permits related to the work contained in Exhibit "A" and Exhibit "B" of this Lease:

1. Landlord will place a new storefront on the Premises, install new stucco on the front façade and a new awning, the style and color of which shall be in Landlord's sole and absolute discretion. However, Landlord shall take into account the Tenant's color scheme, all of which shall be done

in accordance with the current code.

2. Landlord will close openings on the west side of the Premises, which were formerly window openings, all of which shall be done in accordance with the current code.
3. Any other improvements, installations, upgrades or otherwise needed to be made to the Premises, which is necessary for the operation of Tenant's business in the Premises shall be made by the Tenant, at Tenant's sole cost and expense, unless the Landlord has agreed to make those improvements in accordance with the terms of this Lease.



## CERTIFICATE OF ATTENDANCE

Certified Paralegals are required to record evidence of 50 hours of continuing legal education hours to renew the CP credential every 5 years. CLE hours are recorded in CPs' accounts through the [NALA online portal](https://www.nala.org/certification/certtest2view). Of the 50 hours, 5 hours must be in legal ethics, and no more than 10 hours may be recorded in non-substantive areas. If attending a non-NALA sponsored educational event, this certificate may be used to obtain verification of attendance. Please be sure to obtain the required signatures for verification of attendance. The requirements to maintain the CP credential are available from NALA's web site at <https://www.nala.org/certification/certtest2view>. Please keep this certificate in the event of a CLE audit or further information is needed.

**PLEASE COMPLETE THE SPACES BELOW AND ATTACH A PROGRAM**

Session Length In Hours	Session Topics (Description and Speakers)	Validation of Attendance
1.0 substantive	Commercial Leasing: Understanding the Basics	<i>MR</i>

Name of CP (Please Print)			NALA Account Number (On Mailing Label)		
			149113		
Signature of CP			Name of Seminar/Program Sponsor		
			Attorneys' Title Fund Services, LLC		
Address			Authorized Signature of Sponsor Representative		
			<i>Michael Rothman</i>		
			Date of Educational Event:		
City:		State (XX):			
Preferred e-mail address			Location:		
			Online Webinar		

For Office Use Only	
Substantive hours	
Non-substantive hours	
Ethics	





**FL BAR Reference Number: 2410141N**

**Title:** Commercial Leasing: Understanding the Basics

**Level:** Intermediate

**Approval Period:** 11/01/2024 - 05/31/2026

**CLE Credits**

General 1.0

**Certification Credits**

Real Estate 1.0

Business Litigation 1.0