

Per 1<sup>st</sup> Addendum &  
Restaurant open date

LEASE AGREEMENT

Lease 1<sup>st</sup> effective January 1, 2013

THIS LEASE AGREEMENT (the "Lease Agreement"), is made and entered into this 30<sup>th</sup> day of AUGUST, 2011, by and between the City of Flagler Beach, Florida, a municipal corporation (the "Landlord") and Raymond Barshay, (the "Tenant"), upon the following terms and conditions:

expires

January 1, 2023

1. Lease of Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the portion of the Flagler Beach Municipal Pier that comprises the current Pier Restaurant (the "Leased Premises"). The Leased Premises shall include all property beneath the roof and overhang of the Pier Restaurant as well as any deck that may be constructed attached to the Pier Restaurant pursuant to this Lease.

w/3 consecutive  
options to renew  
for 5 years.

2. Landlord's Title. Landlord represents and warrants that it has ownership of and authority to lease the Leased Premises to Tenant.

has to notify city

3. Landlord Repairs and Acceptance of Leased Premises. Within 45 days of the termination of the Myer Lease pursuant to Paragraph 52, Landlord shall perform the following repairs to the Leased Premises:

of intention to  
exercise option  
rights 9 months

- Remove and replace seven damaged pieces of hardy board siding on dumpster storage on northeast corner and east wall of dining room of the Leased Premises;
- Remove and replace 500 stainless steel hurricane straps on the foundation structure of the Lease Premises;
- Replace the deteriorated A Frame hardware under the A Frame of the Leased Premises;

before lease  
expires.

(hereinafter, the "Landlord Repairs"). In the event the cost of the Landlord Repairs is estimated to exceed \$24,084, either party may terminate this Lease upon written notice to the other party. Upon reasonable request by Landlord made in writing to Tenant, the time allowed for the Landlord Repairs shall be extended up to 45 additional days.

Tenant acknowledges that Landlord has not made any representation or warranty with respect to the condition of the Leased Premises or the suitability or fitness of the Leased Premises for any purpose. Tenant agrees to accept the Leased Premises and the Improvements located thereon in their "AS IS" condition without any agreements, representations, understandings, or obligations on the part of Landlord to perform any alterations, repairs, or improvements (or to provide any allowance for same) except as expressly provided above.

4. Tenant's Duty to Repair. Tenant agrees that upon the effective date of this Lease granting Tenant possession of the Leased Premises, Tenant shall institute and follow through to completion all repairs, other than those described in Paragraph 3,

1  
2  
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20 following repairs to the Leased Premises:

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23 storage on northeast corner and east wall of dining room of the Leased  
24 Premises;  
25 - Remove and replace 500 stainless steel hurricane straps on the foundation  
26 structure of the Lease Premises;  
27 - Replace the deteriorated A Frame hardware under the A Frame of the Leased  
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46 follow through to completion all repairs, other than those described in Paragraph 3,

above, necessary to bring the Leased Premises and the structures located thereon into compliance with all governing building codes, fire codes and other applicable regulations (hereinafter the "Tenant Repairs"). In the event the cost of the Tenant Repairs is estimated to exceed \$35,916, the Tenant may terminate this Lease upon written notice to Landlord. In the event the cost of the Tenant Repairs is estimated to exceed \$100,000, the Landlord may terminate this Lease upon written notice to the Tenant. In the event Tenant completes the repairs provided for in this paragraph Tenant shall be credited the total cost of such repairs up to a maximum credit of \$20,916 as Advance Rent. The Advance Rent credit shall be applied toward Tenant's rental payment obligations as follows:

(a) \$1,000.00 of the Advance Rent shall be applied monthly toward Tenant's rental payment obligation as a rent credit until the balance of the Advance Rent is reduced to \$9,000.00;

(b) The Advance Rent remaining after application of the credits described in (a), above, shall be applied toward Tenant's rental payment obligations and any other payments due and unpaid by Tenant to Landlord at the end of the Term of this Lease, including any extensions thereof.

5. Effective Date of Lease; Calculation of Lease Term; Option to Extend. This Lease shall be effective upon execution by all parties hereto, including execution of the Consent to Early Termination clause by Katalin Myer (the "Commencement Date"). The original Lease Term shall end on the first calendar day exactly ten years after the first of the following to occur (the "Move-in Date"):

(a) Tenant opens the restaurant for service of customers;

(b) Tenant is issued a certificate of occupancy; or

(c) The 121<sup>st</sup> day after Tenant has applied for any building permit related to the Leased Premises except any permits related to construction of the deck described in Paragraph 15(b). Provided, however, Tenant may request the time provided in this subsection be extended up to 90 days if necessary permits have not yet been issued and Landlord shall not unreasonably deny any such request. Tenant shall apply for all building permits necessary to complete the repairs described in Paragraph 4, above, within 60 days from September 1, 2011 or the date Tenant receives confirmation, in a form acceptable to Tenant, that the State will allow construction of a deck as referenced in Paragraph 15, herein, whichever occurs earlier.

Within a reasonable time after the Move-in Date, the parties hereto shall execute an addendum to this Lease memorializing the Move-in Date. Failure by the parties, however, to execute such addendum shall in no way affect the validity of this paragraph or the calculation of the Move-in Date.

Tenant shall have the option to extend the original Lease Term for three (3) consecutive five (5) year terms. Tenant shall exercise the First Option for an additional five (5) year term by written notice delivered to Landlord on or before nine months prior to the end of the original Lease Term. If Tenant exercises the First Option, the original Lease Term will be extended upon the same terms and conditions as set forth herein.

If the Tenant exercises the First Option, it shall, at the end of the term of the First Option, have an additional option to extend the term another five (5) years (the "Second Option"). Tenant shall exercise the Second Option by providing written notice to Landlord of such exercise on or before nine months prior to the end of the First Option period. If Tenant exercises the Second Option, the Lease Term will be extended upon the same terms and conditions as set forth herein.

If the Tenant exercises the Second Option, it shall, at the end of the term of the Second Option, have an additional option to extend the term another five (5) years (the "Third Option"). Tenant shall exercise the Third Option by providing written notice to Landlord of such exercise on or before nine months prior to the end of the Second Option period. If Tenant exercises the Third Option, the Lease Term will be extended upon the same terms and conditions as set forth herein.

Notwithstanding the foregoing, Tenant shall have no right to exercise any Option if: a) Tenant is in default of any term of the Lease at the time Tenant attempts to exercise the Option; b) Tenant is in default of any term of the Lease on the date the Option becomes effective; or c) Tenant has regularly and habitually failed to fully comply with the terms and conditions of the Lease.

6. Base Rent. Tenant agrees to pay Landlord minimum base rent as follows:

(a) Fixed Rent

In years 1 and 2 of this Lease, Tenant shall pay to Landlord \$3,000.00 per month. For all subsequent years, including any exercised option terms, Fixed Rent shall be increased annually on the anniversary date of the effective date of this Lease by 3% per annum.

(b) Additional Percentage Rent:

In each of years 1 and 2 of this Lease, Tenant shall pay to Landlord an amount equivalent to 2% of Tenant's gross sales in excess of \$1 million from the Restaurant. In each of years 3 and 4 of this Lease, Tenant shall pay to Landlord an amount equivalent to 2.5% of Tenant's gross sales in excess of \$1 million from the Restaurant. In each year from year five of this Lease forward, including any exercised option periods, Tenant shall pay to Landlord an amount equivalent to

139 3% of Tenant's gross sales in excess of \$1 million from the Restaurant.  
140 Tenant shall on a monthly basis provide the City with a complete report  
141 on gross sales which report shall consist of Tenant's sales tax receipt  
142 record. The City holds the right to audit those reports on an annual  
143 basis. For purposes of this Lease, "gross sales" shall mean all  
144 Restaurant sales for which monetary consideration is paid.  
145

146 Beginning on the Move-in Date, the base rent plus applicable sales tax shall be due  
147 and payable to Landlord in advance on the first day of each and every calendar month  
148 during the Lease Term. The rent increases set forth in this section shall occur  
149 automatically and without notice or demand from Landlord. If the Lease is  
150 terminated on any day other than the last day of a calendar month, the Base rent due  
151 for that month shall be prorated as of the date the Lease is terminated.  
152

153 7. Property Taxes. Tenant shall pay all Property Taxes levied or assessed  
154 against the Leased Premises prior to delinquency. The term "Property Taxes" shall  
155 mean the aggregate amount of all ad valorem real property taxes, excluding special  
156 and general assessments, and any other taxes imposed upon the Leased Premises and  
157 all improvements located thereon from time to time. Property Taxes shall also  
158 include any personal property taxes imposed upon Tenant's furniture, fixtures,  
159 machinery, equipment, and appurtenances located upon or used in connection with the  
160 Leased Premises.  
161

162 8. Tenant's Use of the Leased Premises. Except as otherwise specifically  
163 provided herein, Tenant shall use the Leased Premises solely for the purpose of  
164 operating a restaurant and restaurant related activities serving the general public and  
165 for no other purpose. Tenant shall, at its sole cost and expense, obtain all licenses and  
166 permits required by any local, County, State or Federal agency. Tenant shall comply  
167 with all fire safety codes applicable to the Leased Premises, at Tenant's sole expense.  
168 Subject to Tenant's acquisition of all necessary licensing, Tenant may serve alcoholic  
169 beverages within the boundaries of the structure located on the Leased Premises as  
170 well as upon the deck contemplated in Paragraph 15(b).  
171

172 9. Compliance with Laws. Tenant shall cause the Leased Premises to  
173 comply with all laws, ordinances, regulations and directives of any governmental  
174 authority having jurisdiction over the Leased Premises including, without limitation,  
175 any law, ordinance, regulation or directive which in the future may become applicable  
176 to the Leased Premises. Tenant shall not misuse the Leased Premises, or permit the  
177 Leased Premises to be used in any manner which: (a) violates any law, ordinance,  
178 regulation, or directive; (b) causes or is reasonably likely to cause damage to the  
179 Leased Premises; (c) violates a requirement or condition of any fire or extended fire  
180 coverage insurance policy covering the Leased Premises or increases the cost of such  
181 policy; or (d) constitutes or is reasonably likely to constitute a nuisance, annoyance,  
182 or inconvenience to the general public.  
183

184           10.     Hazardous Materials. No Hazardous Materials, as defined herein, shall  
185 after the signing of this Lease, be permitted within the Leased Premises at any time.  
186 Notwithstanding the foregoing, normal quantities of Hazardous Materials customarily  
187 used in the conduct of Tenant's business (such as cooking equipment and cleaning  
188 supplies) may be brought on the Leased Premises and shall be used strictly in  
189 compliance with the manufacturer's instructions. Notwithstanding the obligation of  
190 Tenant to indemnify Landlord pursuant to this Lease, Tenant shall, at its sole cost and  
191 expense, promptly take all actions required by any governmental authority to remove,  
192 dispose of, and clean up after any Hazardous Materials located on the Leased  
193 Premises, without regard to the source of the Hazardous Materials, provided the  
194 Hazardous Materials were not brought on the Leased Premises by Landlord or prior  
195 tenants. Such action shall include, without limitation, the investigation of the  
196 environmental condition of the Leased Premises, the preparation of any feasibility  
197 studies or reports concerning the location and removal of the Hazardous Materials,  
198 and the performance of any cleanup, remedial, removal, or restoration work. Tenant  
199 shall obtain Landlord's written approval prior to taking any such actions, which  
200 approval shall not be unreasonably withheld. Tenant agrees to execute affidavits,  
201 representations and other similar documents from time to time at Landlord's request  
202 stating to Tenant's best knowledge and belief there are no Hazardous Materials  
203 located upon the Leased Premises. As used herein, the term "Hazardous Materials"  
204 means (a) any material or substance which is defined or becomes defined as a  
205 "hazardous substance," "hazardous waste," "infectious waste," "chemical mixture or  
206 substance," or "air pollutant" under any statutes, laws, ordinances, codes, regulations,  
207 rules or orders promulgated by any governmental authority, or (b) any other material  
208 or substance displaying toxic, reactive, ignitable, or corrosive characteristics, as all  
209 such terms are used in their broadest sense.

210  
211           11.     Hours of Operation. Tenant's business operation on the Leased  
212 Premises shall be open to the public seven (7) days a week, offering a full service  
213 restaurant providing for breakfast, lunch and dinner. Tenant shall have the right,  
214 upon consent by Landlord, which consent shall not be unreasonably withheld, to alter  
215 hours of operation based on market conditions and in keeping with good business  
216 practices. Notwithstanding the foregoing, Tenant shall have the right to close the  
217 Leased Premises while the Leased Premises are undergoing reconstruction or repair.  
218 Tenant shall additionally have the right to close the Leased Premises for up to one  
219 week during any calendar year for the purpose of conducting maintenance on the  
220 Leased Premises. Tenant may also close the Leased Premises when weather  
221 conditions may be hazardous to Tenant's customers and the general public. Tenant  
222 shall further have the right to close the Leased Premises on Christmas day and any  
223 three other days Tenant chooses during the course of any calendar year.

224  
225           12.     Utilities. Except as otherwise provided, Tenant shall be solely  
226 responsible for the prompt payment of all charges for any and all utility services to  
227 the Leased Premises including, without limitation, electricity, potable water, sewage  
228 disposal services, natural gas, trash and garbage collection services, and telephone  
229 services. The accounts for all such utility services shall be opened solely in Tenant's

name, and Tenant shall be responsible for the payment of all deposits associated with such utilities. Tenant shall indemnify and hold Landlord harmless against any and all liability arising from Tenant's failure to promptly pay for any utility service to the Lease Premises. It is expressly understood and agreed that the Tenant shall not be responsible for any utilities as defined herein for any portion of the Landlord's property except for the Leased Premises. It is further agreed that Tenant shall not be responsible for utility charges due for the Pier Restrooms, Pier Bait Shop or the Pier lights or any other utilities that are not related to Tenant's operations at the Leased Premises.

13. Landlord's Maintenance and Repair Obligations.

After completion of the repairs to be made by Tenant pursuant to Paragraph 4 of this Lease, except as provided in Paragraph 14, Landlord shall be responsible for maintenance, repair and restoration of the premises, including all structural portions of the Leased Premises including, but not limited to, the foundation, exterior walls, roof and for items that are related to the structural safety of the pilings and pier infrastructure. The Tenant shall have no responsibility for any maintenance or repair except as set forth in paragraph 14 of this Lease.

14. Tenant's Maintenance and Repair Obligations. Tenant's maintenance and repair obligations shall include, without limitation: (a) maintenance, repair and replacement of the non-structural interior improvements to the Leased Premises including partition walls, floor coverings, wall coverings, interior doors, and ceilings; (b) disposal of all rubbish, trash, garbage, and other waste from the Leased Premises in a clean and sanitary manner; (c) maintenance, repair, and replacement of all utility installations serving the Leased Premises only, which are not the express obligation of Landlord; (d) maintenance, repair and replacement of all exterior window and door glass and screens; (e) maintenance, repair and replacement of the HVAC system which serves the buildings located on the Leased Premises; (f) repair of any damage caused to the Leased Premises caused by the negligence or intentional acts or omissions of Tenant or Tenant's employees, agents, invitees or guests. (g) Tenant is also responsible for all termite and pest control of the Leased Premises. If Tenant fails to fulfill its maintenance obligations hereunder, Landlord shall have the right, but not the obligation, to perform such maintenance and repair on behalf of Tenant and to charge Tenant the full cost thereof which will become immediately due and payable as additional rent.

15. Tenant Alterations.

(a) Upon execution of this Lease, the Landlord has approved the plan attached hereto as Exhibit "A" indicating initial improvements and alterations to the Leased Premises. Thereafter, Tenant shall not make or allow to be made any major alterations, additions, or improvements to the Leased Premises (the "Alterations") without first obtaining the written consent of Landlord, which shall not be unreasonably withheld. For purposes of this Lease,

“major alteration” shall mean any alteration that requires any permanent structural alteration of the Leased Premises. Prior to commencing any such work, Tenant must furnish Landlord with plans and specifications; names and addresses of contractors; copies of contracts; necessary permits; evidence of contractors’ and subcontractors’ insurance in a type and amount acceptable to Landlord; and indemnification in form and amount satisfactory to Landlord. All such Alterations shall be installed in a good and workmanlike manner using new materials. Upon completion, Tenant shall furnish “as built” plans, contractor’s affidavits, and full and final lien waivers, covering all labor, services, and materials provided in connection with the Alterations. All Alterations shall comply with all insurance requirements, codes, ordinances, laws and regulations, including the Americans With Disabilities Act. Tenant shall reimburse Landlord upon demand as additional rent for all sums expended by Landlord to examine the architectural, mechanical, electrical, and plumbing plans for any Alterations. Rent due and payable hereunder shall not be abated or reduced during the installation of Alterations.

- (b) During the first twelve months after the Commencement Date of this Lease Tenant may, at its option, construct a deck attached to the Leased Premises not to exceed 1,600 square feet, subject to permitting and approval by Landlord of the size, location and design of the deck, which approval shall not be unreasonably withheld. Landlord shall cooperate with the Tenant in seeking necessary State approval for the deck. In the event Tenant completes construction of said deck within twelve months from the Commencement Date, subject to annual appropriations, Landlord shall reimburse Tenant’s design, permitting (including necessary State approvals), labor and materials costs incurred in construction of the deck up to a maximum reimbursement from Landlord of \$50,000.00. Tenant may request the amount of time to complete said deck be extended up to an addition twelve (12) months, approval of which shall not be unreasonably withheld. The parties expressly recognize and agree that Landlord’s commitment to reimburse the costs of the deck design and construction is limited to the structural elements of the deck and that Landlord shall not reimburse costs incurred to install any outdoor utilities on the deck. In the event of default by Landlord of its agreement to reimburse the costs described in this paragraph, Tenant’s sole recourse shall be a credit against future rental payments due from Tenant to Landlord pursuant to this Lease. Prior to September 1, 2011, if necessary State approvals to construct the deck are not obtained, either party may terminate this Agreement with thirty days written notice to the other party; After September 1, 2011, neither party shall have the right to terminate this Agreement based on the inability to obtain State approvals for construction of the deck referenced herein. In the event either party exercises its right to terminate this Lease pursuant to this paragraph and Landlord subsequently obtains State approval for construction of a deck Tenant shall be reimbursed any



322 expenses up to \$50,000 it incurred related to such State approval that was  
323 material to the State approval ultimately received.  
324

- 325 (c) Tenant agrees to complete at its sole cost and expense the improvements  
326 detailed in Exhibit "B" (the "Additional Tenant Improvements"), attached  
327 hereto and incorporated herein, at Tenant's sole cost and expense within  
328 twelve months from the Commencement Date of this Lease. Tenant shall  
329 make improvements in amounts not less than the amounts detailed in  
330 Exhibit "B" and shall submit its receipts for such improvements to  
331 Landlord to document Tenant's compliance with this Paragraph.  
332

333 16. Construction Liens. Tenant shall promptly pay for all labor, services  
334 and materials furnished to the Leased Premises at the request of Tenant, and shall not  
335 permit any construction liens to be recorded against the Leased Premises. Tenant and  
336 Landlord acknowledge that as public property, the Leased Premises are not subject to  
337 attachment by a construction lien. In the event, however, that any such lien is  
338 recorded against the Leased Premises, Tenant shall remove the lien from the Leased  
339 Premises within thirty (30) days following written demand from Landlord by either  
340 paying the lien or transferring the lien to security in accordance with Florida  
341 Construction Lien Law. In the event Tenant fails to remove the lien from the Leased  
342 Premises within thirty (30) days following written demand, Landlord may, at its sole  
343 option and election, pay and satisfy the lien. In such event, all sums paid by Landlord  
344 to satisfy the lien shall become immediately due and payable by Tenant to Landlord  
345 as additional rent without notice or demand.  
346

347 17. Liability Insurance; Indemnification. Throughout the Lease Term,  
348 Tenant shall continuously maintain in full force and effect general liability and  
349 property insurance with an A or A+ rated carrier protecting against personal injury,  
350 death, or property damage occurring upon the Leased Premises. Such insurance shall  
351 have combined single limits of no less than Two Million Dollars (\$2,000,000.00) for  
352 each occurrence, shall have a minimum deductible of not more than Ten Thousand  
353 Dollars (\$10,000.00) and shall name Landlord as additional named Insured. Such  
354 insurance shall be provided by a company authorized to do business in the State of  
355 Florida and shall be reasonably acceptable to Landlord. The policy of insurance shall  
356 include a provision prohibiting cancellation without at least thirty (30) days prior  
357 written notice to Landlord. Tenant shall provide proof to Landlord of the required  
358 insurance within fourteen (14) days of Tenant taking possession of the Lease  
359 Premises pursuant to this Lease and shall immediately provide proof of insurance at  
360 any time thereafter upon request for same by Landlord. Additionally, Tenant shall  
361 indemnify and hold Landlord harmless from and against any and all claims and  
362 demands (including attorneys' fees and court costs) for, or in connection with, any  
363 accident, injury, or damage whatsoever suffered by any person or caused to any  
364 property upon the Leased Premises including, without limitation, claims for loss,  
365 injury, or damage resulting from the condition of the Leased Premises, without regard  
366 to whether such claim arises in whole or in part from the act, omission, or negligence  
367 of Landlord, Tenant, or a third party.

368  
369 18. Fire and Casualty Insurance. Throughout the Lease Term, Landlord  
370 shall continuously maintain in full force and effect fire and casualty insurance with an  
371 A or A+ rated carrier equal to the full insurable value of the improvements to the  
372 Leased Premises. Such insurance shall be maintained at the sole cost and expense of  
373 Landlord. The proceeds of such insurance shall be payable solely to Landlord.  
374 Landlord agrees to use the proceeds of such insurance to repair and restore the  
375 improvements to the Leased Premises following casualty unless this Lease is  
376 terminated as a result of the casualty pursuant to Paragraph 19, below.  
377

378 19. Damage or Destruction of Leased Premises. Damage or destruction of  
379 the Leased Premises shall be governed by the following provisions:  
380

381 (a) Definitions. For purposes of this Paragraph 19, the term "partial  
382 destruction" shall mean damage to the Leased Premises by fire or other  
383 casualty which, in Landlord's sole opinion, is reasonably capable of being  
384 repaired within one hundred twenty (120) days following the date of the  
385 casualty. The term "total destruction" shall mean damage to the Leased  
386 Premises by fire or other casualty, which, in Landlord's sole opinion, is not  
387 reasonable capable of being repaired within one hundred twenty (120) days  
388 following the date of the casualty.  
389

390 (b) Partial Destruction. In the event of partial destruction of the  
391 Leased Premises, Landlord shall promptly and with due diligence repair the  
392 damage (exclusive of any Alterations to the Leased Premises made by Tenant)  
393 at Landlord's sole cost and expense.  
394

395 (c) Total Destruction. In the event of total destruction of the  
396 Leased Premises, Landlord and Tenant shall make a mutually reasonable  
397 determination as to whether to rebuild and/or repair the Leased Premises.  
398 Such determination shall be made based upon the availability of insurance  
399 proceeds, permitting requirements, and the commercial viability of rebuilding,  
400 including the need to contract and manage the rebuilding or reconstruction of  
401 the Leased Premises. Should the Parties determine that the repair or  
402 reconstruction of a total destruction of the Leased Premises be unreasonable  
403 based upon a totality of the factors, Tenant shall be entitled to receive an  
404 amount equal to the amount of additional coverage purchased by Landlord  
405 through Landlord's property and casualty insurance carrier to cover any capital  
406 improvements made to the Leased Premises by Tenant; Tenant shall be  
407 responsible for notifying Landlord of any additional capital improvements to  
408 be insured upon completion of such improvements. In the event Landlord  
409 purchases such additional insurance, Tenant shall pay an amount equal to the  
410 annual additional insurance premium Landlord is charged by Landlord's  
411 property and casualty carrier for the additional coverage. Payment of said  
412 additional insurance premium shall be due in full within thirty days of  
413 Landlord providing notice to Tenant in writing of the additional insurance

premium amount. If Tenant elects to receive payment pursuant to this subparagraph, this Lease shall be terminated and the Parties shall be released each to the other.

(d) Abatement of Rent upon Casualty Rendering the Leased Premises Uninhabitable. If a casualty renders the Leased Premises uninhabitable, the payment of Rent shall be completely abated from the date of the casualty until the date the Leased Premises are substantially restored by Landlord and possession of the Leased Premises is redelivered to Tenant. The term of this Lease and any extensions thereof and any rent adjustments shall be automatically extended and/or delayed for the time period that the rent is abated. In no event shall Landlord be liable to Tenant for any damage to, or any inconvenience or interruption of, the business of Tenant conducted on the Leased Premises, which may be occasioned by such casualty. Tenant's sole remedy in the event of a casualty loss to the Leased Premises shall be the abatement of rent specifically set forth herein.

(e) Repair and Restoration. If this Lease is not terminated as a result of a casualty loss, Landlord shall promptly and diligently proceed to repair and restore the Leased Premises to a condition substantially similar to that existing prior to the date of the casualty. The restoration and repairs shall be performed in a workmanlike manner in full compliance with all applicable building codes, ordinances, rules, and regulations. The means and methods by which the repair and restoration is performed shall be in the sole discretion of the Landlord. Landlord reserves the right to repair or reconstruct the Leased Premises in a manner which differs from the original plans and specifications, provided the Leased Premises is repaired or Landlord further reserves the right to repair or reconstruct the Leased Premises using equipment and materials which differ from those used in the original construction of the Leased Premises, provided such changes do not materially affect the quality or general appearance of the Leased Premises.

(f) Availability of Insurance Proceeds. Notwithstanding anything to the contrary set forth in this Paragraph 19, Landlord shall have no obligation to repair or reconstruct the Leased Premises following a casualty loss if the available insurance proceeds are insufficient or unavailable to pay the full cost of such repair or restoration. In the event insurance proceeds are insufficient or unavailable to pay the full cost to repair or restore the damage following a casualty loss, Landlord may elect not to repair or restore the damage without regard to whether the damage constitutes partial destruction or total destruction. If Landlord elects not to repair or restore the damage due to insufficiency or unavailability of insurance proceeds, Landlord shall provide written notice of such decision to Tenant within ninety (90) days following the date of the casualty. In such case, this Lease shall be deemed terminated as of the date of said notice. However, nothing contained herein shall be construed

to eliminate, restrict or otherwise limit the Landlord's obligation to the Tenant as set forth in Paragraph 19(c).

(g) Tenant's Repair Obligation. Except as otherwise provided herein, Landlord shall only be obligated to repair or restore the Leased Premises following a casualty loss to its condition as of the date of the loss. Tenant shall be solely responsible for repairing or restoring any Alterations made to the Leased Premises by Tenant and Tenant's fixtures, leasehold improvements, and personal property. Landlord may require Tenant to provide Landlord with acceptable proof that Tenant has funds available to perform such repair or restoration prior to Tenant commencing repair or restoration of alterations made to the Leased Premises prior to the casualty.

20. Assignment and Subletting. Subletting of any portion of the Leased Premises is prohibited. Assignment of this Lease shall be subject to the following terms and conditions:

(a) Restriction. Tenant shall not, either voluntarily or by operation of law, assign or otherwise transfer this Lease of any interest herein, or sublet the Leased Premises or any part thereof, or permit Tenant's business to be operated by anyone other than Tenant and Tenant's employees (hereinafter collectively referred to as a "Transfer"), without the prior written consent of Landlord, which shall not be unreasonably withheld. The parties hereto expressly recognize that Tenant's reputation, experience, expertise and business model are significant factors in Landlord's agreement to this Lease. The parties hereto agree that Landlord shall have the right to refuse its consent to any proposed Transfer to a person or entity that does not have comparable reputation, experience, expertise, financial ability or business model to Tenant. Notwithstanding the foregoing, Tenant may Transfer this Lease to a corporate entity in which Tenant owns at least fifty-one percent (51%) of the issued shares or other ownership interests. Upon any Assignment or Transfer of the entirety of Tenant's interest in the Leased Premises pursuant to the requirements and restrictions of this Paragraph 20, all tenant rights and responsibilities accruing on or after the date the Assignment or Transfer is final shall be solely the rights and responsibilities of the tenant accepting the Assignment or Transfer and the assigning tenant shall be relieved of all rights and responsibilities accruing on or after the date the Assignment or Transfer is final.

(b) Landlord's Consent. In the event Tenant desires to Transfer this Lease or any rights hereunder, Tenant shall request Landlord's consent to the Transfer at least sixty (60) days in advance of the date the Transfer is proposed to become effective. Tenant shall provide Landlord with such information as Landlord may request to consider Tenant's proposed Transfer. Any reasonable expenses incurred by Landlord to review Tenant's request to consent to a proposed Transfer, including reasonable legal fees, shall be paid

by Tenant as a condition of Landlord's consideration of the request.  
Landlord's consent to a Transfer must be in writing signed by Landlord.

21. Default by Tenant. Each of the following shall be an event of default ("Event of Default") by Tenant:

(a) If Tenant fails to pay in full any Base Rent, or other monetary sums payable by Tenant to Landlord under this Lease or any part hereof within fifteen (15) days following written demand from Landlord; or

(b) If Tenant fails to comply with any of the agreements, terms, covenants, or conditions in this Lease other than those referred to in the foregoing Subparagraph (a) within thirty (30) days after written notice from Landlord to Tenant specifying the items in default; or

(c) If Tenant abandons the Leased Premises, as that term is defined by the non-residential section of the Florida Landlord and Tenant Act at the time of abandonment; if Tenant is named in a petition in bankruptcy, whether voluntary or involuntary; if a receiver is appointed for all or substantially all of Tenant's property; if Tenant takes advantage of any debtor relief proceedings under any present or future laws; or if Tenant makes an assignment for the benefit of creditors.

22. Landlord's Remedies Upon Default. Upon the occurrence of an Event of Default by Tenant, Landlord shall have the option, in Landlord's sole discretion, to pursue any one or more of the following remedies: (a) Landlord shall have the right to cancel and terminate this Lease and immediately dispossess Tenant; (b) Landlord shall have the right, without first terminating or canceling this Lease and without waiving the right to seek immediate possession of the Leased Premises, to declare the Base Rent to be accelerated and immediately due and payable in full for the remainder of the Lease Term, and to collect thereafter any and all Percentage Rent and other sums coming due in accordance with the terms and conditions of this Lease; (c) Landlord may elect to enter the Leased Premises and relet the Leased Premises for Tenant's account, holding Tenant liable in damages as set forth in Paragraph 23, below (d) Landlord may enter upon the Leased Premises and do whatever Tenant is obligated to do under the terms of this Lease (and Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in effectuating compliance with Tenant's obligations under this Lease as additional rent, and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action); or (e) Landlord may exercise any and all other rights and remedies permitted under Florida Law, whether at law or in equity. All such remedies of Landlord shall be cumulative, and enforcing one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute waiver of such default, or an election of remedies.

550           23.     Landlord's Right to Relet Upon Default. Should Landlord elect to  
551 enter and relet the Leased Premises for Tenant's account pursuant to Paragraph 22,  
552 above, Landlord shall be entitled to make such alterations and repairs to the Leased  
553 Premises as may be necessary or desirable in order to relet the Leased Premises, and  
554 shall further be entitled to relet the Leased Premises or any part thereof to such tenant  
555 or tenants, for such term or terms (which may be for a term extending beyond the  
556 Lease Term), at such rental or rentals, and upon such other terms and conditions as  
557 Landlord deems advisable, in its sole discretion. Upon reletting, the Tenant shall be  
558 released of any and all liability for the payment of any obligations paid by the tenant  
559 to which the Leased Premises have been relet.

560  
561           24.     Landlord's Right to Cure. Notwithstanding the notice provisions set  
562 forth in Paragraph 21, above, if Tenant defaults in the performance of any covenant  
563 on Tenant's part to be performed pursuant to any provision, agreement, or covenant of  
564 this Lease, which default creates a condition which is dangerous to persons or which  
565 is likely to cause further damage to the Leased Premises, Landlord may immediately  
566 give oral or written notice to Tenant, directing that Tenant perform the same within a  
567 reasonable period of time as established by such notice. In the event that Tenant fails  
568 to comply with the applicable provision of this Lease within the period of time  
569 established by such notice, Landlord shall have the right to perform the same for the  
570 account of Tenant, in which event Tenant shall reimburse Landlord for all expenses  
571 incurred by Landlord in performing such obligation as additional rent. Landlord's  
572 notice to Tenant, when related to conditions which are a danger to persons or which  
573 are likely to cause further damage to the Leased Premises and therefore need  
574 immediate action by Tenant, may be delivered to Tenant's person in charge of the  
575 Leased Premises in addition to the notice provided for in Paragraph 33. Landlord's  
576 right to cure as set forth in this Paragraph, shall be in addition to Landlord's other  
577 remedies upon the occurrence of an Event of Default, as otherwise provided herein.  
578 However, Landlord agrees that it will not pursue any such other remedies until thirty  
579 (30) days after Landlord gives tenant written notice to reimburse Landlord for all  
580 expenses uncured by Landlord in curing Tenant's default pursuant to this Paragraph.

581  
582           25.     Default by Landlord. Landlord shall be deemed in default of this Lease  
583 should Landlord fail to comply with any of the agreements, terms, covenants, or  
584 conditions of this Lease for a period of thirty (30) days after notice from Tenant to  
585 Landlord specifying the items in default; provided, however, if such default cannot  
586 reasonably be cured by Landlord through the exercise of due diligence within thirty  
587 (30) days following the date of said notice, then Landlord shall have such additional  
588 time as is reasonably necessary to cure such default provided Landlord diligently and  
589 continuously pursues such action as may be necessary to cure such default. Upon  
590 default by Landlord, Tenant shall have the option, in Tenant's sole discretion, to  
591 either (a) terminate this Lease on notice to Landlord, or (b) perform the same for the  
592 account of Landlord, and demand that Landlord reimburse Tenant for all expenses  
593 reasonably incurred by Tenant to cure Landlord's default. If Landlord fails to  
594 reimburse Tenant within thirty (30) days following written demand, Tenant shall be  
595 entitled to recover its reasonable attorneys' fees and court costs incurred to obtain

reimbursement pursuant to Paragraph 29. Except as otherwise expressly provided herein, in no event shall Tenant have the right to deduct or set-off any amounts claimed to be due Tenant from the Base Rent, Percentage Rent, or any other payment from Tenant to Landlord provided in this Lease.

26. Signage. All signage located upon the Leased Premises shall be maintained in good condition and repair by Tenant, at Tenant's sole expense. All signage and modifications thereto, except changes to copy, shall require written approval and permitting by Landlord, which shall not be unreasonably withheld.

27. Entry by Landlord. Landlord and its agents or representatives shall have the right to enter the Leased Premises to inspect the Leased Premises and to maintain or make repairs, alterations, additions, renovations, or restorations to the Leased Premises. If reasonably necessary for the protection and safety of Tenant and its employees, Landlord shall have the right to temporarily close the Leased Premises. Entry by Landlord hereunder shall not constitute a constructive eviction or entitle Tenant to any abatement or reduction of rent except as otherwise expressly provided herein. Landlord agrees to give Tenant at least forty-eight (48) hours notice prior to entering the Leased Premises to make repairs authorized under this Paragraph, unless such repairs are necessary to address a life or safety situation. If Tenant does not provide Landlord with keys to the Lease Premises, and Landlord requires emergency access to the Leased Premises for any reason, Tenant shall be solely responsible for any damage caused by Landlord in obtaining emergency access.

28. Quiet Enjoyment. Provided that Tenant performs all its obligations hereunder, Tenant shall have and peacefully enjoy the Leased Premises during the Lease Term free of claims by or through Landlord, subject to all of the terms and conditions contained in this Lease.

29. Attorneys' Fees. If either Landlord or Tenant shall commence any action or other proceeding to construe or enforce this Lease, the prevailing party in such action shall be entitled to recover reasonable attorneys' fees and court costs incurred in such action from the non-prevailing party, in addition to any other relief, including fees and costs incurred on appeal.

30. Indemnification. Should Landlord be made a party to any litigation instituted by Tenant against a party other than Landlord or by a third party against Tenant, Tenant shall indemnify, hold harmless, and defend Landlord from any loss, cost, liability, damage, or expense incurred by Landlord (including attorneys' fees and court costs) in connection with such litigation.

Should Tenant be made a party to any litigation instituted by Landlord against a party other than Tenant or by a third party against Landlord, Landlord shall indemnify, hold harmless, and defend Tenant from any loss, cost, liability, damage, or expense incurred by Tenant (including attorneys' fees and court costs) in connection with such litigation provided that Landlord's duty to indemnify pursuant to this Lease

shall be limited to the same amount Landlord's tort liability would be limited to pursuant to Chapter 768, Florida Statutes, as amended from time to time.

31. Surrender of Leased Premises. Upon expiration of the Lease Term or earlier termination of this Lease, Tenant shall surrender the Leased Premises to Landlord in the same condition as on the execution of this Lease, subject to reasonable wear and tear. All Alterations shall be conclusively deemed fixtures of the Leased Premises and shall become the property of Landlord upon the expiration or earlier termination of this Lease. Tenant shall, at its sole expense, remove all business and trade fixtures, machinery and equipment, furniture and other items of personal property owned by Tenant or installed by Tenant in the Leased Premises. Any damage to the Leased Premises caused by such removal shall be repaired by Tenant to the reasonable satisfaction of Landlord. If Tenant fails to remove any such items within forty-five (45) days after the expiration or earlier termination of this Lease, any items not removed from the Leased Premises by Tenant may be deemed to have been abandoned by Tenant and may be retained or disposed of by Landlord in any manner Landlord may see fit.

32. Holdover Tenancy. If Tenant holds possession of the Leased Premises after the Lease has terminated, by lapse of time or otherwise, Tenant shall become at sufferance upon all of the terms contained herein, except as to the Lease Term and Base Rent. During such holdover period, Tenant shall pay to Landlord a monthly Base Rent equal to 200% of the Base Rent payable by Tenant to Landlord during the last month of the Lease Term. The monthly rent for such holdover period shall in no event be construed as a penalty or as liquidated damages for such retention of possession. The payment of such additional Base Rent, however, shall not be deemed to extend the term of this Lease.

33. Notices. Any notice given or required to be given in connection with this Lease shall be in writing and shall be delivered either by hand delivery, by registered or certified mail with return receipt requested, or by an overnight courier service which provides a receipt or other evidence of delivery; provided, however, oral notice may be given under the circumstances set forth in Paragraph 24. Notices to Landlord shall be delivered at: 105 S. 2<sup>nd</sup> Street, Flagler Beach, Florida 32136. Notice to Tenant shall be delivered at: P.O. Box 731233, Ormond Beach, Florida 32173. Notices delivered by registered or certified mail shall be deemed received on the earlier of the third day following the date the notice was mailed with sufficient postage prepaid or the delivery date indicated on the return receipt. Either party may change its address by providing the other party with such change via certified mail, return receipt requested. Tenant shall maintain a domestic address for receipt of notice.

34. Relationship of Parties. It is understood and agreed that the relationship of the parties hereto is strictly that of Landlord and Tenant, that this Lease is entered into on arms-length basis, and in no manner shall this Lease be construed as granting an ownership right to Landlord in Tenant's business. It is



688 further understood and agreed that this Lease is not intended, nor shall it be  
689 construed, as creating a joint venture or other business relationship between Landlord  
690 and Tenant other than s expressly provided in this Lease.  
691

692 35. Waiver of Jury Trial. Tenant and Landlord hereby knowingly and  
693 voluntarily waive trial by jury in any action whatsoever brought by Landlord or  
694 Tenant to construe or enforce this Lease. The foregoing waiver is a material  
695 inducement to the willingness of Landlord and Tenant to enter this Lease.  
696

697 36. No Pending Claims Against Tenant. Tenant hereby warrants and  
698 represents that there are no administrative claims or lawsuits pending or threatened  
699 against Tenant as of the date Tenant has executed this Lease.  
700

701 37. No Recordation. Tenant's recordation of this Lease or any  
702 memorandum or short form of it will be void and constitute default under this Lease.  
703

704 38. Amendments. This Lease shall not be amended, changed, or modified  
705 except in writing executed by Landlord and tenant. Landlord shall not have waived or  
706 released any of its rights hereunder unless in writing and executed by Landlord.  
707

708 39. Binding Effect. Except as expressly provided herein, this Lease shall  
709 be binding upon the parties hereto, their respective heirs, personal representatives,  
710 successors, and assigns, and all of the terms covenants, and provisions herein shall  
711 inure to the benefit of their respective heirs, personal representatives, successors, and  
712 assigns.  
713

714 40. Interpretation. Tenant acknowledges that it has read and reviewed this  
715 Lease and that it has had the opportunity to confer with counsel in the negotiation of  
716 this Lease. Accordingly, this Lease shall be construed neither for nor against  
717 Landlord or Tenant, but shall be given a fair and reasonable interpretation in  
718 accordance with the meaning of its terms and the intent of the parties.  
719

720 41. Independent Covenants. Each covenant, agreement, obligation, or  
721 other provision of this Lease to be performed by Tenant are separate and independent  
722 covenants of Tenant and are not depended on any other provision of this Lease.  
723

724 42. Severability. In the event any provision of this Lease is found to be  
725 invalid or unenforceable by a court of competent jurisdiction, the remainder of this  
726 Lease shall not be affected, and any provision found to be invalid shall remain  
727 unenforceable to the extent permitted by law. The parties agree that in the event two  
728 different interpretations may be given to any provision hereunder, one of which will  
729 render the provision unenforceable, and one which will render the provision  
730 enforceable, the interpretation rendering the provision enforceable shall be adopted.  
731

732 43. Governing Law; Venue. This Lease shall be construed and enforced in  
733 accordance with the laws of the State of Florida. Venue for any action or suit brought

in connection herewith shall be commenced only in the court of appropriate jurisdiction located in Flagler County, Florida.

44. Time of the Essence. Time is of the essence of this Lease and the performance of all obligations hereunder.

45. Headings. The headings, captions, titles, and numerical references used herein are inserted merely as a matter of convenience, and shall not alter or have any effect upon the meaning, terms, or substance of this Lease.

46. Radon Gas. 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 and radon testing may be obtained from your County Health Department.

47. Number and Gender. Whenever the context hereof so requires, the single shall include the plural, and the use of masculine or neuter terms shall be construed to include all genders.

48. Entire Agreement. This Lease constitutes the sole and only agreement of the parties hereto, and supersedes any prior understandings or written or oral agreements regarding the subject matter contained herein. Landlord has not made, and Tenant is not relying upon, any warranties, representations, promises, or statements made by Landlord or any agent of Landlord except as expressly set forth herein.

49. Force Majeure. Neither party shall be liable to the other for failure to perform any obligation or responsibility under this Lease within the time period required for such performance if performance is prevented by the occurrence of an event which is beyond the control of the party, including, without limitation, strike, labor disputes, acts of God, war, or civil insurrection or legislative act making any of the obligations of this Lease impossible. In such event, the amount of time for the party to perform shall be extended by the amount of time performance is delayed by reason of any force majeure event.

50. Nature of the Property Surrounding the Leased Premises. The parties hereto expressly recognize that the Leased Premises are adjacent to the City Pier and beach and that public events and activities consistent with such uses, including festivals, fundraising events and fireworks displays may continue to occur on or over the beach and City Pier and in the airspace over the Leased Premises during the term of this Lease. Landlord shall not construct any building or facility that will block the view of the ocean from the Leased Premises unless such building or facility is in the interest of protecting the health, safety and welfare of the citizens and visitors to

Flagler Beach. In the event that Landlord constructs any building or facility,  
Landlord shall attempt to work with Tenant to minimize any impact on Tenant's view.


51. Competing Food and Drink at Pier. The parties hereto acknowledge that the City owns additional property at the City of Flagler Beach Pier that may be leased or used for commercial purposes. Landlord agrees to include language in any leases that it may enter with regard to such properties at the Pier to prohibit food and drink sales that may compete directly or indirectly with the food, ice cream, and beverage service provided by the Tenant at the Leased Premises. Landlord agrees that it will not compete directly or indirectly with the food, ice cream, and beverage service provided by the Tenant at the Leased Premises. These provisions shall not prohibit the sale or dispensing of prepackaged food, ice cream, and bottle and canned drinks including but not limited to chips, candy, crackers, bottled water, bottled soft drinks, and ice at any properties managed or leased by Landlord at the Pier.

52. Execution by Katalin Myer. Landlord and Tenant recognize that the Leased Premises is currently governed by a lease agreement between Katalin Myer and the City of Flagler Beach. It is the intent of the parties hereto, that Katalin Myer shall retain possession of those portions of the Leased Premises included in the lease agreement between Charles Myer Enterprises and the City of Flagler Beach until Katalin Myer transfers her existing business and property to the Tenant in accordance with the terms of the contract executed between Katalin Myer and the Tenant, until September 1, 2011, or until the expiration of the lease agreement between Charles Myer Enterprises and the City of Flagler Beach, whichever shall occur first (the "Transfer of Possession Date"). It is the intent of all parties hereto that all provisions of this Lease except Tenant's right to possession of the Leased Premises shall be operative and enforceable beginning on the Commencement Date.

**IN WITNESS WHEREOF**, Landlord and Tenant have executed this Lease in form sufficient to bind them.

**"LANDLORD"**

**CITY OF FLAGLER BEACH**

  
Alice Baker, Mayor

Date: 6-20-11

Attest:

  
Penny Overstreet, City Clerk

820

"TENANT"

821

Witness: Elizabeth E. Kania

822

Print Name: Elizabeth E. Kania

823

Witness: Phumy Ostul

824

Print Name: Kenny Oustrut

By: Raymond Barshay

Date: 8/30/11

825

CONSENT TO EARLY TERMINATION

826

<sup>Meyer</sup> I agree to termination of the Lease entered by and <sup>Meyer</sup>between the City and Charles

827

<sup>Meyer</sup>Myer Enterprises, Inc. on September 14, 1990 (the "<sup>Meyer</sup>Myer Lease") including any and

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all amendments thereto; I further agree that such termination of such Lease shall be

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effective as of the date I transfer the assets of the business located at the Leased

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Premises to Raymond Barshay or a corporate entity affiliated with Raymond Barshay.

831

I understand and recognize that my possession of the property described in the <sup>Meyer</sup>Myer <sup>Meyer</sup>Lease shall continue until the date the business assets are transferred, until September

832

1, 2011 unless this Lease Agreement with Mr. Barshay has been terminated prior to

833

said date or until the expiration of the term of the <sup>Meyer</sup>Myer Lease, whichever shall occur

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first, and that such possession shall continue to be governed by the terms of the <sup>Meyer</sup>Myer <sup>Meyer</sup>Lease, including any amendments thereto. It is expressly recognized that my

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execution of this document solely indicates my agreement to terminate the <sup>Meyer</sup>Myer <sup>Meyer</sup>Lease and I am not bound or governed by any terms contained in the Lease

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Agreement between the City and Raymond Barshay.

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KATALIN MYER Meyer

DATE: 8-23-11

845 EXHIBIT “A”

846



## EXHIBIT B

customers in a fashion that will inspire repeat business and encourage word-of-mouth recommendations to others.

### ❖ Company summary

The restaurant derives its name/essence from its location adjoining the historic Flagler Beach fishing pier. The theme and decor of the facility will reflect the character and elements of its surrounding location. The company ownership is a privately held, limited-liability corporation owned by Raymond Barshay and Edward F. Menard. This will be considered a combination start-up restaurant and complete renovation of the existing pier restaurant.

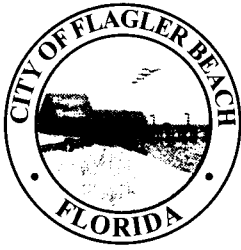
### Projected Renovation/ Start-Up Costs

Plans and Permits	\$30,000
Legal	\$25,000
Equipment	\$40,000
Furniture	\$30,000
Fixtures	\$10,000
Menu Design/Print	\$10,000
Loan costs	\$7,000
Licenses/Deposits	\$5,000
Hiring/payroll	\$9,000
Soft opening expenses	\$7,000
Grand opening expenses	\$10,000
Advertising/Marketing(open)	\$7,500
Start-up inventory	\$20,000
Small wares	\$8,000
Interior renovation	\$75,000
Exterior renovation	\$65,000
Signage	\$20,000
Purchase of existing business	TBD

The projection of timing for start-up and completion of the renovation is as follows:

New lease and assumption of existing lease by.....Jan. 31st, 2011  
Plans and permits by.....Feb. 28th, 2011  
Closing/Renovation by.....April, 15th, 2011  
Training and Reopening by.....May, 15th, 2011

Any of the timelines may progress so as to be ahead of the projections if other parts are able to be accomplished quicker. It is also possible that due to the nature of this project it may be delayed at some stage. Time is of the essence to all parties.



# City of Flagler Beach

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P.O. Box 70 • 105 South 2nd Street  
Flagler Beach, Florida 32136

Phone (386) 517-2000 • Fax (386) 517-2008

July 29, 2011

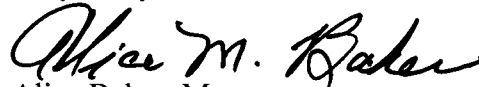
Mr. Raymond Barshay  
P.O. Box 731233  
Ormond Beach, Florida 32173

RE: City of Flagler Beach Amendment of Pier Lease Offer

Dear Mr. Barshay:

As approved by the City Commission at its regular Commission meeting on July 28, 2011, please be advised that the City has amended its offer regarding the Pier Restaurant Lease as described in Exhibit "A" attached hereto. In short, the modification strikes the thirty day notice requirement prior to the limited termination right provided in Paragraph 15(b) of the Lease Agreement. Upon your acceptance and execution of the Lease Agreement, please execute and have witnessed where identified on Exhibit "A" in order to fully accept the City's proposal of the Lease.

Very Truly Yours,

  
Alice Baker, Mayor



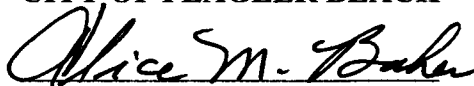
## EXHIBIT "A"

Paragraph 15 (b) is amended as follows [deletions identified by ~~striketrough~~]:

During the first twelve months after the Commencement Date of this Lease Tenant may, at its option, construct a deck attached to the Leased Premises not to exceed 1,600 square feet, subject to permitting and approval by Landlord of the size, location and design of the deck, which approval shall not be unreasonably withheld. Landlord shall cooperate with the Tenant in seeking necessary State approval for the deck. In the event Tenant completes construction of said deck within twelve months from the Commencement Date, subject to annual appropriations, Landlord shall reimburse Tenant's design, permitting (including necessary State approvals), labor and materials costs incurred in construction of the deck up to a maximum reimbursement from Landlord of \$50,000.00. Tenant may request the amount of time to complete said deck be extended up to an addition twelve (12) months, approval of which shall not be unreasonably withheld. The parties expressly recognize and agree that Landlord's commitment to reimburse the costs of the deck design and construction is limited to the structural elements of the deck and that Landlord shall not reimburse costs incurred to install any outdoor utilities on the deck. In the event of default by Landlord of its agreement to reimburse the costs described in this paragraph, Tenant's sole recourse shall be a credit against future rental payments due from Tenant to Landlord pursuant to this Lease. Prior to September 1, 2011, if necessary State approvals to construct the deck are not obtained, either party may terminate this Agreement with ~~thirty days~~ written notice to the other party; After September 1, 2011, neither party shall have the right to terminate this Agreement based on the inability to obtain State approvals for construction of the deck referenced herein. In the event either party exercises its right to terminate this Lease pursuant to this paragraph and Landlord subsequently obtains State approval for construction of a deck Tenant shall be reimbursed any expenses up to \$50,000 it incurred related to such State approval that was material to the State approval ultimately received.

**"LANDLORD"**

**CITY OF FLAGLER BEACH**

  
Alice Baker, Mayor

Date: 8-3-11

Attest:

Penny Overstreet  
Penny Overstreet, City Clerk

Witness: Elizabeth E. Kanis  
Print Name: Elizabeth E. Kanis  
Witness: Kathleen Doyle  
Print Name: Kathleen Doyle

**"TENANT"**

Raymond Barshay  
By: Raymond Barshay

Date: 9/30/11



**Vend Lease  
Company, Inc**  
www.vendlease.net

8100 Sandpiper Circle, Suite, 300  
Baltimore, MD 21236  
410-933-8100 • 1-888-363-5327  
Fax: 410-933-5258  
www.vendlease.net

**Fax**

<b>To:</b>	Whom It May Concern	<b>From:</b>	LISA THOMSON X 139 lthomson@vendlease.net
<b>Fax:</b>	386-517-2008	<b>Pages:</b>	4 INCLUDING COVER
<b>Phone:</b>	386-517-2000	<b>Date:</b>	10/22/12
Landlord Waiver for GRANDVIEW FLAGLER PARTNERS, LLC T/A THE FUNKY			
<b>Re:</b>	PELICAN		
Reference # 30136			

☒ Urgent   ☐ For Review   ☐ Please Comment   ☒ Please Reply   ☒ Please Recycle

We are entering into an equipment lease agreement with GRANDVIEW FLAGLER PARTNERS, LLC T/A THE FUNKY PELICAN and are therefore requesting you to complete and sign the attached Landlord Waiver

We understand that you may prefer to use a "Subordination of Landlord's Lien". We are certainly open to using your document. Please forward it along for our review/execution.

You can respond by fax or e-mail.

If you have any questions, please do not hesitate to contact me.

Thanks!

RX Date/Time 10/22/2012 13:57  
10-22-'12 14:55 FROM-Vend Lease

410 933 5258  
410-933-5258

P.002  
T-477 P0002/0004 F-641



**Vend Lease  
Company, Inc**  
www.vendlease.net

## WAIVER AND CONSENT FORM

AGREEMENT #

30136

Reference is made to the certain Agreement dated between GRANDVIEW FLAGLER PARTNERS, LLCT/A THE FUNKY PELICAN as ("Customer") and VENDOR LEASE COMPANY INC as ("Secured Party") covering the personal property described therein and personal property listed on any supplements to that Agreement ("Personal Property") located at:

215 S OCEAN SHORE BLVD FLAGLER BEACH, FL 32136

(Street Address) ("Premises")

in which the undersigns holds an interest (either as owner or lienholder). In this connection, Secured Party requires this Waiver and consent so that said Personal Property will not be deemed real estate or subject to any claims of the undersigned.

In consideration of Secured Party entering into said Agreement, the undersigned owner or lienholder or Premises on which the Personal Property will be placed agrees as follows:

1. It is the intention of all parties that said Personal Property regardless of the manner or attachment shall remain personal property and shall not become realty as a result of being placed in said Premises.
2. The undersigned hereby expressly consents to the installation of the Personal Property on the Premises and waives all right, title, and interest in and to said Personal Property and agrees that Secured Party may, at a reasonable time, enter upon the Premises for the purpose of removing said Personal Property regardless of the manner by which it is attached to realty and may remove and retake said Personal property without interference. Secured Party will reimburse the undersigned for a reasonable amount for damage caused in the removal of the Personal Property but will not be responsible for returning the Premises to the condition that existed prior to Installation of the Personal Property. If a password is required for access to the Premises or the Personal Property, the undersigned agrees to provide same to Secured Party or its agent upon request. Secured Party will have no responsibility for any past due rent or other fees, charges or amounts owed by Customer to the undersigned.
3. The undersigned further waives each and every right now or hereafter possessed under the laws of the State of Maryland or any other state where the Premises are located and/or by virtue of the provisions of any lease covering said Premises now in effect or hereafter executed to levy on or distrain for rent against the Personal Property.
4. The undersigned will give Secured Party at least 30 days written notice upon the termination of any lease or space agreement or foreclosure of any mortgage covering the Premises and will allow Secured Party access to the Premises to remove the Personal Property.
5. If there are any conflicting terms between this Waiver and Consent form and the Equipment Lease Agreement or space agreement covering the Premises between Customer and the undersigned, this Waiver and Consent form shall control. The undersigned expressly and unconditionally consents to the jurisdiction and venue of courts in Baltimore County in the State of Maryland.
6. A facsimile or electronic copy of this Agreement with signature shall be considered to be an original.

in the City of FLAGLER BEACH

State of FL

County of FLAGLER

CITY OF FLAGLER BEACH

Landlord / Mortgagee Name

X

Signature

X

Address

X

Date

Kindle Provencher

105 S. 2nd Street, Flagler Beach, FL 32136

November 8, 2012

# EQUIPMENT SCHEDULE "A"

Lease # 30136

This Equipment schedule "A" is to be attached to and become part of that Schedule of Equipment dated 10/15/12 by and between the undersigned and Vend Lease Company, Inc., Secured Party.

Qty	Description	Model #	Serial #
*** SOFTWARE ***			
1	SOF-RDC-STKEY	POSitouch 5 Terminal Software	
1	SOF-RDC-T&A	POSitouch Time & Attendance With Labor Scheduling	
1	SOF-RDC-ADV-TABLE	POSitouch Advanced Table Management New	
1	SOF-MID-CC AUTH	Midnite Express Credit Card Auth	
1	SOF-GIV-RDC/PC	RDC Gift Card Interface Module	
1	SOF-MIC-7PRO	MICROSOFT WINDOWS 7PRO	
*** HARDWARE ***			
3	TER-J2-225-TFR-CALYPSO	J2 225 TFR 14IN Widescreen 2.13GHz 2GB Ram 8GB SSD	
2	TER-J2-225-TFR-HD	J2 225 TFR 14IN Widescreen 2.13GHz 2GB Ram 160GB HD POSReady 2009	
5	PRI-EPS-C31C514153	Epson TM-U220B Impact Auto Cut Printer Gray	
4	DRA-MMF-ADV-MEDIA	MMF Advantage W/Media Slots BLACK US STD TRAY 12/24v Random No Bell* Cable REQ	
5	PIN-TERMINAL PARTS KIT	Terminal Parts Kit	
Each includes:			
Qty	Item ID	Item Description	
1.00	CBL-LAN-10BT-5FT	5 Foot Patch Cable Black	
1.00	CBL-LAN-10BT-3FT	3 Foot Patch Cable Black	
1.00	CBL-LAN-10BT-2FT	2 Foot Patch Cable Black	
1.00	CON-CUS-DB9F RJ45 DM962	Modular Adapter - RJ45/DB9F Black	
1.00	CON-CUS-DB25M RJ45 DM963	Modular Adapter - Print Connect DB25M/RJ45 Black	
5	UPS-APC-UPS 300	APC Back-UPS BE 350	
1	PAR-CRC-19SWTVEL-F	13x19 Inch Black Platform Terminal Swivel With Feet	

\*\*\*REMOTE PRINTING\*\*\*

- 2 PRI-EPS-C31C514153 Epson TM-U220B Impact Auto Cnt Printer Gray -  
KITCHEN PRINTERS  
2 PIN-PREP PRNTR KIT Epson Remote Printer Parts Kit

Each includes:

Qty.	Item ID	Item Description
1.00	CON-CUS-DB25M/RJ45-DM963	Modular Adapter - Print Connect DB25M/RJ45 Black
1.00	CON-CUS-DB9F/RJ45-DM962	Modular Adapter - RJ45/DB9F Black
1.00	CBL-ZTI-10BTB-7FT	7 Foot Patch Cable Black
1.00	CBL-LAN-10BT-5FT	5 Foot Patch Cable Black

\*\*\* BACK-OFFICE\*\*\*

- 1 PC-DELL-SERVER-T110 Dell Server T110 Intel 2.4GHz 2GB 160GB  
1 MON-SYS-C19000 LCD Back Office 19 Inch Monitor Black  
1 HUB-DLIN-DDS-16- Compatible 16 Port 10/100 Network Switch  
1 HUB-DLIN-DI-804HV Compatible 10/100 Mbps 4-Port Router  
1 UPS-APC-UPS 300 APC Back-UPS BE 350

This Equipment Schedule "A" is hereby verified as correct by the undersigned Customer, who acknowledges receipt of a copy.

SIGNER OF THIS ADDENDUM MUST BE THE SAME AS ON FRONT OF AGREEMENT. A FACSIMILE OR ELECTRONIC COPY OF THIS AGREEMENT WITH SIGNATURE(S) SHALL BE CONSIDERED TO BE AN ORIGINAL.

GRANDVIEW FLAGLER PARTNERS, LLC T/A THE FUNKY PELICAN  
X Raymond Barshay  
RAYMOND BARSHAY  
Manager  
X 10/15/12  
Date

## FIRST ADDENDUM TO LEASE AGREEMENT

THIS FIRST ADDENDUM TO LEASE AGREEMENT (the "First Addendum"), is made and entered into this 6<sup>th</sup> day of AUGUST, 2012, by and between the City of Flagler Beach, Florida, a municipal corporation (the "Landlord") and Raymond Barshay, (the "Tenant"), upon the following terms and conditions:

WHEREAS, the City and Tenant have entered into a Lease Agreement regarding the Pier Restaurant; and

WHEREAS, the City and Tenant desire to make this First Addendum to the Lease Agreement amending certain terms of the Lease Agreement; and

WHEREAS, specifically, by this First Addendum, the Parties intend to amend the Move-In Date of the Lease Agreement, which date represents the date upon which the Lease Term is calculated as well as the date upon which Tenant must begin paying rent to the City; and

WHEREAS, pursuant to the Lease Agreement the Move-In Date was April 29, 2012; and

WHEREAS, by this First Addendum, the Parties intend to provide for postponement of the Move-In Date to October 1, 2012 while Tenant completes necessary alterations to the Leased Premises prior to opening for business; and

WHEREAS, by this First Addendum, the Parties also intend to reduce the amount of credit for repairs, the Tenant is allowed to recoup from the City in the form of rent reductions by Five Thousand Dollars which represents waiver by Tenant of five months' worth of rent reductions provided for in the original Lease Agreement; and

WHEREAS, the City and Tenant intend for this Addendum to be attached to and become a part of the Lease Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein and within the original Lease Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows (Note, deletions are identified by ~~striketrough~~ and additions are identified by underline):

SECTION 1. Paragraph 4 of the Lease Agreement is amended as follows:

4. Tenant's Duty to Repair. Tenant agrees that upon the effective date of this Lease granting Tenant possession of the Leased Premises, Tenant shall institute and follow through to completion all repairs, other than those described in Paragraph 3, above, necessary to bring the Leased Premises and the structures located thereon into compliance with all

governing building codes, fire codes and other applicable regulations (hereinafter the "Tenant Repairs"). In the event the cost of the Tenant Repairs is estimated to exceed \$35,916, the Tenant may terminate this Lease upon written notice to Landlord. In the event the cost of the Tenant Repairs is estimated to exceed \$100,000, the Landlord may terminate this Lease upon written notice to the Tenant. In the event Tenant completes the repairs provided for in this paragraph Tenant shall be credited the total cost of such repairs up to a maximum credit of ~~\$20,916~~ \$15,916 as Advance Rent. The Advance Rent credit shall be applied toward Tenant's rental payment obligations as follows:

(a) \$1,000.00 of the Advance Rent shall be applied monthly toward Tenant's rental payment obligation as a rent credit until the balance of the Advance Rent is reduced to \$9,000.00;

(b) The Advance Rent remaining after application of the credits described in (a), above, shall be applied toward Tenant's rental payment obligations and any other payments due and unpaid by Tenant to Landlord at the end of the Term of this Lease, including any extensions thereof.

**SECTION 2.** Paragraph 5 of the Lease Agreement is amended as Follows:

5. Effective Date of Lease; Calculation of Lease Term; Option to Extend. This Lease shall be effective upon execution by all parties hereto, including execution of the Consent to Early Termination clause by Katalin Myer (the "Commencement Date"). The original Lease Term shall end on the first calendar day exactly ten years after the first of the following to occur (the "Move-in Date"):

(a) Tenant opens the restaurant for service of customers;

(b) Tenant is issued a certificate of occupancy; or

~~(c) The 121<sup>st</sup> day after Tenant has applied for any building permit related to the Leased Premises except any permits related to construction of the deck described in Paragraph 15(b). Provided, however, Tenant may request the time provided in this subsection be extended up to 90 days if necessary permits have not yet been issued and Landlord shall not unreasonably deny any such request. Tenant shall apply for~~



~~all building permits necessary to complete the repairs described in Paragraph 4, above, within 60 days from September 1, 2011 or the date Tenant receives confirmation, in a form acceptable to Tenant, that the State will allow construction of a deck as referenced in Paragraph 15, herein, whichever occurs earlier.~~

c) October 1, 2012.

~~Within a reasonable time after the Move-in Date, the parties hereto shall execute an addendum to this Lease memorializing the Move-in Date. Failure by the parties, however, to execute such addendum shall in no way affect the validity of this paragraph or the calculation of the Move-in Date.~~

Tenant shall have the option to extend the original Lease Term for three (3) consecutive five (5) year terms. Tenant shall exercise the First Option for an additional five (5) year term by written notice delivered to Landlord on or before nine months prior to the end of the original Lease Term. If Tenant exercises the First Option, the original Lease Term will be extended upon the same terms and conditions as set forth herein.

If the Tenant exercises the First Option, it shall, at the end of the term of the First Option, have an additional option to extend the term another five (5) years (the "Second Option"). Tenant shall exercise the Second Option by providing written notice to Landlord of such exercise on or before nine months prior to the end of the First Option period. If Tenant exercises the Second Option, the Lease Term will be extended upon the same terms and conditions as set forth herein.

If the Tenant exercises the Second Option, it shall, at the end of the term of the Second Option, have an additional option to extend the term another five (5) years (the "Third Option"). Tenant shall exercise the Third Option by providing written notice to Landlord of such exercise on or before nine months prior to the end of the Second Option period. If Tenant exercises the Third Option, the Lease Term will be extended upon the same terms and conditions as set forth herein.

Notwithstanding the foregoing, Tenant shall have no right to exercise any Option if: a) Tenant is in default of any term of the Lease at the time Tenant attempts to exercise the Option; b) Tenant is in default of any term of the Lease on the date the Option becomes effective; or c) Tenant has regularly

and habitually failed to fully comply with the terms and conditions of the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease in form sufficient to bind them,

"LANDLORD"

CITY OF FLAGLER BEACH

Linda Provencher  
Linda Provencher, Mayor

Date: 8/14/12

Attest:

Penny Overstreet  
Penny Overstreet, City Clerk

Witness: [Signature]  
Print Name: [Signature]  
Witness: [Signature]  
Print Name: JOE HARRIS

"TENANT"

Raymond Barshay  
By: Raymond Barshay  
Date: 8/6/12

**AGREEMENT FOR STORM RELATED REPAIRS TIME & MATERIALS**

This agreement made this 10 day of, OCTOBER, by and between FLAGLER COUNTY (Owner<sup>®</sup>) and Advanced Roofing, Inc. (ARI<sup>®</sup>) for the performance of emergency storm related roof repairs to Owners property location at FLAGLER CITY HALL whereby it is agreed as follows:  
FUNKY PELICAN

WHEREAS the roof on Owners property has been damaged by storm related winds and requires repair on an emergency basis;

NOW THEREFORE in consideration of the mutual covenants of each to the other and other good and valuable consideration paid in hand the sufficiency of which is hereby acknowledged it is hereby agreed as follows:

1. Unless otherwise stated in writing, Owner agrees to pay ARI on a time and materials basis, payment due when invoiced. ARI has the right, in its sole discretion, to request a deposit before commencing any work. ARI also has the right to stop work in the event Owner fails to timely pay any invoice. The rates are consistent with established rates charged by ARI through Roof Connect, an organization of roofers throughout the United States. The labor rates, material prices, based upon RoofConnect Emergency Maintenance Services Hourly Rate Schedule and Materials Price Schedule; and equipment prices, based upon the applicable National Roofing Contractors Association Equipment Cost Schedule. If permits are required, before or after the work is performed, this will be billed and paid as a separate item. Owner represents that it has the ability to pay for the repairs and that payment is not conditioned upon Owner's receipt of insurance proceeds or other financing.

Owner understands that in post storm conditions ARI's first priority is to use its best efforts to make emergency repairs to as many structures as possible and may not have the manpower, equipment or means for trash and debris removal. That responsibility will remain with Owner unless otherwise agreed in writing. However, if ARI is able to remove the roof debris at the time of the emergency repair it is authorized to do so at an additional cost to the Owner. ARI agrees to make emergency repairs and to use its best effort to temporarily repair those areas of the roof damaged by the storm. Owner acknowledges and agrees that (a) any emergency repairs performed by ARI are temporary only and (b) ARI shall not be responsible or liable for any leaks or resulting damage that occurs after the emergency repairs are performed. This acknowledgment includes roof repairs and service work as well as temporary roofs. In the case of temporary roofs, ARI will select the type of temporary roof dependent upon materials and equipment available, and generally does not include flashing, gutters or other components of a full roof system. Temporary roofs must be replaced with a permanent roof in order to properly secure the property. Emergency repairs and roofs are not guaranteed and are provided with no warranty against future leaks or property damage. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ARI DISCLAIMS ANY IMPLIED WARRANTY, INCLUDING WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

2. Owner agrees that it will not hold ARI responsible for any failure of the storm repairs and shall hold ARI harmless and indemnify it against any claim for injury or damage arising from the alleged failure of storm repairs or related thereto.

3. This agreement shall be governed by the laws of the State of Florida. Should any dispute arise

between the parties hereto with regard to any of the forgoing, the proper venue for any such dispute shall be Broward County, Florida.

4. In the event either of the parties hereto is compelled to enforce any portion of this agreement hereof, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs up to and including post judgment and appellate level proceedings.

5. ARI agrees that it will get to Owner's property as soon as it can allocate the necessary manpower and equipment, which generally should be within 30 days from the execution hereof. In the event Owner obtains the services of another roofer to do the work before ARI has mobilized to the property site this contract shall be null and void without penalty to either party. Owner acknowledges and agrees that ARI shall not be responsible or liable for any damage caused by rain or other acts of god that occur after execution of this agreement and before the emergency repairs commence.

6. There are no promises, representations or understandings outside of the terms stated in this agreement, which represents the complete agreement between the parties. Any promises, representations, or understandings made prior to the execution of this agreement are deemed merged herein. No modification of this agreement shall be valid unless in writing, signed by the party against whom the change is asserted. Any notification required by this contract shall be made in writing.

ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND SERVICES AND ARE NOT PAID IN FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS, THOSE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE ALREADY PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY. TO PROTECT YOURSELF, YOU SHOULD STIPULATE IN THIS CONTRACT THAT BEFORE ANY PAYMENT IS MADE, YOUR CONTRACTOR IS REQUIRED TO PROVIDE YOU WITH A WRITTEN RELEASE OF LIEN FROM ANY PERSON OR COMPANY THAT HAS PROVIDED TO YOU A "NOTICE TO OWNER." FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX, AND IT IS RECOMMENDED THAT YOU CONSULT AN ATTORNEY.

CHAPTER 558, FLORIDA STATUTES, SHALL APPLY TO ANY CLAIM OR ACTION ARISING OUT OF OR RELATING TO THE IMPROVEMENTS PROVIDED PURSUANT TO THIS AGREEMENT.

IN WITNESS WHEREOF the parties hereto have set their hands and seals the day and date above written.

ADVANCED ROOFING, INC.

By

  
JASON CARVETH

OWNER

Authorized agent of Advanced Roofing

By \_\_\_\_\_

Authorized Agent of Owner

Type in full legal name of Property Owner:

\_\_\_\_\_

All contact phone numbers:

\_\_\_\_\_

\_\_\_\_\_

Billing address if different than property address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_