

**IN THE COUNTY COURT OF THE 11<sup>TH</sup> JUDICIAL CIRCUIT,  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

5501 NE 2ND AVENUE, LLC,

Plaintiff,

vs.

DISTRICT LIVE AGENCY, LLC,

Defendant,

– and –

DISTRICT LIVE AGENCY, LLC,  
and THE BEVERAGE GROUP, LLC,

Counter-Plaintiffs,

vs.

5501 NE 2ND AVENUE, LLC, and  
LITTLE HAITI DEVELOPMENT PARTNERS LP,  
and MALLORY KAUDERER,

Counter-Defendants.

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**DEFENDANT’S EMERGENCY MOTION FOR MANDATORY TEMPORARY  
INJUNCTION**

Defendant District Live Agency, LLC (“DLA” or “Defendant”), by and through undersigned counsel and pursuant to Fla. R. Civ. P. 1.610, moves the Court to enter a mandatory temporary injunction enjoining Plaintiff 5501 NE 2ND Avenue, LLC (“Plaintiff”) from continued violations of certain lease provisions, including revoking DLA’s liquor license and states:

## **I. INTRODUCTION**

As a result of Plaintiff and its principals' myriad illegal and retaliatory actions, which violate Florida law, as well as certain provisions of the lease entered into between Plaintiff and DLA, dated April 1, 2019 (hereinafter, the "Lease")<sup>1</sup>, DLA has sustained and continues to sustain immediate and irreparable injury. While Plaintiff and its principals have undertaken a laundry list of improper actions, the most recent action, as well as the action that has the most bearing on this Motion, revolves around the Plaintiff and its principals' revocation of a liquor license rented to DLA from Churchill's Pub, LLC (an affiliate of Plaintiff) by way of a Liquor License Rental Agreement entered into between Churchill's Pub, LLC and DLA effective April 1, 2019 (the "Liquor License Rental Agreement"). DLA seeks a mandatory temporary injunction to reinstate the subject liquor license, thereby maintaining the status quo (consistent with the law) between the parties until the eviction action has been adjudicated.

## **II. FACTUAL BACKGROUND**

### **A. The Beginning of the Parties' Relationship**

1. Beginning in April 2014 and through April 1, 2019, Counter-Plaintiffs, The Beverage Group, LLC ("TBG") and its principal, Franklin Dale ("Dale") provided business management advisory services to Counter-Defendant Mallory Kauderer ("Kauderer") and his entities, including but not limited to Churchill's Pub LLC.

2. Churchill's Pub (the "Pub" or the "Business") is one of the oldest bars in Miami-Dade County, and nationally recognized for jump-starting the careers of many rock and roll and punk rock artists.

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<sup>1</sup> A copy of the Lease is attached hereto as Exhibit "A."

3. On or about 2015, Counter-Plaintiff Dale developed a vision for a “Live Music District” in the Lemon City/Little Haiti area to bring the entire district back to its former prominence.

4. Kauderer seemed not only supportive of this vision, but he entered into agreements with Dale concerning the treatment of monies owed (by Kauderer) to Dale for purposes of empowering Dale to execute this vision.

5. Both Kauderer and Dale understanding the zoning and development potential of an entertainment district with multiple bars and stages, they made long-term commitments to each other (Dale to Kauderer and Kauderer to Dale).

6. Without question, the agreements between Dale and Kauderer were dependent upon their landlord/tenant relationship or otherwise Kauderer deceptively incurred hundreds of thousands of cash debt, which he knew he lacked the ability to satisfy.

7. Such is evidenced by Kauderer’s taking of several hard money, high interest rate loans against the Business’s revenues (revenues that had been soaring under Dale’s leadership) from at least 2016 to the present.

8. Consequently, the Business suffered terribly.

9. Dale eventually began to notice a pattern surrounding Kauderer’s actions. Kauderer would make promises for improvements to the properties leased by Dale’s entities in and around the Pub, but then would never follow through on such promises. Instead, Kauderer began draining the Business of its growth capital and leaning on Dale’s agreement concerning rent credits in order to keep the economically fruitful business relationship alive and assuaging Dale’s concerns about the monies owed to him and his entities.

10. Despite the overwhelming success of the Business under Dale's leadership over the years, Kauderer continued to take advantage of the business relationship between the parties and continued to rack up debts owed to Dale, including for over \$120,000.00 in premium hospitality advisory services across Kauderer's folio of properties.

**B. The Lease, this Eviction Action, and the Beginnings of Plaintiff's Retaliatory Actions**

11. Ultimately, the parties entered into an agreement whereby Dale would own 100% of the Business of the Pub upon the signing of a new lease in 2019.

12. Thereafter, and according to the terms of the parties' agreement, on April 1, 2019, DLA signed the Lease.

13. As of April 1, 2019, per the parties' agreement, the business of the Pub was owned 100% by DLA. To be clear, DLA would have never entered into an agreement to lease the Pub's premises, which were settled with outrageous amounts of debt, but for the agreement to transfer the ownership of the business of the Pub to Dale.

14. The following year, when the COVID-19 pandemic hit South Florida, not dissimilar from countless entertainment venues and businesses nationwide, DLA and TBG's businesses, including as owner and operator of the Pub (through the newly formed entity Churchill Beverage LLC) was (and continues to be) devastated.

15. However, as explained in the counterclaim filed in this action, notwithstanding the difficulties of the circumstances, **DLA consistently paid rent to Plaintiff and to date, no rent is owed by DLA under the Lease.**

16. Conversely, DLA was patient with Kauderer, as he owed vast sums of money to DLA. To date, those sums of money continue to be owed in the form of rent credits or otherwise cash.

17. Thus, DLA is not in default under the Lease and has vehemently opposed the underlying eviction action(s).

18. Despite the fact that the Business was unable to operate pursuant to eminent domain, TBG, DLA, and Dale ensured that the rent under the Lease for the property located at 5501 NE 2nd Avenue, Miami, FL (the “Property” or “Churchill’s Pub”) was paid.

19. Indeed, despite Kauderer’s outstanding debts, TBG and DLA, acting in good faith, relied on Kauderer’s promises of a collaborative and fair business relationship between the parties, including the provisions for payment of either rent credits or cash for the sums owed by Kauderer to DLA.

20. However, Kauderer effectively defrauded Counter-Plaintiffs, as well as an additional entity co-owned by DLA (Churchill Beverage LLC), by fraudulently applying for CARES Act funds, thereby taking away DLA and/or Churchill Beverage LLC’s ability to apply for the CARES Act funds for the benefit of the Pub.

21. Indeed, Kauderer—who has no ownership interest in the business of the Pub—applied for the CARES Act funds, in violation of the law to the detriment of Counter-Plaintiffs.

22. As a result of this fraudulent CARES Act application, Kauderer and his other unrelated entities, including but not necessarily limited to Little Haiti Development Partners LP (“LHDP”), received hundreds of thousands of dollars from the government, all of which should have gone to Counter-Plaintiffs and the business of the Pub, consistent with the representations made by Kauderer in the application for the CARES Act funds.

23. As explained in the counterclaim, DLA raised each of these issues to Counter-Defendants. Instead of working collaboratively with Counter-Plaintiffs, Kauderer resorted to greed, lawlessness, and malicious retaliation, including threats of eviction.

24. In fact, Kauderer responded by summarily posting a defective three-day notice at 175 NE 55<sup>th</sup> Street, Miami, FL 33137, a nearby property that DLA utilizes.

25. DLA responded, in good faith, by providing a comprehensive letter setting forth its grievances and making a demand for monies owed to it, notwithstanding Kauderer's attempts to leverage his role as landlord.

26. Thereafter, on or about August 17, 2020 Plaintiff posted a defective Three-Day Notice (the "Three-Day Notice") reflecting that \$92,838.02 (the "Claimed Amount Due") is due and owing from DLA to Plaintiff for non-payment of rent.

27. The Three-Day Notice provided no specifics concerning the basis of the Claimed Amount Due, nor set forth for which months Plaintiff claims rent is owed, pursuant to the terms of the Lease.

28. Notably, DLA has paid rent for all months upon which it is obligated, despite the fact that the Pub was closed for many months because of the COVID-19 pandemic.

29. Accordingly, there can be no question that the Three-Day Notice and subsequent eviction proceedings are completely without merit and evidence Kauderer's unlawful acts, which caused (and continue to cause) significant harm to Counter-Plaintiffs' trade.

**C. Other Instances of Plaintiff's Retaliatory Behavior and Restraint of DLA's Trade**

30. Notwithstanding the fact that DLA has paid what is owed under the Lease, and in fact well-beyond what is owed (and is therefore not in breach of the Lease obligations), Plaintiff, Kauderer, and other entities owned by Kauderer are continuing to effectuate an unlawful conspiracy for purposes of retraining DLA's trade.

31. More specifically, on or around August 22, 2020, Kauderer instructed his agent Ian Michael Loughlin ("Loughlin") to begin the process of commandeering the Pub's online

profiles and social media accounts from DLA and/or Dale (who at that time was the sole administrator of these accounts), including churchill\_pub Instagram, Churchill's Pub Google Business listing, and Churchill's Pub Facebook Group.

32. Loughlin requested that Dale grant him access to the Pub's Instagram account under the guise that Loughlin was posting about the passing of a rock and roll artist. However, once logged into the account, Loughlin changed the password and reset the email to his own. He completely removed Dale from the account, notwithstanding the fact that Dale is the rightful owner of the business of the Pub.

33. Thereafter, under the guise of goodwill and collaboration, Loughlin stole critical pieces of the Pub's digital identity<sup>2</sup> and disrupted, compromised, and gained total control of the Pub's Google Business Listing.<sup>3</sup>

34. Having gained control of these social media accounts through surreptitious means, Loughlin posted (and has yet to remove) derogatory comments about Dale and DLA on these accounts.

35. These postings have caused unquantifiable harm to the reputation of DLA and Dale.

36. And, more importantly, Loughlin and Kauderer are currently using these accounts to represent to customers and consumers that the Pub is closed, although it has been open since February 4, 2021.

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<sup>2</sup> Attached hereto as Composite Exhibit "B" are text message conversations between Dale and Loughlin, whereby Dale warns Loughlin of his malfeasance and Loughlin acknowledges that Dale is the rightful owner of the accounts.

<sup>3</sup> Attached hereto as Composite Exhibit "C" is the Pub's Google Business Listing, which evidences Loughlin's unlawful acts applied thereto.

37. Furthermore, anyone who searches Churchill's Pub on Google® not only sees that it is temporarily closed (which it is not),<sup>4</sup> but will also come across the derogatory and false article about Dale and DLA.

38. Thereafter, on or around August 23, 2020 Kauderer fraudulently cancelled the Pub's internet and phone service.

39. Kauderer then reclaimed the Pub's phone number through another account and has been fielding all calls made to the Pub.

40. Kauderer, through Loughlin, is representing to callers and the public that the Pub is closed. **Such is not the case.**

41. The misrepresentations regarding the status of the Pub's operations and the information regarding the legal issues surrounding the Pub are causing unquantifiable harm to the Pub, and further harm will continue.

42. Indeed, Comcast, the Business' phone and internet provider, confirmed the Business' account was closed and the phone number was moved to a profile with Kauderer's phone number listed.

43. Around the same time, Kauderer violated federal regulations and perpetrated mail fraud by having all mail forwarded from the Pub to his corporate headquarters.

44. Thereafter, on September 22, 2020, Kauderer disconnected power from the Property, leaving the Business *without* power, but *with* a large outstanding bill to FPL of over \$4,000. This bill should have been paid through CARES Act funds, however, as referenced above, Kauderer stole those funds.

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<sup>4</sup> Attached hereto as Exhibit "D" is a google search showing the Pub to be temporarily closed, which it is not.

45. As a result, FPL also disconnected the main power running into the building located on the Property.

46. In addition to all of the improper behavior and actions described above, Kauderer absconded with Small Business Administration (“SBA”) Economic Injury Disaster Loan Program (“EIDL”) funds designated for the Pub, which disqualified Dale and the Pub from any additional pandemic relief.

47. Kauderer did not apply **any** of the monies he stole from the Business towards payroll, rent, utilities, outstanding vendor balances, or business licenses as per the highly specific SBA rules.

48. Instead, Kauderer transferred funds to real estate development holding entity LHDP, in direct violation of SBA rules.

49. He then weaponized his possession of these funds against DLA and Dale, first in a *quid pro quo*, then through intimidation and self-help remedies.

**D. The Final Nail in the Coffin—The Liquor License was Revoked in Direct Violation of the Terms of the Lease**

50. At the same time the parties entered into the Lease, the parties entered into a Liquor License Rental Agreement, which was an exhibit to and mandatory component of the Lease whereby Plaintiff rented to DLA the right to use a State of Florida Department of Business and Professional regulation Division of Alcoholic Beverages & Tobacco 4COP Liquor License, with a license number of BEV 2300396 (the “License”), to operate the Pub. A copy of the Liquor License Rental Agreement is attached hereto as Exhibit “E.”

51. Additionally, the Lease reflects that the landlord (Kauderer/Plaintiff) is required to keep the License active throughout the Term of the Lease and moreover DLA is not allowed to obtain a separate License.

52. On or around March 24, 2021, in another retaliatory action by Kauderer against DLA and Dale, Kauderer removed the License from the premises, effectively preventing the Pub from operating because the Lease mandates that DLA/Dale/Churchill's only use said License.

53. Thus, the Business cannot acquire a separate license nor can it sell alcohol, the main source of its revenue.<sup>5</sup> In fact, alcohol sales represents 99% of the Pub's revenue.

54. Now, just two (2) months after the Business reopened after the COVID-19 pandemic, Plaintiff and Kauderer have essentially shut the business down, again.

55. All of this occurred despite the fact that DLA is not in default of any provision of the Lease, does not owe any rent to Plaintiff, and the Lease and Liquor License Rental Agreement are still in effect.

56. But, more crucially and materially to this Motion, the License was revoked prior to the adjudication of these sham eviction proceedings.

### **III. LEGAL ARGUMENT**

#### **A. The Standard for Issuance of a Temporary Mandatory Injunction**

The purpose of a temporary injunction is to prevent irreparable harm until the merits of a claim can be adjudicated. *Cami v. Helmsley*, 602 So.2d 617, 618 (Fla. 3d DCA 1992). Generally, a temporary mandatory injunction is proper "where irreparable harm will result unless the status quo is maintained; a party has a clear legal right to the injunction; that party has no adequate remedy at law; and in certain cases, considerations of public interest." *Martin v. Pinellas County*, 444 So.2d 439, 441 (Fla. 2d DCA 1983). Moreover, a mandatory temporary injunction may be issued requiring specific performance of a contract. *Wilson v. Sandstrom*, 317 So.2d 732 (Fla.

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<sup>5</sup> Attached hereto as Exhibit "F" is a screenshot from Florida Department of Business and Professional Regulation's website showing Kauderer detaching the liquor license from the Property.

1975), *cert denied*, 423 U.S. 1053, 96 S.Ct. 782, 46 L.Ed.2d 642 (1976); *Bowling v. National Convoy and Trucking Co.*, 135 So.541 (Fla. 1931).

**B. The Present Circumstances Satisfy the Standards for a Mandatory Injunction**

**1. Irreparable Harm Will Result Unless the Status Quo is Maintained, and Plaintiff is Ordered to Reinstate the Liquor License.**

It is beyond question that 99% of the Pub's revenue is derived from alcohol sales. As such, without the right to sell alcohol, the Pub is effectively shut down and it cannot conduct any business. Notably, Plaintiff knows how necessary the License is to the Business, and is using the License as another means of retaliation against DLA for bringing to light the illegal acts of Plaintiff and its principals, as discussed herein above. Moreover, if this Court does not maintain the status quo and reinstate the License to DLA, DLA will likely have to shut the doors of the Pub, notwithstanding the fact that it has been a staple of the Miami live music scene for 42 years. This is clearly a case where the status quo needs to be maintained in order to prevent irreparable harm to DLA.

**2. DLA Has a Clear Legal Right To the Injunction**

DLA has a clear legal right to the liquor license at issue. As set forth in the Liquor License Rental Agreement between Churchills Pub, LLC and DLA:

In consideration of the mutual covenants and herein stated, Lessor hereby rents to Lessee and Lessee hereby rents from Lessor the right to use the above designated State of Florida Department of Business and Professional Regulation Division of Alcoholic Beverages & Tobacco 4COP Liquor License (the "License"), together with the rights thereto, for the above Term to operate the bar known as Churchill's Pub.

See Ex. E at p.1. Moreover, Section 3.1 of the Lease specifies Plaintiff's, duties regarding the liquor license at issue:

Tenant and Landlord shall enter into a separate agreement for the use of Churchill's Pub full liquor license and sale of alcohol as permitted by law. **Said use of the**

**liquor license shall run the entire life of this Lease and any Lease Renewal Terms outlined herein. At no point during the entirety of the Lease Term may the Tenant be permitted to obtain a separate liquor license for use on the premises.**

See Ex. A at Sec. 3.1 (emphasis added).

The monthly rent was \$1,300.00, which as set forth above, was **always** paid by DLA. Moreover, DLA has not breached the terms of the Lease. Thus, since no rent is owed to Plaintiff and DLA is not otherwise in default under the terms of the Liquor License Rental Agreement or Lease, DLA has a legal right to the use of the License.

Additionally, the term of the Lease has not yet expired. In fact, there are 48 months left on the Lease. And, to the extent that Plaintiff will argue that the Lease has terminated based on the filing of this eviction proceeding, it is incorrect. The validity of any termination of the Lease remains a “genuine and justiciable issue until such time as respective rights and obligations of the parties are fully litigated.” *Covelli Family, L.P. v. ABG5, L.L.C.*, 977 So.2d 749, 753 (Fla. 4th DCA 2008) (holding that commercial lessee that filed action against lessor challenging termination of lease was not a holdover tenant that would be liable for double rent under lease; validity of termination of lease remained a “genuine and justiciable issue until such time as respective rights and obligations of parties were fully litigated”).

In *Covelli*, a commercial lessee of a building damaged by two hurricanes filed a complaint against its lessor for declaratory and injunctive relief and breach of contract after the lessor gave lessee notice of its intent to terminate the lease. *Id.* at 751. Thereafter, the lessor filed a counterclaim for eviction against the lessee. *Id.* The court found that the trial court erred in ordering lessee to pay double rent as a holdover tenant because lessee had a “well-founded claim of possession.” *Id.* at 752. Moreover, the court held that the validity of termination of the lease

remained a “genuine and justiciable issue until such time as respective rights and obligations of the parties were fully litigated.” *Id.*

Here, the validity of Plaintiff’s termination of the Lease, and thereby the Liquor License Rental Agreement, is disputed. Moreover, DLA has a well-founded claim to possession of the Property as there is no rent owed under the Lease, nor is DLA in default of any other provision therein. Accordingly, a “genuine and justiciable issue” remains until such time as the respective rights and obligations of the parties are determined, and thus, the License must be reinstated. Moreover, during the pendency of the eviction proceeding, DLA is not relieved of its obligation to pay rent under the Lease, thus neither should Plaintiff be relieved of its obligations to provide the License to DLA. This is especially true considering how fundamental the License is to the business of DLA.

Accordingly, as set forth above and in the Lease provisions and Liquor License Rental Agreement set forth herein, it is beyond peradventure that DLA has a clear legal right to the License and will prevail in this action against Plaintiff, as no rent is owed and DLA is not otherwise in breach of the parties’ agreements.

### **C. DLA Has No Adequate Remedy At Law**

The Pub was closed for 11 months due to the COVID-19 pandemic, and the revocation of the License (now that the Pub is finally operational) effectively shuts down the Pub again. Clearly, money damages will adequately address the harm that will not only befall the business of the Pub itself, but also the reputation of the Pub. As the Supreme Court in *Lewis v. Peters*, 66 So.2d 489 (Fla. 1953) stated, “[o]ne critical purpose of temporary injunctions is to prevent injury so that a party will not be forced to seek redress for damages after they have occurred.”

**D. Public Interest Favors Entry of the Injunction**

The public interest clearly favors entry of an injunction in this matter. The Pub has been a staple of the Miami live music scene for 42 years. Moreover, it is one of the most prominent businesses in the Little Haiti neighborhoods. As such, public interest clearly favors the reinstating the liquor license in order for the Pub to continue to operate. Additionally, the public interest does not favor rewarding the actions of con artists such as Kauderer and Loughlin.

**IV. CONCLUSION**

For all of the foregoing reasons, DLA respectfully requests that this Court grant Defendant District Live Agency, LLC's Emergency Motion for Mandatory Temporary Injunction and reinstate its liquor license in order to maintain the status quo during these eviction proceedings.

Dated: April 2, 2021

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**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that a true and correct copy of the foregoing has been E-filed with the Clerk of Court via the Florida Court's E-Filing Portal that generates E-Service upon all counsel of record this 2<sup>nd</sup> day of April, 2021.

s/ *Elizabeth G. McIntosh*  
Attorney

# **EXHIBIT A**

**BASIC LEASE INFORMATION RIDER**

- Preamble Date of Lease: April 1, 2019
- Preamble Landlord: 5501 NE 2<sup>nd</sup> Avenue, LLC
- Preamble Tenant: District Live, LLC
- Section 2.0 Premises/Building: 5501 NE 2<sup>nd</sup> Avenue (also known as 215 NE 55<sup>th</sup> Street), 206 NE 55<sup>th</sup> Terrace, 5431 NE 2<sup>nd</sup> Avenue and 222 NE 55<sup>th</sup> Street Miami, FL 33137
- Section 2.0 Approximate Net Rentable Area of Premises: (1) The roughly 5,172 square feet of building on a 9,180 square foot lot known as 5501 NE 2<sup>nd</sup> Avenue, in addition to the 11,084 square feet of land known as 5421 NE 2<sup>nd</sup> Avenue and 222 NE 55<sup>th</sup> Street, as per 2014 boundary survey attached hereto as Exhibit "D" ("Premises 1"); and (2) The roughly 1,250 square feet of space commonly known as Unit 206 in the building located at 200 NE 55<sup>th</sup> Terrace ("Premises 2"). Collectively known as the "Premises" unless specifically identified herein. Premises 2 is included as a Sub Lease and therefore all terms with respect to Premises 2 included herein are subject to change as per the terms of the Premises 2 Master Lease.
- Section 3.1 Tenant's Use of Premises: Churchill's Pub (Bar/Restaurant/Live Music Venue), including the sale of food, liquor, beer and wine. Churchill's Pub shall remain the sole use of the premises for the entirety of the Lease unless authorized in writing by the Landlord.
- Section 4.1 Lease Commencement Date: April 1, 2019
- Section 4.1 Expiration Date: March 31st, 2022
- Section 4.1 Lease Term: Three (3) years
- Section 4.3 Renewal Term: Two (2) Three-(3) year Renewal Terms
- Section 5.1 Rent Commencement Date: April 1, 2019
- Section 5.1 Initial Base Rent: Rent for Premises 1 shall be payable at a rate of \$8,800.00 per month, Triple Net. Rent for Premises 2 shall be payable at a rate of \$1,400.00 per month Gross Rent. Tenant's first monthly installment of Base Rent shall be due upon execution hereof. Base rents will be subject to review in May and June, 2019. Premises 2 is included as a Sub Lease and therefore Base Rent for Premises 2 shall be subject to adjustment based on the Premises 2 Master Lease.
- Section 5.2 Base Rent shall increase and adjust annually pursuant to the Rent Schedule below:

	Monthly Rent (Premises 1)	Monthly Rent (Premises 2)	Total Base Rent
Year 1	\$8,800.00	\$1,400.00	\$10,200.00
Year 2	\$9,300.00	\$1,500.00	\$10,800.00
Year 3	\$9,800.00	\$1,600.00	\$11,400.00
Renewal Term 1			
Year 4	Market Rate	Market Rate	
Year 5	3% Increase	3% Increase	
Year 6	3% Increase	3% Increase	
Renewal Term 2			
Year 7	Market Rate	Market Rate	
Year 8	3% Increase	3% Increase	
Year 9	3% Increase	3% Increase	

Section 7.0 Tenant's Share: **100%**. This is a triple net lease and Tenant shall pay any and all costs and expenses for the operation and maintenance of the Premises (Premises 1), including but not limited to real estate taxes, assessments and insurance. Premises 2 is being Leased as a Sub Lease and is subject to changes in rent on the Master Lease but shall not be subject to Triple Net Operating Costs as defined in this Lease.

Sections 7.0 & 22.0 Rent Payment and Landlord Notice Location:  
Management Office  
300 NE 71<sup>st</sup> Street, Miami, FL 33138, or such other Location as Landlord may designate in writing from time to time.

Tenant's Address for Notices After Lease Commencement Date:  
District Live, LLC  
16003 Kingsmoore Way  
Miami, FL 33014

Section 7.2 Gross Sales Additional Percentage Rent due to Landlord: Upon the execution of the Lease, and in addition to all other rents, sales tax, pass thru expenses and expenses payable to the Landlord, tenant shall pay Landlord **3% of the Gross Sales in excess of \$1,300,000 but less than \$1,500,000, and 6% of the Gross Sales in excess of \$1,500,000** transacted during that year of the lease. In the event Gross Sales meet either of those thresholds Landlord shall contribute One Percent (1%) of the Gross Sales towards a "Live Music Trust" for use by the Landlord and Tenant in the area.

Section 10.0 Security Deposit: **\$10,200** or 1X average rent of Initial Lease Term. To be adjusted at each option term under same average and rounded to nearest number divisible by 100.

Section 20.0 Amount of General Comprehensive Liability Insurance: \$2,000,000

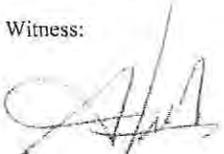
Section 38.0 Tenant's Real Estate Broker or Salesperson: None

Landlord's Real Estate Broker or Salesperson: None

Certain of the information relating to the Lease, including many of the principal economic terms, are set forth in the foregoing Basic Lease Information Rider (the "BLI Rider"). The BLI Rider and the Lease are, by this reference, hereby incorporated into one another. In the event of any direct conflict between the terms of the BLI Rider and the terms of the Lease, the BLI Rider shall control. Where the Lease simply supplements the BLI Rider and does not conflict directly therewith, the Lease shall control.

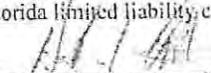
IN WITNESS WHEREOF, Landlord and Tenant have signed this BLI Rider as of this 30 day of March, 2019.

Witness:

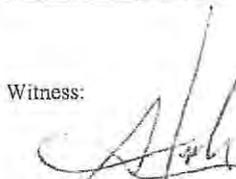
  
\_\_\_\_\_  
Francisco Hernandez

"LANDLORD"

5501 NE 2<sup>nd</sup> Avenue, LLC,  
a Florida limited liability company

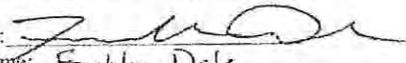
By:   
Name: DONALD LEAVITT  
Its: MANAGER

Witness:

  
\_\_\_\_\_  
Francisco Hernandez

"TENANT"

District Live, LLC,  
a Florida limited liability company

By:   
Name: Franklin Dale  
Its: MGR

## COMMERCIAL LEASE AGREEMENT

**1.0 Parties.** This Commercial Lease Agreement (this "Lease") is made as of the date set forth in the Basic Lease Information Rider attached hereto and incorporated herein by reference ("BLI Rider") between **5501 NE 2<sup>nd</sup> Avenue, LLC**, a Florida limited liability company, located at 300 NE 71<sup>st</sup> St, Miami, Florida 33138 ("Landlord"); and **District Live LLC**, a Florida limited liability company, with a mailing address of 16003 Kingsmoore Way, Miami, FL 33014 ("Tenant").

**2.0 Demised Premises.** Subject to the terms and provisions of this Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, those certain Premises known as "Premises 1" and "Premises 2" respectively containing the approximate net rentable square feet shown in the BLI Rider (the "Premises") located in and comprising the entire building at (See BLI Rider), City of Miami in the County of Miami-Dade, State of Florida (the "Building") and the land upon which the Building is situated (See Boundary Survey, attached hereto as Exhibit D). Premises 2 is included as a Sub Lease and therefore all terms with respect to Premises 2 included herein are subject to change as per the terms of the Premises 2 Master Lease. Landlord makes no guarantee of its ability to continue occupancy of Premises 2. In the event Landlord's occupancy of Premises 2 is no longer viable, Landlord will notify Tenant in writing with 60 days prior written notice and Landlord and Tenant mutually agree that all terms and conditions herein applicable to Premises 2 will cease. Tenant's taking of possession of the Premises and its payment of the Rent and Security Deposit due hereunder shall constitute Tenant's acceptance of the Premises in all respect, including its square footage configuration and other physical features.

### **3.0 USE OF PREMISES.**

**3.1 Permitted Use/Business Name/Liquor License.** The Premises shall be used and occupied by Tenant solely for the purpose(s) set forth in the BLI Rider and for no other purpose. The business of the Tenant in the Premises shall be carried on under the name and style set forth in the BLI Rider and under no other name and style unless approved by the Landlord in writing. Any violation of this provision shall constitute a default of the Lease and be subject to default provisions herein. Tenant and Landlord shall enter into a separate agreement for the use of the Churchill's Pub full liquor license and sale of alcohol as permitted by law. Said use of the liquor license shall run the entire life of this Lease and any Lease Renewal Terms outlined herein. At no point during the entirety of the Lease Term may the Tenant be permitted to obtain a separate liquor license for use on the premises. Any violation of this provision shall constitute a default of the Lease and be subject to default provisions herein. Tenant understands that at all times throughout the term of the Lease, its display windows and interior design are an integral part of the Premises and the aesthetic integrity of the property. Tenant warrants that its display windows and interior design shall be of professional caliber and quality at all times.

**3.2 Hours of Business.** During the term, the Tenant shall conduct its business in the Premises, continuously and uninterruptedly, except on holidays acceptable to Landlord. Tenant acknowledges that Tenant's obligation to keep the Demised Premises open and operating during such regular business hours is a material inducement to Landlord entering into this Lease.

**3.3 Tenant's Covenants as to Use and Occupancy.** Tenant shall exercise reasonable care in its use of the Premises or Building and shall not do or permit anything to be done in or about the Premises or Building, nor bring nor keep anything in the Premises or Building which will in any way affect the fire or other insurance upon the Building, or any of its contents, or which shall in any way conflict with any statute, ordinance, rule, regulation, order, law or other requirement (collectively the "Laws") affecting the occupancy and use of the Premises or Building, which is now, or may hereafter be, enacted or promulgated by any public authority. Tenant shall not obstruct or interfere with the rights of other tenants of the Building, or injure or annoy them. Tenant shall not use, or allow the Premises to be used, for any illegal purpose, or any purpose constituting a public or private nuisance or for sleeping purposes, and nothing shall be prepared, manufactured, or mixed in the Premises which would emit an odor and/or fumes of any type into or around any part of the Building, save and except for such odors as are customarily associated with a restaurant and lounge. Tenant shall promptly comply with and execute all of the aforesaid Laws and all rules, orders and regulations of the Southeastern Underwriters Association for the prevention of fires, at Tenant's own cost and expense. Tenant shall pay for any increases in Landlord's insurance due specifically to Tenant's use of the Premises or Building and for all damage and any amounts expended by Landlord to correct a breach by Tenant of this Section. On or prior to the opening of the Premises for business to the public and at all times during the Term of this Lease and any extensions or renewals thereof, Tenant shall, at its expense, obtain and maintain all permits, licenses and other governmental authorizations which are necessary for the operation of its business in accordance with Section 3.1.

**3.4 Prohibited Uses.** Tenant shall not use the Premises nor permit them to be used for any of the following purposes: (A) for the sale of second-hand goods, war surplus articles, insurance salvage stock, fire sale stock, merchandise damaged by or held out to be damaged by fire; (B) as an auction or flea market; (C) for a bankruptcy sale or going-out-of-business sale or liquidation sale or any similar sale, unless the Tenant is in fact in bankruptcy or is going out of business or is in liquidation, in which case such sale shall not continue beyond 30 days; (D) a business primarily used for a mail order office or catalog store; (E) any business in which the Tenant is engaged in intentionally deceptive or fraudulent advertising or selling practices or any other act or business practice contrary to honest retail practices; (F) Tenant shall not sell lottery tickets; (G) "Adult" bookstores or cinemas; (H) pawn shops; (I) soup kitchen or homeless shelter; (J) Mental health facility, substance abuse facility or other rehabilitation center; (K) gambling or bingo facility; (L) Funeral home or mortuary services; (M) Laundromat or dry cleaners with on-premises cleaning plants or facilities; (N) Automobile, recreational vehicle or mobile home sales, rentals or repairs, excluding luxury or so-called "exotic" automobile sales; (O) Manufacturing facilities; (P) Tenant shall not sell any phone cards or other telecommunication or internet cards, or any use other than as specified in paragraph 3.1 above.

**4.0 Term/Renewal Term/Termination Option.**

**4.1** The term (the "Term") of this Lease shall be for the period of years set forth in the BLI Rider beginning on the Commencement Date shown in the BLI Rider (the "Commencement Date") and ending on the Expiration Date shown in the BLI Rider ("Expiration Date") or sooner, if terminated as provided herein. If Tenant, with Landlord's prior consent, shall occupy the Premises before commencement of the Term, all provisions of this Lease shall be in full force and effect commencing upon the occupancy, and Base Rent and Additional Rent for such period shall be paid by Tenant at the same rate herein specified for the Term.

**4.2** If, for any reason, Landlord is unable to give possession of the Leased Premises on the date of commencement of this Lease, this Lease shall not be affected thereby nor shall Tenant have any claim against Landlord by reason thereof. All claims for damages arising out of such delay other than a proportionate abatement of rent are hereby waived and released by Tenant. Nothing herein contained shall operate to extend the term of this Lease beyond the agreed termination date and Tenant's only remedy and Landlord's only liability shall be the abatement of rent herein referred to. If Landlord is unable to give possession of the Leased Premises to Tenant within ninety (90) days next after the commencement of the term of this Lease, then Tenant shall have the right to cancel this Lease upon written notice thereof delivered to Landlord within ten (10) days after the lapse of said ninety (90) day period, and upon such cancellation, Landlord and Tenant each shall be released and discharged from any and all liability in connection with this Lease.

**4.3 Renewal Options.** Provided Tenant is not in default of any material term, condition or covenant contained in this Lease at the time of exercise of the option to extend this Lease beyond any period for curing same, Tenant shall have the option to extend the original term hereof for Two (2) additional terms of three (3) years (the "Renewal Terms"). The Second Renewal Term as defined in the BLI Rider (Renewal Term 2) shall be subject to Landlord approval of which the Landlord shall not be obligated to provide. Tenant shall exercise each such option, if at all, by delivering written notice of such election not less than one hundred eighty (180) days prior to the expiration of the then current term. If such option is duly exercised, the term of this Lease shall be automatically extended for the period of the option, upon all of the terms, provisions, conditions and agreements set forth in this Lease, except that the Base Rent shall continue to increase annually by the sum as shown in the Rent Schedule set forth in the BLI Rider. In the event Tenant effectively exercises Tenant's Renewal Term, the Base Rent shall be equal to at least 95% of the then market rate or fair market value per square foot ("Market Rate") determined at the commencement of such Renewal Terms. As used in this Lease, Market Rate shall be determined by Landlord. Landlord shall, no later than thirty (30) days after receipt of the applicable extension notice from Tenant, advise Tenant in writing ("Landlord's Notice") of its determination of Market Rate for the Renewal Term. If Tenant disagrees with Landlord's determination of Market Rate, Tenant shall so notify Landlord in writing no later than fifteen (15) days following receipt of Landlord's Notice of Market Rate. If Landlord and Tenant cannot agree on the Market Rate as above described within thirty (30) days after Tenant's notice of disagreement, then each party shall, within fifteen (15) days following the 30-day workout period, select an independent MAI appraiser, each having at least five (5) years of experience in the appraisal of commercial real estate in Miami-Dade County, Florida, with reasonable experience in the appraisal of retail/commercial buildings in the City of Miami, Florida, to make a determination of the Market Rate. Both MAI appraisers chosen by Landlord and Tenant shall then agree upon a third MAI appraiser, and each of the three (3) appraisers shall submit their appraisals to Landlord and Tenant no later than thirty (30) days prior to the expiration of the applicable term of this Lease. The Market Rate shall be the average of the determination of the three (3) appraisals; provided, however, if the difference in Market Rate of any appraisal is less than five (5%) percent of the average of the other two (2) appraisals, then the Market Rate shall be the average of the two (2) closest appraisals. Each party shall pay the fees and costs of the appraiser it has selected and both parties shall split the fees and

costs of the third appraiser equally. Notwithstanding the foregoing, in no event shall the Base Rent for the first year of the Second Renewal Term be less than the Base Rent payable during the last year of the immediately preceding Term plus three percent (3%). Further, during each subsequent year of each Renewal Term, the said Market Rate (Base Rent) shall be increased on each anniversary date thereof, by multiplying the Base Rent for the immediately preceding Lease Year by 1.03.

**4.4 Cancellation Option.** Should Landlord decide to demolish said Premises or otherwise redevelop the Property at any time subsequent to the initial Lease Term hereof, Landlord may terminate this Lease in its entirety upon Landlord notifying the Tenant in writing One Hundred Fifty Days (150) prior to the date that Landlord deems necessary for the Tenant to vacate the Premises. The Landlord cancellation option shall only apply to the Lease Renewal Option terms. In the event Landlord intends to redevelop the portion of the Premises known as the 11,084 square feet of land defined as 5421 NE 2<sup>nd</sup> Avenue and 222 NE 55<sup>th</sup> Street, as per 2014 boundary survey attached hereto as Exhibit "D" Landlord shall have the right to terminate the Tenants' rights under the Lease to that portion of the Leased Premises upon 120 Days prior written notice at any time during the Initial Lease Term and subsequent Lease Renewal Terms. In the event Landlord intends to exercise its right to terminate Tenants' rights to 5421 NE 2<sup>nd</sup> Avenue and 222 NE 55<sup>th</sup> Street Landlord agrees that the Base Rent may be reduced by a mutually agreed upon amount of which Tenants consent will not be unreasonably withheld.

(a) In such event, Tenant shall have the right, at Tenant's sole cost and expense and with 60-days prior written notice to Landlord, to remove any and all fixtures, which Tenant paid for at the beginning of the initial Lease Term and dispose of at Tenant's discretion. To determine what these specific fixtures are, Tenant shall prepare and deliver to Landlord a detailed list of fixtures at any time prior to the Rent Commencement Date.

(b) No removal of fixtures shall be made until all plans for such removal have been approved by Landlord, which approval shall not be unreasonably withheld. Landlord shall have fifteen (15) days from its receipt of all such plans to review the same and to send its written comments regarding the same to Tenant. Within ten (10) days after receipt of Landlord's notice of changes (if any), Tenant shall cause all such changes to be made, which changes shall be circled and dated, and Tenant shall resubmit the revised plans for Landlord's review. Within ten (10) days after receipt of the revised plans, Landlord shall review and approve or state what changes Landlord requires to be made. The revisions and resubmission shall continue until Landlord, in its reasonable discretion, shall have approved Tenant's plans.

(c) At a minimum, Tenant will leave on premises and in working order the bathrooms and existing HVAC, as well as all external doors securing the property. The roof and external structure must be leak-free and in secure condition, fully repaired from any removal of fixtures made by Tenant.

(d) Tenant shall remove such fixtures with diligence and continuity and in a good and workmanlike manner, and Tenant shall (i) comply with all laws, ordinances and governmental regulations in its removal of said fixtures, (ii) provide Landlord with such security or assurances as Landlord may reasonably require to guarantee that, once commenced, sufficient funds will be available to cause the appropriate removal of all such fixtures, (iii) provide Landlord, prior to commencement of any removal, with proof of compliance, in form reasonably satisfactory to Landlord, with all planning, zoning, design review and other requirements imposed by all applicable City, County, State and Federal and other governmental authorities, and (iv) indemnify and hold harmless Landlord from and against all loss, cost or damage suffered by Landlord, including, without limitation, reasonable attorneys' and paralegals' fees and disbursements, on account of Tenant's removal of said fixtures, or any injury to person or property occasioned thereby;

(e) Tenant agrees to indemnify and save Landlord harmless from and against any and all bills for labor performed and equipment and materials furnished to Tenant and applicable sales taxes thereon and from and against any and all liens, bills or claims therefor or against the Premises and from and against all losses, damages, costs, expenses, suits and claims whatsoever in connection with the removal of any such fixtures.

#### **5.0 Base Rent.**

**5.1** As rental for the lease of the Premises, Tenant shall pay to Landlord, at Landlord's address set forth in Section 22 hereof, or at such other place and to such other person as Landlord may from time to time designate in writing for the initial term of this Lease, commencing on the Rent Commencement Date set forth in the BLI Rider, total monthly base rent at \$ (see BLI Rider), plus applicable state sales tax, (subject to escalation as described in Section 5.2

below) payable in monthly installments, in advance, without notice, due on the first day of each calendar month during the term of this Lease, free from all claims, demands or setoffs against Landlord of any kind or character whatsoever. If the Term of this Lease shall begin or terminate on other than the first or last day respectively of a calendar month, all Base Rent and other charges accruing under this Lease for such portion of the partial calendar month shall be apportioned and paid on the basis of a thirty (30) day month. In addition to any other sums due under this Lease, simultaneously with Tenant's execution of this Lease, Tenant shall pay Landlord the first month's rent. The period between the Delivery Date and the Rent Commencement Date shall be deemed the 'Rent Free Period', provided that during the Rent Free Period, Tenant shall pay all utility charges and other expenses due in connection with Tenant's use and operation of the Premises.

**5.2** The Base Rent set forth in Section 5.1 above shall be adjusted at the beginning of each Lease Year (as hereinafter defined) during the term of this Lease (and any renewal hereof) by the amount set forth in the BLI Rider. A "Lease Year" shall be the twelve (12) month period commencing with the Commencement Date of this Lease and ending one (1) year later, except for the last Lease year of the term, which may be less than twelve (12) months. Each subsequent Lease Year is the twelve (12) full calendar months immediately following the preceding Lease Year. The first adjustment of Base Rent shall be made at the beginning of the second Lease Year, and at the beginning of each new Lease Year thereafter.

**5.3 Additional Rent.** The term "Additional Rent" is sometimes used herein to refer to any and all other sums payable by Tenant hereunder. Tenant agrees to pay Additional Rent upon demand by Landlord. Additional Rent is to be treated in the same manner as Rent hereunder, both in terms of the lien for Rent herein provided and in terms of the default provisions herein contained.

**6.0 Covenant of Rent.** Tenant agrees that the provisions for payment of Base Rent herein are independent covenants of Tenant and Tenant shall not interpose any counterclaim or counterclaims in a summary proceeding or in any action based solely upon non-payment of rent or any other payment required of Tenant hereunder.

#### **7.0 Operating Cost Pass Through and Gross Sales Percentage Rent**

**7.1** For purposes of this Lease, the following terms shall have the following meanings: "Parcel" means the land owned by Landlord on which the Building is located. "Tenant's Share" means and is conclusively agreed to be 100%. Landlord and Tenant acknowledge that the stipulated Tenant's Share has been obtained by taking the approximate net rentable area of the Premises, and dividing such number by the approximate total net rentable area of the Building. In the event Tenant's Share is changed during a calendar year by reason of a change in the net rentable area of the Premises or the Building, Tenant's Share shall thereafter mean the result obtained by dividing the new net rentable area of the Premises by the net rentable square feet of the Building and multiplying such quotient by 100.

In addition to Base Rent and adjustments thereto, Tenant shall pay to Landlord as additional rent Tenant's Share of all Operating Costs. This shall be deemed a triple net Lease and Tenant shall pay Tenant's Share of all Operating Costs without regard to a base year. Operating Costs shall include all "Taxes" (including, without limitation, all impositions, taxes, ad valorem real property taxes, municipal, county and federal assessments (special or otherwise), water and sewer assessments, local improvement rates, and assessments and other governmental liens or charges of any and every kind, nature and sort whatsoever, ordinary and extraordinary, and substitutes therefor), assessments, insurance costs, governmental liens and any other charges, costs and expenses of Landlord of any nature and sort whatsoever, ordinary, foreseen, or unforeseen, computed on the accrual basis, which arise from Landlord's ownership, operation or use of the Parcel or Building, or any part thereof ("Operating Costs"). Operating Costs shall also be deemed to include (i) any and all costs of ownership, management, operation, repair, refurbishing, redecorating, replacement, and administration and maintenance of the Building, common areas and parking areas including, without limitation, wages, salaries, taxes, insurance, benefits and other payroll burdens of all employees, janitorial, maintenance, security, and other services, building management office rent or rental value, power, fuel, water, waste disposal, landscaping care, garbage removal, window cleaning, system maintenance, advertising, and any and all other utilities (including, but not limited to electricity for the Building), materials, supplies, maintenance, repairs, casualty and liability insurance applicable to the Building and Landlord's personal property and depreciation on personal property, (ii) the cost (amortized over such reasonable period as Landlord shall determine together with interest at the rate of three (3) points over Citibank's prime rate per annum on the unamortized balance) of any capital improvements made to the Building by Landlord after the date of this Lease that are required under any governmental law or regulation; provided, however, that Operating Expenses shall not include depreciation on the Building other than depreciation on carpeting in public corridors and common areas, costs of tenant improvements, real estate brokers' commissions, interest and capital items other than those referred to in this subsection

(ii). There shall be excluded from the definition of Taxes: any inheritance, estate, succession, transfer or gift taxes imposed upon Landlord or any income taxes specifically payable by Landlord as a separate taxpaying entity without regard to Landlord's income source as arising from or out of the Building and/or the land on which it is located.

Tenant agrees to pay Tenant's Share of annual Operating Costs, plus applicable state sales tax thereon, within ten (10) days of request therefor from Landlord. Following the end of each calendar year, Landlord shall advise Tenant of Tenant's Share of the actual Operating Costs payable for the prior calendar year as computed based upon the actual cost thereof to the Landlord. If there shall have been an underpayment by the Tenant based on Landlord's estimates, the Tenant shall pay the difference within ten (10) days of request therefor from Landlord; if there shall have been an overpayment by Tenant, Tenant shall be given a credit towards the next due payment of Tenant's Share of Operating Costs for the current year.

Tenant shall have ninety days, after receiving Landlord's annual notification regarding the actual year end figures for the Operating Costs in which to dispute or request additional information regarding Landlord's calculation of Operating Costs. If Tenant has not objected in writing within said ninety days than Tenant shall have deemed to have accepted Landlord's figures and will have no further rights relating to the dispute of same.

The Tenant's Share of actual Operating Costs for the final calendar year of this Lease shall be due and payable even though it may not be finally calculated until after the expiration of the Lease Term.

## **7.2 Gross Sales Percentage Rent.**

(a) Tenant shall also pay, as "Percentage Rent" for each Lease Year included in the Initial Term and all subsequent Renewal Terms, payable as hereinafter provided, the amount, if any, by which Tenant's Gross Sales in excess of One Million Three Hundred Thousand Dollars (\$1,300,000) but less than One Million Five Hundred Thousand Dollars (\$1,500,000) transacted during such Lease Year, multiplied by Three percent (3%) (the "Percentage Rent Rate"); and the amount, if any, by which Tenant's Gross Sales in excess of One Million Five Hundred Thousand Dollars (\$1,500,000) transacted during such Lease Year multiplied by a Percentage Rent Rate of Six percent (6%). In the event Gross Sales meet either of those thresholds Landlord shall contribute One Percent (1%) of the Gross Sales towards a "Live Music Trust" for use by the Landlord and Tenant in the area

(b) The term "Gross Sales" as used herein is defined to mean the total amount in dollars of the actual prices charged, whether for cash or on credit or trade-in or partly for cash, credit or trade-in, for all sales or leases of merchandise, food, liquor, wines, beverages and services (including finance or service charges thereon), redeemed gift or merchandise certificates, irrespective of where sold, and all other receipts of business conducted at, in, on, about or from the Demised Premises, including, but not limited to, all mail or telephone orders received or filled at, in, on, about or from the Demised Premises, and including all deposits not refunded, all orders taken at, in, on, about or from the Demised Premises, whether or not said orders are filled elsewhere, total receipts of sales through any vending machine(s) or other coin or token operated devices, and total sales by any sublessee, concessionaire or licensee or any other occupant (to the extent permitted herein) otherwise at, in, on, about or from the Demised Premises, and sales and receipts occurring or arising as a result of solicitation off the Demised Premises conducted by personnel operating from, or reporting to, or under the supervision of any employee of Tenant located at the Demised Premises. Provided that Tenant keeps proper evidence thereof. Gross Sales shall not, however, include (i) any sums collected and paid out for any retail sales tax or retail excise tax imposed by any Governmental authority and paid directly by Tenant to that Governmental Authority and separately stated, (ii) any exchange of goods or merchandise between the stores of Tenant where such exchange of goods or merchandise is made solely for the convenient operation of the business of Tenant and not for the purpose of consummating a sale which had theretofore been made at, in, on, about or from the Demised Premises, nor for the purpose of depriving Landlord of the benefits of a sale which otherwise would be made at, in, on, about or from the Premises (iii) the amount of returns to shippers, suppliers or manufacturers, (iv) the amount of any cash or credit refund, limited to the sales prices, made upon any sale where the merchandise sold, or some part thereof, is thereafter returned by the purchaser and accepted by Tenant, (v) sales of fixtures, furniture, machinery or equipment which are not in the ordinary course of business, (vi) the amount of any discount on sales to employees of the Demised Premises, (vii) to the extent that the amount thereof was previously included in Gross Sales, bad debts, uncollectable accounts and costs of collection, not exceeding two (2%) percent of Gross Sales per Lease Year, (viii) to the extent such charges do not materially exceed Tenant's costs, separately stated charges for delivery services rendered to Tenant's customers, (ix) tips and gratuities, and (x) finance charges, interest and discounts attributable to charge accounts and credit cards to the extent that same are collected from Tenant's customers for transmittal to credit card providers or otherwise paid by Tenant to credit card providers for credit sales to Tenant's customers. Each sale upon installment or credit shall be treated as a sale for the full amount when Tenant shall receive any

payment from its customer, and subject to the limitation set forth above, no deduction shall be allowed for uncollectable credit accounts.

(c) Tenant shall utilize, and cause to be utilized, cash registers equipped with sealed continuous totals or such other devices for recording sales as Landlord shall reasonably approve to record all sales, and Tenant shall keep at its principal office in the continental United States for at least thirty-six (36) months after expiration of each Lease Year full, true and accurate books of account and records conforming to generally accepted accounting principles showing all of the Gross Sales transacted at, in, on, about or from the Demised Premises for such Lease Year, including all sales or similar tax reports and returns, dated cash register tapes, sales checks, sales books, bank deposit records, computer tapes, discs, chips, printouts or other storage media and any other records normally maintained by Tenant and other supporting data. Landlord shall have the right, from time to time, to inspect Tenant's recordkeeping system and, in connection therewith, to make test audits of Gross Sales. Within fifteen (15) days after the end of each calendar month, or portion thereof, Tenant shall furnish to Landlord a statement signed and verified by Tenant (or by an authorized officer if Tenant be a corporation, or other entity of the Gross Sales transacted during such month or portion thereof; and within sixty (60) days after the end of each Lease Year and within sixty (60) days after the end of the Term, Tenant shall furnish to Landlord a statement, hereinafter called the annual statement, certified to Landlord by an executive officer of Tenant, of Gross Sales transacted during the preceding Lease Year included in the Term. The certification by said officer shall expressly state that the Gross Sales shown on said statement conform with and are computed in compliance with the definition thereof contained in Subsection 3.2(b) hereof. In the event Gross sales for each of two (2) Lease Years are misstated by more than three (3%) percent, thereafter the annual statement of Gross Sales must be certified by an independent certified public accountant. Landlord shall have the right, from time to time, by its accountants or representatives, to audit Tenant's Gross Sales and, in connection with such audits, to examine all of tenant's records (including sales or similar tax returns, an actual inventory of tenant's stock-in-trade and all supporting data and any other records from which gross Sales may be tested or determined) of Gross Sales disclosed in any statement given to Landlord by Tenant and Tenant shall make all such records readily available at Tenant's main office, for such examination. If any such audit discloses that the Gross Sales transacted by Tenant exceed those reported, Tenant shall forthwith pay to Landlord such additional Percentage Rent as may be shown to be payable and, if the actual Gross Sales exceed the Gross Sales reported by Tenant by more than three (3%) percent, or if Tenant's records or systems do not comply with the requirements of this Subsection, Tenant shall also then pay the reasonable cost of such audit and examination, including travel, food and lodging and related expenses of Landlord's auditors. In the event Tenant has understated Gross Sales by five (5%) percent or more, Landlord may, in addition to any other remedies, terminate this Lease; provided, however, that Landlord shall not exercise its right to terminate this Lease if Tenant shall demonstrate to Landlord's reasonable satisfaction that such understatement was made inadvertently. Any information obtained by Landlord pursuant to the provisions of this Subsection shall be treated as confidential, except in any litigation or arbitration proceedings between the parties and, except further, that Landlord may disclose such information to prospective buyers, to prospective or existing lenders, in any registration statement filed with the Securities and exchange Commission or other similar body or in compliance with subpoenas and judicial orders. In no event shall this Subsection be deemed to limit Landlord's right of pre-trial discovery and disclosure in any action or proceeding.

(d) If Tenant fails to submit a monthly statement of Gross Sales within fifteen (15) days following Landlord's request therefor, then until such statement is received by Landlord, Gross Sales for such month shall be deemed equal to Tenant's highest previously reported monthly Gross Sales (or, if Tenant has never previously reported, to the Gross Sales reasonably estimated by Landlord), and if such failure shall occur twice in any Lease Year, Landlord may, at Tenant's expense, conduct an audit of Tenant's Gross Sales as set forth in Subsection 7.2(c) above.

Percentage Rent shall be payable by Tenant not later than the twentieth (20th) day of each calendar month for and in respect to the preceding calendar month. Such payment shall be a sum equal to the amount by which Tenant's Gross Sales for the then current Lease Year, through the last day of the preceding month, multiplied by the Percentage Rent Rate, shall exceed the Minimum Rent payable for said period, less any Percentage Rent previously paid for such Lease Year. Upon receipt by Landlord of the certified annual statement of gross Sales to be furnished as hereinabove provided, there shall be an adjustment between Landlord and Tenant with payment to or credit by Landlord as the case may be, to the end that Landlord shall receive the entire amount of Percentage Rent payable under this Lease for the preceding Lease Year and no more.

**8.0 Sales and Use Taxes.** All payments of Base Rent, Tenant's Share of Operating Costs and any other charges arising under this Lease shall be paid by Tenant together with applicable Florida Sales, use and any other taxes thereon. The Tenant shall pay when due all taxes (whether imposed on the Landlord or Tenant) attributable to the personal property, trade fixtures, business income, occupancy or sales of the Tenant or any other occupant of the Premises and to the



use of the Building by the Tenant (collectively the "Business Tax"). If the Tenant's Business Tax is payable by the Landlord, such charge to be computed for the entire period for which the amount is overdue. All late charges shall be due immediately upon demand by Landlord without set-off or defense.

**9.0 Rent Past Due.** Tenant hereby acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges, which may be imposed on Landlord by the terms of any mortgage covering the Demised Premises. Accordingly, in the event any installment of Base Rent, Tenant's Share of Operating Costs, Additional Rent or other charges accruing under this Lease shall become overdue for a period of ten (10) days following the due date, a late charge of five percent (5%) of the delinquent sum may be charged by Landlord. If any installment of Base Rent, Tenant's Share of Operating Costs, Additional Rent or other charges accruing under this Lease remain overdue for more than ten days, an additional late charge in an amount equal to interest at the rate of one and one half percent (1.5%) per month (eighteen percent (18%) per annum) or the maximum permitted by law, on the delinquent amount may be charged by Landlord, such charge to be computed for the entire period for which the amount is overdue. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

The Rent for the portion of the Premises herein defined as Premises 2 in the BLI Rider shall be due and payable on the 1st (First) of the month without grace and is not subject to the period of ten (10) days outlined in this paragraph. Such costs outlined herein may be imposed by Landlord onto Tenant upon failure to pay the rent on Premises 2 on the 1<sup>st</sup> of the month.

All late charges shall be due immediately upon demand by Landlord without set-off or defense.

In the event that any check, bank draft, order for payment or negotiable instrument given to Landlord for any payment due under this Lease, shall be dishonored for any reason whatsoever, not attributable to Landlord, Landlord shall be entitled to make an administrative charge to Tenant, as additional rent, the greater of \$50.00, or five percent (5%) of the delinquent amount (however, not to exceed amount permissible by Florida law) for each such occurrence.

In the event than more than one (1) check, bank draft, order for payment or negotiable instrument given to Landlord for any payment due under this Lease shall be dishonored for any reason whatsoever, not attributable to Landlord, during the term of this Lease or any renewal or extension thereof, Landlord shall require that all subsequent payments made by Tenant to Landlord, be made by either United States Postal Money Order or a Florida Bank Cashier's Check.

**10.0 Security Deposit.** Simultaneously with the execution of this Lease, Tenant has paid to Landlord the sum set forth in the BLI Rider, representing Tenant's "Security Deposit", to be held by Landlord without interest for the full and faithful performance by Tenant of the terms and conditions of this Lease. Landlord may utilize such part of the security deposit as is necessary to cure any default of Tenant under this Lease and in such event Tenant shall immediately replace such portions as may be expended by Landlord. Upon the expiration of this Lease (except arising due to a default by Tenant), delivery of the Premises to Landlord in their original condition, ordinary wear and tear excepted, and payment to Landlord of Tenant's Share of all actual Operating Costs for the final calendar year of this Lease, then the security deposit shall be returned to Tenant without interest. Upon any conveyance of the Building by Landlord to a successor in title, the successor shall become liable to Tenant for the return of the security deposit and the conveying party released from same. Landlord shall not be required to hold the security deposit in any special account for the benefit of the Tenant and the security deposit may be co-mingled with Landlord's funds. In the event any installment of Base Rent or other charges accruing under this Lease shall not be paid when due (including the return of any of Tenant's checks for insufficient or uncollected funds or otherwise), the Landlord shall have the right, at the Landlord's sole discretion, to require the Tenant to place with Landlord an additional security deposit (in excess of the original security deposit), of up to two (2) installments of the then current Base Rent, which sum shall become a part of the original security deposit. If the Security Deposit is insufficient to cover any actual damages sustained by Landlord for default (hereinafter defined) of Tenant, Tenant shall pay to Landlord upon demand an amount sufficient to fully compensate Landlord for any and all actual damages sustained by Landlord. The rights of the Landlord shall in no way be limited or restricted by the security deposit, and the Landlord shall have the absolute right to pursue any available remedies to protect its interests herein, as if the security deposit had not been made.

**11.0 Improvements and Delivery of Possession/Landlord's Work.**



(a) Tenant acknowledges that Tenant has inspected the Premises and Tenant is accepting the same in "as is" condition. No representations except those expressly contained herein have been relied on by Tenant with respect to the condition, design, amenities or completion of the Building or Premises. Tenant will make no claim against Landlord on account of any representation of any kind, whether made by any renting agent, broker, officer or other representative of Landlord or which may be contained in any advertisement relating to the Building unless such representation is specifically set forth in this Lease. Any improvements shall become Landlord's property and remain on the Premises upon the expiration or earlier termination of this Lease. Notwithstanding anything to the contrary contained in this Lease (including, without limitation, Section 3.4), the obtaining and maintenance of all permits, licenses, zoning and governmental authorizations required for Tenant's business operations shall be Tenant's sole responsibility and at Tenant's sole cost and expense and in no case shall the obtaining or maintenance of such be a condition to Tenant's obligations hereunder. Notwithstanding any contrary provision of this Lease, if any personal property is located in the Premises, the Tenant accepts such personal property in its existing condition, as-is, and without representation or warranty as to title, condition or any latent-defects. Tenant shall indemnify and hold harmless the Landlord of and from any and all liens or other claims which are asserted against any or all of such personal property by the State of Florida Department of Revenue for unpaid personal property taxes arising prior to or after the date of this Lease, including any such claims with respect to any such taxes owed by any prior owner or user of such personal property.

(b) Landlord shall have no obligation to make any improvements or alterations to the Premises, and Tenant hereby accepts the Premises and all other portions of the Building in an AS IS condition. Tenant agrees that by taking possession of the Premises, Tenant formally accepts the same and acknowledges that the Premises are in the condition called for hereunder. Tenant hereby acknowledges that it has relied on its own inspections and due diligence in entering this Lease and not on any representations or warranties of Landlord or any broker or other representative of Landlord concerning the condition or suitability of the Premises or the Project for any particular purpose or any other matter.

(c) Landlord shall have final approval of any plans for repairs or improvements to the Leased Premises. Tenant shall only use licensed general contractors and permit/license expeditors approved in writing by the Landlord, at its sole discretion. Landlord shall have the right to supervise every part of the improvement process, including any plans, permits, licenses, demolition, construction and/or repairs, impact fees, and others.

**12.0 Negation of Personal Liability.** Notwithstanding anything to the contrary herein contained, Tenant agrees that Landlord (and, in case Landlord is a joint venture, trust, partnership, tenancy in common, association or other form of joint ownership, the partners, beneficiaries, members and employees of any such joint venture, trust, partnership, tenancy-in-common, association or other form of joint ownership) shall have absolutely no personal liability with respect to any of the provisions of this Lease, or any obligation or liability arising therefrom or in connection therewith. Tenant shall look solely to Landlord's equity in the Premises and/or proceeds from the sale thereof, for the satisfaction of any remedies of Tenant against Landlord including, without limitation, the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms and provisions of this Lease to be observed and/or performed by Landlord, subject, however, to the prior rights of any holder of any mortgage covering all or part of the Premises and no other assets of Landlord or any principal or partner of Landlord shall be subject to levy, execution or other judicial process for the satisfaction of Tenant's claim and in the event Tenant obtains a judgment against Landlord, the judgment docket shall be so noted. This exculpation of liability shall be absolute and without exception whatsoever, including, without limitation, for any claim of negligence. This section shall inure to the benefit of Landlord's successors and assigns and their respective principals.

**13.0 Use Restrictions/Regulations.** Tenant shall not abandon or vacate the Premises, shall not permit, license, or suffer the occupancy of any other party in the Premises and shall:

(a) From and after the Commencement Date, keep the Premises continuously and uninterruptedly open during regular business hours, subject to all applicable laws and regulations. Tenant acknowledges that Tenant's obligation to keep the Premises open and operating during such regular business hours is a material inducement to Landlord entering into this Lease.

(b) Keep the Premises and sidewalks, service-ways and loading areas adjacent to the Premises neat, clean and free from dirt, rubbish, insects and pests at all times and store all trash and garbage within the Premises, arranging for the regular pick-up of such garbage and trash at Tenant's expense. Tenant shall store all trash and garbage

within the area designated by Landlord for such trash pick-up and removal and only in receptacles of the size, design and color from time to time prescribed by Landlord. Tenant shall not operate an incinerator or burn trash or garbage within the Building. Tenant shall, at its expense, enter into a regularly scheduled (not less frequently than monthly) pest extermination contract for the Premises.

(c) Keep the inside of all glass in the windows and doors of the Premises clean; maintain all the windows in a neat, attractive condition; and keep all display windows and exterior electric signs in front of the Premises lighted from dusk until not earlier than 11:00 P.M. every day, including Sundays and holidays, or as Landlord may otherwise reasonably require.

(d) Not in any way obstruct the sidewalks adjacent thereto, except to the extent that Tenant shall have been approved for and shall have paid, obtained and continually maintain all licenses and permits required by all applicable governmental agencies (including, but not limited to, ADA) for outdoor seating, if any, and further including, but not limited to, the payment of any and all impact and other fees required in connection therewith; nor solicit business or distribute any hand bills or other advertising matter in the adjoining properties; nor permit any objectionable or unpleasant odors to emanate from the Premises; not place or permit any radio, television, loudspeaker or amplifier on the roof or in the outside courtyard of the Premises. Tenant shall respect the rights of the occupants of surrounding properties to quietly enjoy their respective properties.

(e) Maintain the decor and fixturing of the Premises, the merchandise and operation of Tenant's business consistent with the operation of a restaurant/bar/lounge business. In this regard, in performing original construction and any subsequent alterations of the Premises, Tenant shall retain an architect certified and in good standing in the State of Florida for the preparation of space plans and, further, shall utilize and install only new materials, business fixtures and related machinery. Tenant shall operate its business at the Premises in a respectable, reputable, tasteful, competent and dignified manner.

(f) At its sole cost and expense, comply with all present and future laws, orders, and regulations of all state, federal, municipal, and local governments, departments, commissions, and boards regarding the collection, sorting, separation, storage and recycling of waste products, garbage, refuse, and trash. Tenant shall sort and separate such waste products, garbage, refuse, and trash into such categories as provided by law. Each separately sorted category of waste products, garbage, refuse, and trash shall be placed in separate receptacles reasonably approved by Landlord. Such separate receptacles may, at Landlord's option, be removed from the Premises in accordance with a collection schedule prescribed by law. Landlord reserves the right to refuse to allow the collection from Tenant of any waste products, garbage, refuse, or trash that is not separated and sorted as required by law, and to require Tenant to arrange for such collection at Tenant's sole cost and expense, utilizing a contractor satisfactory to Landlord. Tenant shall pay all costs, expenses, fines, penalties, or damages that may be imposed on Landlord or Tenant by reason of Tenant's failure to comply with the provisions of this Paragraph, and, at Tenant's sole cost and expense, shall indemnify, defend, and hold Landlord harmless (including legal fees and expenses) from and against any actions, claims, and suits arising from such noncompliance, utilizing counsel reasonably satisfactory to Landlord.

(g) The rules and regulations as may be hereafter adopted by Landlord for the safety, cleanliness and operation of the Building and the preservation of good order therein and for the most efficient use by all tenants, agents, employees, invitees and visitors of the automobile parking spaces provided by Landlord, if any, are expressly made a part of this Lease and Tenant agrees to comply with such rules and regulations. No rules and regulations shall prohibit the reasonable use of the Premises by Tenant, its agents, employees, invitees and visitors for the purposes permitted by this Lease. The Landlord shall not be responsible to Tenant for any nonobservance of such rules and regulations by any other tenant of the Building. The rules and regulations shall be binding upon the Tenant upon delivery of a copy of them to Tenant.

#### 14.0 Lease Sale/Assignment and Subletting.



14.1 (a) Tenant may not sublet the Premises or any part thereof, or sell or assign this Lease or any interest herein without Landlord's prior written consent, which shall be provided at the sole discretion of the Landlord. Any attempted sale, assignment or subletting without such prior written consent shall be void. No consent by Landlord to any sale, assignment or subletting shall be deemed or construed to relieve Tenant from obtaining the express written consent of Landlord to any further sale, assignment or subletting. It shall be reasonable for Landlord to withhold its consent to any proposed sale or assignment if at the time of the proposed sale or assignment Tenant shall be in default under this Lease following notice and beyond any applicable notice and grace period, and/or the assignee intends to change the use of the Premises (unless Landlord consents to same). Together with any request for Landlord's consent to a sale, assignment or sublease Tenant shall simultaneously submit to Landlord: (i) the name and address of the proposed buyer, assignee or sublessee; (ii) the basic terms of the proposed sale, assignment or sublease; (iii) reasonably satisfactory information about the nature, business and business history of the proposed assignee or sublessee; and (iv) such other information as may be reasonably requested by Landlord. Any terms with respect to a Lease sale, assignment or sublease between the Landlord and the Tenant may be negotiated after all the requirements of Paragraph 14.1(a) outlined herein are met.

(b) All references in this Lease to an assignment and/or sublease shall be deemed to include all arrangements for occupancy or other use by any person or entity of all or any part of the Premises. If Tenant is a corporation, partnership or other entity, any transfer of a majority or direct controlling interest in such corporation (i.e., 50% or more of the outstanding voting stock of Tenant), partnership or other entity shall be deemed to be an assignment of this Lease. In the event of any proposed assignment, subletting or other transfer for which Landlord's consent is required hereunder, Tenant shall promptly reimburse Landlord for all costs and expenses incurred by Landlord in connection with reviewing any proposed transfer, including, but not limited to, reasonable attorneys' and paralegals' fees and costs, not to exceed \$500.00.

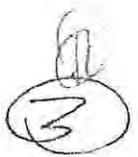
14.2 In the event of a termination of this Lease, any subtenant of the Premises or assignee of the Lease shall attorn to the owner of the reversion, unless the owner of the reversion shall, at the owner's option, elect to dispossess such subtenant or assignee or otherwise terminate its rights hereunder. Each subtenant or assignee that hereafter takes an interest in the Premises shall be deemed to have agreed to the provisions of this Section 14.2. Tenant covenants that each sublease of the Premises or assignment of this Lease hereafter executed shall contain a clause expressly providing that the subtenant or assignee thereunder shall attorn to the owner of the reversion, upon request, in the event of a termination of this Lease, but the absence of such a clause from any sublease or assignment shall not relieve the subtenant or assignee from the provisions of this Section 14.2.

14.3 No acceptance by Landlord of any performance, rent or additional rent herein provided to be done or paid by Tenant from any person, firm or corporation other than Tenant, shall discharge Tenant or any other person, firm or corporation liable for performance of Tenant's obligations hereunder (except to the extent of the performance and payments so accepted by Landlord) from liability to pay all of the rent and additional rent herein provided to be paid by Tenant or from liability to perform any of the terms, covenants, conditions and agreements set forth in this Lease.

14.4 Landlord (or its successors or assigns) may assign this Lease, or any interest herein and Tenant (or its permitted subtenants, successors or assigns) shall attorn to such assignee provided such successor or assignee assumes the obligations of Landlord thereafter accruing and from the effective date of such assignment and assumption the assignor of the Lease shall have no further liability or obligation pursuant to this Lease.

14.5 Tenant hereby assigns to Landlord all of Tenant's right, title and interest, following any Event of Default by Tenant hereunder, in and to all subleases and/or to collect from any or all subtenants all rents and other sums payable by them, and to apply the same to the payment of rent and all other amounts payable by Tenant hereunder, but no exercise by Landlord of rights under this Section 14.5 shall be deemed a waiver by Landlord of any other rights hereunder or shall be deemed an acceptance by Landlord of such subtenant or an acquiescence by Landlord to the occupancy of any part of the Premises by such subtenant or a release of Tenant from the performance of any of the obligations of Tenant hereunder.

14.6 Notwithstanding any of the foregoing provisions, covenants and conditions to the contrary, in the event that this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, 11 U.S.C.

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101 et. seq. (the "Bankruptcy Code"), any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment allocable to this Lease shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other consideration constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and shall be promptly paid to or turned over to Landlord. If Tenant proposes to assign this Lease pursuant to the provisions of the Bankruptcy Code to any person or entity who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to Tenant, then notice of such proposed assignment setting forth (a) the name and address of such person, (b) all of the terms and conditions of such offer, and (c) the adequate assurance to be provided by Tenant to assure such person's future performance under the Lease including, without limitation, the assurance referred to in Section 365 of the Bankruptcy Code, or any such successor or substitute legislation or rule thereto, shall be given to Landlord by Tenant no later than twenty (20) days after receipt by Tenant, but in any event no later than ten (10) days prior to the date that Tenant shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption. Landlord shall thereupon have the prior right and option, to be exercised by notice to Tenant given at any time prior to the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such person, less any brokerage commissions which may be payable out of the consideration to be paid by such person for the assignment of this Lease. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption.

#### **15.0 Condition of Demised Premises: Maintenance And Repairs.**

**15.1 Tenant Responsibilities.** The parties agree that Tenant, except as provided in Section 15.2, will be responsible, at Tenant's sole cost and expense, and at all times throughout the term and any extensions thereof, 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 existed upon the Commencement Date, reasonable wear and tear excepted. Tenant's responsibilities hereunder include, but are not limited to, the replacement, repair and maintenance of all exterior and interior improvements, fixtures, appliances, equipment, and systems, including, but not limited to roof, structure, air conditioning, 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 neat and clean. Tenant shall keep the exterior walls of the Premises graffiti free and clean, and shall keep the exterior areas (including but not limited to city property) adjacent to the Premises free of trash and debris (whether or not said debris and trash were promulgated by Tenant).

All replacements, repairs and maintenance shall be performed by contractors or workmen designated or approved by Landlord. Tenant shall not commit nor allow any waste or damage to be committed on any portion of the Building or Premises. Tenant shall be responsible for the sanitation, storage and daily removal of all garbage generated by Tenant. If the Tenant does not make repairs promptly and adequately or otherwise fails to comply with this Section, the Landlord may, but need not, make repairs or correct such failure, and the Tenant shall pay Landlord the cost thereof on demand.

Tenant, at its sole cost and expense, shall enter into a regularly scheduled preventive maintenance/service contract with a maintenance contractor reasonably approved by Landlord, for servicing all heating, ventilating and air conditioning systems and equipment servicing the Premises, and an executed copy of such contract shall be delivered to Landlord. This service contract must include all services suggested by the equipment manufacturer within the operations/maintenance manual and must become effective within thirty (30) days after the date Tenant shall have taken possession of the Premises.

**15.2 Landlord Responsibilities.** Landlord shall not be required to maintain or make any improvements or repairs of any kind in or upon all or any portion of the Premises; all such maintenance, repair and replacement shall be performed by Tenant, at Tenant's sole cost and expense. The Tenant shall pay the Landlord for overtime and for any other expense incurred in the event repairs, alterations, decorating or other work performed by Landlord are not made during ordinary business hours at the Tenant's request. If any damage to the Premises or Building results from any act or neglect of the Tenant, its employees, agents, invitees, licensees, or contractors, the Landlord may, at the Landlord's option, repair such damage, whether caused to the Building or to tenants thereof, and the Tenant shall thereupon pay to the Landlord, upon demand, the total cost of such repairs and damages both to the Building and to the tenants thereof, plus a sum equal to twenty percent (20%) of such cost, representing Landlord's overhead.

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**15.3 Maintenance of Grease Interceptors, Grease Receptacles, and/or Grease Traps.** Tenant hereby agrees to provide, maintain, repair and replace as necessary, in compliance with all applicable county, municipal, State and Federal codes, rules, regulations, statutes, ordinances and guidelines regarding any device which is designed to contain waste byproducts and discharge associated with the cooking of foods, including, without limitation, grease traps.

**16.0 Alterations, Additions or Improvements.**

**16.1 Tenant Improvements.** Tenant shall have the right, from time to time during the term of this Lease or any extension thereof, at Tenant's sole cost and expense, to make additions, alterations, and changes (hereinafter singularly referred to as an "Alteration" and collectively as "Alterations") in or to the improvements then comprising a part of the Demised Premises, provided there shall not then exist a default under this Lease.

(a) No Alteration shall be made without Landlord's approval (which approval Landlord may withhold in its sole discretion) if such Alteration would (i) impair the structural soundness of the improvements, (ii) materially change the total volume or height of the improvements, (iii) modify in any material respect the basic character and function of the improvements, (iv) modify the external appearance of the improvements or (v) cost in excess of Ten Thousand and No/100 Dollars (\$10,000.00) individually or in the aggregate in any twelve (12) month period;

(b) No Alteration shall be made until all plans and specifications for any such Alteration have been approved by Landlord. Landlord shall have fifteen (15) days from its receipt of all such plans and specifications to review the same and to send its written comments regarding the same to Tenant. Within ten (10) days after receipt of Landlord's notice of changes (if any), Tenant shall cause all such changes to be made, which changes shall be circled and dated, and Tenant shall resubmit the revised plans and specifications for Landlord's review. Within fifteen (15) days after receipt of the revised plans and specifications, Landlord shall review and approve or state what changes Landlord requires to be made. The revisions and resubmission shall continue until Landlord, in its reasonable discretion, shall have approved Tenant's plans and specifications. Within ten (10) days after Landlord has approved of Tenant's preliminary plans and specifications, Tenant shall deliver to Landlord Tenant's final plans and specifications for Landlord's review and approval. Landlord's approval of the final plans and specifications shall be evidenced by Landlord and Tenant initialing two (2) complete sets of final plans and specifications (the "Plans"), whereupon one fully executed set shall be left with the Landlord. Within five (5) days after demand, Tenant shall pay to Landlord any fees or expenses incurred by Landlord in connection with Landlord's submitting such plans and specifications, as it so chooses, to an architect or engineer selected by Landlord for review or examination of the plans and specifications, intermittent inspection of any construction, and/or performance of any construction;

(c) The approval by Landlord of the plans and specifications, if given, shall not (i) imply Landlord's approval of the structural or engineering designs as to quality or fitness of any material or device used; (ii) imply that the plans and specifications are in accordance with the law (it being agreed that such compliance is solely Tenant's responsibility); (iii) relieve Tenant of the responsibility to construct structurally sound improvements which are free of defects; (iv) impose any liability on Landlord to Tenant or any third party; or (v) serve as a waiver or forfeiture of any right of Landlord;

(d) Upon Landlord's approval of any plans and specifications and before commencement of construction of any Alterations, Tenant shall, at Tenant's sole cost and expense:

i. Obtain the necessary permits, consents, authorizations and licenses from all federal, state and/or municipal authorities having jurisdiction over such work, including but not limited to the payment of any and all impact and other fees that may be required by the applicable governmental authorities. Landlord shall reasonably cooperate, at no expense to Landlord, with Tenant including, without limitation, execution of applications for building permits and consents thereto;



ii. Furnish to Landlord a certificate or certificates of Workmen's Compensation Insurance covering all persons who will perform the construction or any contractor, subcontractor or other person; and

iii. Furnish to Landlord original policies of insurance as set forth below (or certificates thereof) covering Landlord, Landlord's agent and such other parties as Landlord shall designate, as additional insureds, in a company approved by Landlord, which policies shall be maintained at all times during the progress of the construction and until completion thereof, and shall provide that no termination, cancellation or modification of such policy shall be effective unless thirty (30) days prior written notice has been given to Landlord:

(aa) Public Liability Insurance with a combined single limit of not less than One Million and No/100 Dollars (\$1,000,000.00) for injuries and damages to persons and property;

(bb) Builder's Risk Insurance with extended coverage.

(c) Tenant shall construct any Alterations with diligence and continuity and in a good and workmanlike manner, and Tenant shall (i) comply with all laws, ordinances and governmental regulations including all regulations by any board of fire underwriters in its construction of said Alterations, as well as full compliance with the Americans With Disabilities Act, (ii) provide Landlord with such security or assurances as Landlord may reasonably require to guarantee that, once commenced, sufficient funds will be available to cause completion of all proposed Alterations, (iii) provide Landlord with preliminary and as-built surveys reasonably acceptable to Landlord in all respects, (iv) provide Landlord, prior to commencement of any alterations, with proof of compliance, in form reasonably satisfactory to Landlord, with all planning, zoning, design review and other requirements imposed by all applicable City, County, State and Federal and other governmental authorities, and (v) indemnify and hold harmless Landlord from and against all loss, cost or damage suffered by Landlord, including, without limitation, reasonable attorneys' and paralegals' fees and disbursements, on account of Tenant's construction of said Alterations, or any injury to person or property occasioned thereby:

(f) Tenant agrees to indemnify and save Landlord harmless from and against any and all bills for labor performed and equipment, fixtures and materials furnished to Tenant and applicable sales taxes thereon and from and against any and all liens, bills or claims therefor or against the Premises and from and against all losses, damages, costs, expenses, suits and claims whatsoever in connection with the construction of any Alterations. Tenant shall fully pay for the cost of the construction of any Alterations so that the Premises shall at all times be free of liens for labor and materials supplied or claimed to have been supplied. Tenant hereby acknowledges that it has no right to cause, create, or permit the establishment of a claim of lien against the Premises. A provision which expressly prohibits Landlord's liability for any liens filed against the Premises in connection with Tenant's construction of any Alterations or other improvements on the Premises, as well as for any labor, materials or other lien incurred by Tenant, as provided in Section 713.10 of the Florida Statutes, may be recorded by Landlord. Tenant shall provide Landlord with all applicable partial releases of lien executed by contractors, subcontractors and materialmen contemporaneously with each payment or draw request under Tenant's construction contracts. Tenant shall obtain, and shall provide Landlord with, the general contractor's final contractors affidavit, release, and indemnity, together with proof of closure of all open permits contemporaneously with final payments to be made to the general contractor and all subcontractors and materialmen; and

(g) All alterations, improvements and additions made by Tenant pursuant to the plans and specifications shall immediately become the property of the Landlord and shall remain upon the Premises at the expiration or earlier termination of this Lease.

**16.2 Mechanics Liens.** Tenant shall keep the Premises and all parts thereof at all times free of mechanic's liens and any other lien for labor, services, supplies, equipment or material purchased or procured, directly or indirectly, by or for Tenant. Tenant further agrees that Tenant will promptly pay and satisfy all liens of contractors, subcontractors, mechanics, laborers, material men and other items of like character, and will indemnify Landlord against all expenses, costs and charges, including bond premiums for release of liens and attorney's fees and costs reasonably incurred

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in and about the defense of any suit in discharging the Premises, from any liens, judgments, or encumbrances caused or suffered by Tenant. In the event any such lien shall be made or filed, Tenant shall bond against or discharge the same within ten (10) days after the same has been made or filed. It is understood and agreed between the parties hereto that the expenses, costs and charges above referred to shall be considered as Base Rent due and shall be included in any lien or other claim for Base Rent.

The Tenant herein shall not have any authority to create any liens for labor or material on the Landlord's interest in the Premises and all persons contracting with the Tenant for the construction or removal of any facilities or other improvements on or about the Premises, and all material men, contractors, mechanics and laborers are hereby charged with notice that they must look only to the Tenant and to the Tenant's interests in the Premises to secure the payment of any bill for work done or material furnished at the request or instruction of Tenant.

In accordance with Florida Statutes §713.10, Landlord shall have the right to post on the Premises and to file and/or record in the Public Records or court registry, as applicable, notices of non-responsibility and such other notices as Landlord may reasonably deem proper for the protection of Landlord's interest in the Premises. Tenant shall, before the commencement of any work which might result in any lien on the Premises, give Landlord reasonable written notice under the circumstances of its intention to commence said work.

#### **17.0 Destruction of Premises.**

(a) Tenant shall give immediate written notice to Landlord of any damage caused to the Demised Premises by fire or other casualty.

(b) If the Demised Premises should (a) be damaged by any uninsured casualty, or (b) be damaged to an extent that the cost of replacement thereof exceeds the insurance proceeds and Tenant fails to deposit with Landlord the full amount of such excess within thirty (30) days after notice thereof to Tenant, Landlord may elect either to terminate this Lease or to proceed to rebuild and repair the Demised Premises. Should Landlord elect to terminate this Lease, it shall give written notice of such election to Tenant within ninety (90) days after Landlord is notified of the occurrence of such casualty.

(c) If the Demised Premises should be partially damaged during the last twelve (12) months of this Lease, or if more than fifty (50%) percent of the Building in which the Demised Premises is located, has been damaged or destroyed, Landlord may elect to terminate this Lease as of the date of occurrence of such damage by giving written notice to Tenant within ninety (90) days after the date Landlord is notified of the occurrence of such damage.

(d) Except as otherwise provided herein, in the event the Demised Premises should be damaged by fire or other casualty insurable under standard fire and extended coverage insurance, Landlord shall proceed with reasonable diligence to rebuild and repair the Demised Premises. Landlord's obligation to rebuild and repair shall be limited to restoring the Demised Premises to substantially the condition in which same existed prior to the casualty, shall be limited to the extent of the insurance proceeds available to Landlord for such restoration and, further, shall exclude any obligation with regard to the personal property and trade fixtures of Tenant. Landlord shall use reasonable diligence to cause such repairs to be completed within one hundred eighty (180) days following the casualty, provided that if Landlord has not completed its work within three hundred sixty five (365) days following such casualty, either party shall have the right to cancel and terminate this Lease, whereupon each party shall be released and relieved of any and all further obligations and liabilities hereunder. Tenant agrees that, promptly upon completion of such work by Landlord, it will proceed with reasonable diligence to restore the remainder of the Demised Premises, including, but not limited to, the repair or restoration of signs, fixtures and equipment. During any period of reconstruction or repair of the Demised Premises, Tenant shall continue the operation of its business within the Demised Premises to the extent practicable.

(e) In the event Landlord should elect to restore the Demised Premises and Tenant should be deprived of the occupancy and use of a portion of the Demised Premises, Base Rent shall be equitably apportioned according to the area of the Demised Premises which is unusable by Tenant, until such time as Landlord shall have completed its restoration as provided herein. In the event of total destruction of the Demised Premises, Tenant's rent shall completely abate from the date of such destruction.

(f) In the event the Building should be damaged to such an extent that Landlord, in its sole discretion, should elect to discontinue or curtail operation of the Building, Landlord may cancel this Lease by giving written notice to Tenant, and this Lease shall terminate and become null and void ninety (90) days after said notice.



**17.1 Tenant's Acts.** If such damage or destruction occurs as a result of the negligence or the intentional acts of Tenant or Tenant's employees, agents, contractors or invitees, and the proceeds of insurance which are actually received by Landlord are not sufficient to pay for the repair of all of the damage, Tenant shall pay, at Tenant's sole cost and expense, to Landlord upon demand, the difference between the cost of repairing the damage and the insurance proceeds received by Landlord.

**17.2 Tenant's Property.** Landlord shall not be liable to Tenant or its employees, agents, contractors, invitees or customers for loss or damage to merchandise, tenant improvements, fixtures, automobiles, furniture, equipment, computers, files or other property (hereinafter collectively "**Tenant's property**") located at the Building. Tenant shall repair or replace all of Tenant's property at Tenant's sole cost and expense. Tenant acknowledges that it is Tenant's sole responsibility to obtain adequate insurance coverage to compensate Tenant for damage to Tenant's property.

**17.3 Waiver.** Landlord and Tenant hereby waive the provisions of any present or future statutes, which relate to the termination of leases when leased property is damaged or destroyed and agree that such event shall be governed by the terms of this Lease.

**18.0 Entry, Inspection and Other Rights Reserved to Landlord.** Tenant will permit Landlord and its agents to enter the Premises at all reasonable times for the purpose of examining or inspecting the same, or for the purpose of protecting Landlord's reversion, or to make alterations, repairs, or additions to the Premises or to any other portion of the Building, or for maintaining any service provided by Landlord to tenants in the Building, or for the purpose of removing placards, signs, fixtures, alterations or additions which do not conform to this Lease or the rules and regulations of the Building, or for any other purpose which Landlord deems necessary for the safety, comfort or preservation of the Premises or Building and during such operations, Landlord may close entrances, doors, corridors, elevators or other facilities, all without liability to Tenant by reason of interference, inconvenience or annoyance. Tenant will permit Landlord at any time within the earlier of: (i) one hundred twenty (120) days prior to the expiration of this Lease or (ii) failure of Tenant to cure a default within twenty four (24) hours of notice by Landlord to bring prospective tenants upon the Premises for purposes of inspection and to put or keep upon the doors or windows thereof a "For Rent" and/or "For Sale" notice. In furtherance of such rights, Landlord shall retain a key to the Premises and Tenant shall not install any new locks to the Premises without the prior written consent of Landlord and unless Tenant furnishes Landlord with a copy of such key. No entry pursuant to this Paragraph shall in any way be deemed a breach of the covenant of quiet enjoyment. Landlord reserves the right to change the name and/or street address of the Building without liability of Landlord to Tenant.

**19.0 Indemnity/Exculpation.**

**19.1 Landlord Non-Responsibility.** Tenant is and shall be in exclusive control and possession of the Premises, and Landlord shall not be responsible or liable for the theft, loss or damage to person or property in, on or about the Premises, and/or the Building. Tenant acknowledges and agrees that Landlord is not responsible for the security of the Premises or the Building in general. Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, gas, electricity, water, rain or leaks from any part of the Building or by any other cause whatsoever, nor shall Landlord or its agents be liable for any such damage caused by other tenants or persons in the Building; nor shall Landlord be liable for any latent defect in the Premises or in the Building.

**19.2 Indemnity & Hold Harmless.** Tenant agrees that Tenant, at all times, will indemnify and hold harmless Landlord from all losses, damages, liabilities and expenses (including reasonable legal fees and court costs) whatsoever, which may arise or be claimed against Landlord, or any injuries or damages to the persons or property of any persons, firms or corporations, consequent upon or arising from: (i) the use or occupancy of the Premises and/or other portions of the Building (including all Common Facilities) by Tenant, (ii) any acts, omissions, neglect or fault of Tenant, Tenant's agents, employees, customers, or invitees, or (iii) Tenant's failure to comply with the terms and provisions of this Lease and/or any applicable laws. In case Landlord shall be made a party to any litigation commenced against Tenant, then Tenant shall protect and hold Landlord harmless and shall pay all costs, expenses and reasonable attorney's fees incurred or paid by Landlord in connection with such litigation and any appeal thereof. The provisions of this Section 19.0 shall survive the expiration or earlier termination of this Lease.

**19.3 Hazardous Materials and Indemnification.** Tenant hereby covenants and agrees that it shall not bring or transport onto the Leased Premises, or use or store in, on, or about the Premises, or in the vicinity thereof, in connection with its use and occupancy of the Premises, or permit any other party to do any of the foregoing, any environmentally hazardous materials, substances, or waste of any nature that is classified as such by any county, municipal,



state, federal or other governmental authority. Tenant agrees to indemnify Landlord and save it harmless from and against any and all claims, losses, actions, damages, liabilities and expenses, including legal fees and expenses, clean-up costs suffered or incurred by Landlord, and any and all costs or expenses relating to the testing of or for any and all such hazardous materials, substances, asbestos, or waste of any nature, for or on account of or arising from or in connection with any breach of Tenant's warranties, representations or obligations under this section, or in connection with any condition created by Tenant as the result of any spill, discharge or release of any environmentally hazardous materials, substances or waste in, on or about the Premises, or in the vicinity thereof.

**19.4 Mold.** Except for Landlord's obligation to remove any and all mold existing in the Premises as of the Effective Date hereof, Landlord shall not be responsible or liable at any time to the Tenant, or to those claiming by, through or under Tenant, for any claim for loss of life, bodily or personal injury, personal property damage, damage to property or business, advertising injury, or for business interruption or relocation expense and/or any other claim arising out of and/or caused directly or indirectly by the existence or the actual, alleged or threatened occurrence, discharge, dispersal, seepage, transmission, migration, release, exposure to or escape of any mold, mildew, spores, fungus or materials containing them, at any time now or hereafter found within, upon and/or about the premises, the site or location or any tangible property and/or the common elements and/or limited common elements, and/or in any areas or space of the Property, Building(s) or Premises and/or from any person, organization located anywhere in the world. This paragraph applies regardless of any other cause or event that contributes concurrently or in any sequence to the loss or damage. "Mold", "spores" and/or "fungus" means any mold, spores and/or fungus of any type or nature whatsoever that can cause or threaten harm to any living organism (including human health or human welfare, or the health or welfare of any animal or plant) or can cause or threaten physical damage, deterioration, loss of use and/or loss of value or marketability, to any tangible property whatsoever. This includes, but is not limited to, any type(s) of mold, spores and/or fungus that are harmful or potentially harmful to health, welfare (such as *Stachybotrys* and others), or that are damaging or potentially damaging to tangible property (such as wet or dry rot, mildew and others) or that can otherwise cause or threaten to cause bodily injury, property damage, personal injury or advertising injury of any kind whatsoever. Tenant agrees that Tenant shall make routine visual inspections for mold growth or signs of water damage or wetness, and that these routine inspections are the most reliable method for identifying the presence of mold or mildew. Tenant agrees to use air-conditioning at all times and to use heating, if at all, in moderation and in a reasonable manner and to keep the Premises properly ventilated by periodically opening windows to allow the circulation of fresh air during dry weather only. Tenant agrees that the Premises shall be kept at a temperature between fifty and seventy-eight degrees Fahrenheit, at all times, including, without limitation, when the Premises are not open for business.

**20.0 Insurance.** The Tenant shall maintain at its expense throughout the terms of this Lease the following insurance coverages: (i) liability insurance for bodily injury and property damage to protect both Landlord and Tenant against damage, costs and attorneys' fees arising out of accidents of any kind occurring on or about the Premises and Building (including all Common Facilities) with combined single limit liability coverage of not less than \$2,000,000 and property damage coverage of not less than \$1,000,000; (ii) fire and extended casualty insurance with sufficient coverage to reimburse the loss of all of Tenant's improvements to the Premises, and all of Tenant's fixtures, equipment, personal property and inventory; (iii) plate glass insurance to protect both Landlord and Tenant covering the replacement value of all plate glass in or about the Premises; (iv) appropriate workmen's compensation and any and all other insurance required by law; (v) business interruption and rent insurance in an amount equal to not less than twelve (12) months Base Rent hereunder and (vi) beer and wine liability insurance in an amount not less than \$1,000,000 or full liquor liability insurance in an amount not less than \$2,000,000, as the case may be.

All insurance shall be written by a company or companies qualified to do business in Florida and reasonably acceptable to Landlord. A certificate of duplicate policies showing such insurance in force shall be delivered to Landlord prior to the Commencement Date, and such insurance and updated certificates or renewed policies shall be maintained with Landlord throughout the term of this Lease. No policy shall be canceled or subject to reduction in coverage or other change without at least thirty (30) days advance written notice to Landlord. All policies shall be written as primary policies not contributing with and not in excess of coverage Landlord may carry. To the extent permitted by its insurers, Tenant hereby waives any right of recovery against Landlord for any loss covered by Tenant's insurance or for which Tenant is required to maintain insurance hereunder. Tenant shall apply to its insurers to obtain such waiver and shall obtain any special endorsements if required by its insurer to evidence compliance with such waiver.

All Policies referred to above shall: (i) be taken out with insurers licensed to do business in Florida and reasonably acceptable to the Landlord; (ii) be in a form reasonably satisfactory to the Landlord; (iii) be non-contributing with, and shall apply only as primary and not as excess to any other insurance available to the Landlord or the Mortgagee; and (iv) contain an undertaking by the insurers to notify the Landlord by registered or certified mail not less than thirty (30) days

**23.0 Default.** Tenant covenants and agrees that any of the following events shall be a default (hereinafter "Default") under this Lease: (i) if any false or materially misleading financial report or statement is furnished or made by or on behalf of Tenant or any guarantor of any of Tenant's obligations hereunder; or (ii) the failure by Tenant to make payment of Base Rent, Operating Costs or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from Landlord to Tenant; or (iii) the failure by Tenant or Guarantor, if any, to observe or perform any of the covenants, conditions or provisions to be observed or performed by Tenant, other than described in subsections (ii) and (vii) hereof, where such failure shall continue for a period of fifteen (15) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than fifteen (15) days are reasonably required for its cure, Tenant shall not be deemed to be in default if Tenant commences such cure within said fifteen (15) day period and thereafter diligently pursues such cure to completion; or (iv) if Tenant or any guarantor of Tenant's obligations hereunder or any affiliate of any of them shall be in breach of any other lease with Landlord or any affiliate or in breach of or in default in the payment and performance of any obligation owing to Landlord or any affiliate, whether or not related to this Lease and howsoever arising, whether by operation or law or otherwise, present or future, contracted for or acquired, and whether joint, several, absolute, contingent, secured, unsecured, matured or unmatured; or (v) if Tenant or any guarantor of any of Tenant's obligations hereunder shall cease doing business as a going concern, make an assignment for the benefit of creditors, generally not pay its debts as they become due, admit in writing its inability to pay its debts as they become due, become insolvent (i.e. greater liabilities than assets), or take any action looking to its dissolution or liquidation; or (vi) if Tenant or any Guarantor should commence, in any court pursuant to any statute either of the United States or of any State, an insolvency or bankruptcy proceeding (including, without limitation, a proceeding for liquidation, reorganization or for adjustment of debts of an individual with regular income), or if such a proceeding is commenced against Tenant or any said Guarantor, if any, and either an order for relief is entered against such party or such party fails to secure a discharge of the proceeding within thirty (30) days of the filing thereof; or (vii) if Tenant shall abandon or vacate the Premises; or (viii) if Tenant fails to pay all charges for water, sewer, electricity and other utilities which are separately metered for the Premises within five (5) days after same are due, or (ix) if Landlord has previously sent Tenant, at any time during the term of this Lease, two notices for the same type of lease violation that occurs a third time, irrespective of whether such violation may have been cured at the time of receipt of the notice; or (x) if there is any sale of Tenant's interest in the Premises under execution or similar legal process.

In the event of any such Default, Landlord may, at its option, without notice, elect any of the following remedies:

- (a) Declare this Lease to be terminated, and take possession of the Premises whereupon the term hereby granted and all rights, title and interest of Tenant in and to the Premises shall end. Such termination shall be without prejudice to Landlord's right to collect from Tenant any rental which has accrued prior to such termination, together with all damages suffered by Landlord's because of Tenant's breach of any covenant of this Lease.
- (b) Re-take and recover possession of the Premises, without terminating this Lease, in which event Landlord may re-rent the Premises as agent for and for the account of Tenant and recover from Tenant (A) the worth at the time of award of the unpaid rent which had been earned at the time of termination; (B) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; (C) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; and (D) any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of releasing, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, any real estate commissions actually paid by Landlord and the unamortized value of any free rent, reduced rent, tenant improvement allowance or other economic concessions provided by Landlord. The "worth at time of award" of the amounts referred to in (A) and (B) above shall be computed by allowing interest at the lesser of ten percent (10%) per annum or the maximum interest rate permitted by applicable law. The worth at the time of award of the amount referred to in (C) above shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of Atlanta at the time of award plus one percent (1%). For purposes of this Section 23(b), "rent" shall be deemed to be all monetary obligations required to be paid by Tenant pursuant to the terms of this Lease.

- (c) Permit the Premises to remain vacant while Landlord makes reasonable efforts to mitigate its damages by attempting in good faith to re-let the same in which event, Tenant shall continue to be responsible for all rental and other payments due hereunder, until such time as the Premises are re-let.
- (d) Accelerate the entire remaining unpaid rent and other monetary obligations of Tenant for the balance of the term of this Lease; declare same to be immediately due and payable forthwith; and at once take action to recover same.
- (e) If Tenant abandons or vacates the Premises, Landlord may re-enter the Premises, and such re-entry shall not be deemed to constitute Landlord's election to accept a surrender of the Premises or to otherwise relieve Tenant from liability for its breach of this Lease. No surrender of the Premises shall be effective against Landlord unless Landlord has entered into a written agreement with Tenant in which Landlord expressly agrees to (i) accept a surrender of the Premises and (ii) relieve Tenant of liability under the Lease. The delivery by Tenant to Landlord of possession of the Premises shall not constitute the termination of the Lease or the surrender of the Premises.
- (f) Take any other action and pursue any other remedy as may be permitted at law or in equity.

All of the Landlord's remedies contained in this Lease shall be cumulative and election by Landlord to take any one remedy shall not preclude Landlord from taking any other remedy not by its nature absolutely incompatible with any previously or contemporaneously elected remedy. The Landlord may, at its option, apply any sums received from the Tenant against any amounts due and payable by the Tenant under this Lease in such manner as the Landlord sees fit and regardless of the express purpose for which the tender was made and regardless of any endorsement placed on the check by which payment is made. The Tenant expressly waives the service of any demand for the payment of rent or for possession and the service of any notice of the Landlord's election to terminate this Lease or to re-enter the Premises, including any and every form of demand and notice prescribed by a statute or other law, and agrees that the simple breach of any covenant or provision of this Lease by the Tenant shall, of itself, without the service of any notice or demand whatsoever, constitute a forcible detainer by the Tenant of the Premises within the meaning of the statutes of the State of Florida.

In the event of a proceeding involving Tenant under the Bankruptcy Code, 11 U.S.C. §101 *et. seq.*, if this Lease should be assumed by Tenant's trustee in bankruptcy (after the trustee has cured all existing defaults, compensated Landlord for any loss resulting therefrom and provided adequate assurance of future performance), then this Lease may not be assigned by the trustee to a third party, unless such party (a) executes and delivers to Landlord an agreement in recordable form whereby such party assumes and agrees with Landlord to discharge all obligations of Tenant under this Lease; (b) has a net worth and operating experience at least comparable to that possessed by Tenant and any Guarantor hereof, if any, as of the time of execution of this Lease; and (c) grants to Landlord, to secure the performance of such party's obligations under this Lease, a security interest in such party's merchandise, inventory, personal property, fixtures, furnishings, and accounts receivable (and in the proceeds of all of the foregoing) with respect to its operations in the Premises, and in connection therewith, such party shall execute such security agreements, financing statements and other documents (the forms of which are to be prepared by Landlord) as are necessary to perfect such lien. If Landlord should not be permitted to terminate this Lease because of the provisions of the Bankruptcy Code, Tenant as a debtor-in-possession or any trustee for Tenant agrees promptly, within no more than fifteen (15) days after request by Landlord to the Bankruptcy Court, to assume or reject this Lease, and Tenant on behalf of itself and any trustee agrees not to seek or request any extension or adjournment of any application to assume or reject this Lease by Landlord with such Court.

Landlord shall not be in default hereunder unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage covering the Premises whose name and address shall have theretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligations; provided, however, that if the nature of Landlord's obligations is such that more than thirty (30) days are required for performance, Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

**24.0 Attorneys' Fees and Costs.** If Landlord or Tenant brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, or appeal thereon, shall be entitled to its reasonable attorneys' fees and court costs to be paid by the losing party as fixed by the court in the same or separate suit, and whether or not such action is pursued to decision or judgment. The attorneys' fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees and court costs reasonably incurred in good faith. Landlord shall be entitled to reasonable attorneys' fees and all other costs and expenses incurred in the preparation and service of notices of default and consultations in connection therewith, whether or not a legal action is subsequently

commenced in connection with such default. Landlord and Tenant agree that attorneys' fees incurred with respect to defaults and bankruptcy are actual pecuniary losses within the meaning of Section 365(b)(1)(B) of the Bankruptcy Code or any successor statute.

**25.0 Non-Waiver of Breach.** Landlord's failure to take advantage of any default or breach of covenant on the part of Tenant shall not be construed as a waiver thereof, nor shall any custom or practice which may grow between the parties in the course of administering this Lease be construed or to waive or to lessen the right of Landlord to insist upon the strict performance by Tenant of any term, covenant or condition hereof, or to exercise any rights of Landlord on account of any such default. A waiver of a particular breach or default shall not be deemed to be a waiver of the same or any other subsequent breach or default. The acceptance of rent hereunder shall not be, or be construed to be, a waiver of any breach of any term, covenant or condition of this Lease. The presentation of any rent or other charge hereunder in the form of a check marked by Tenant to constitute a waiver of any default shall not constitute such waiver even though endorsed and cashed by Landlord unless Landlord expressly agrees to waive such default by separate written instrument. No surrender of the Premises for the remainder of the term hereof shall operate to release Tenant from liability hereunder.

**26.0 Subordination by Tenant.** This Lease and Tenant's rights hereunder, are hereby made expressly subject and subordinate to any and all security agreements, mortgages, ground or underlying leases, or like instruments resulting from any financing or refinancing affecting the Premises or Building (or any portion thereof) which are currently in existence or which may hereafter be created by Landlord, or its successors or assigns, including any and all extensions and renewals, substitutions, and amendments thereof, and to any and all advances made or to be made under same (collectively the "Mortgage"). This provision shall be self-operative without the execution of any further instruments. Tenant agrees to execute any instrument or instruments, which the Landlord may deem necessary or desirable to further evidence the foregoing subordination. Tenant hereby irrevocably appoints Landlord as attorney-in-fact for Tenant with full power and authority to execute and deliver in the name of Tenant any such instrument which appointment shall be deemed coupled with an interest and irrevocable. Tenant further agrees to make such reasonable modifications to this Lease (not increasing Tenant's obligations hereunder) as may be requested by the holder of any such Mortgage (the "Mortgagee"). Tenant agrees that in the event of any act or omission by Landlord which could constitute a default by Landlord or give Tenant the right to terminate this Lease or claim a partial eviction, Tenant shall not exercise any such right until: (i) Tenant notifies Landlord in writing of such default and Landlord fails to cure such default within thirty (30) days of such notice, or if such default cannot reasonably be cured within such thirty (30) days; and (ii) until every holder of any Mortgage is notified in writing of such default and fails to commence to cure such default within thirty (30) days after all of Landlord's periods to cure such default have expired. Tenant further agrees to execute any non-disturbance and/or attornment agreement requested by any mortgagee and/or ground lessor.

**27.0 Time.** It is understood and agreed between the parties hereto that time is of the essence of this Lease, and to all of the terms, conditions and provisions contained herein.

**28.0 Transferability by Landlord.** Landlord shall have the right to transfer and assign, in whole or in part, all and every feature of its rights and obligations hereunder as part of a conveyance of the Building and underlying property and upon such assignment of this Lease or conveyance of the Building, and assumption thereof by such purchaser, the Landlord named herein shall be released from all subsequent obligations or liabilities hereunder, and Landlord's successor in interest shall become the new Landlord hereunder and responsible to Tenant for all obligations of Landlord. In such event, Tenant's Security Deposit shall be transferred to any subsequent Landlord.

**29.0 Amendment of Lease.** This Lease may not be altered, changed, or amended, except by an instrument in writing, signed by the party against whom enforcement is sought. This Lease and any exhibits contain the entire agreement reached in all previous negotiations between the parties hereto and there are no other representations, agreements or understandings of any kind, either written or oral, except as specifically set forth herein.

**30.0 Condemnation.** In the event all or any material part of the Building shall be taken or condemned for any public or quasi-public use or purpose, the Landlord may, at its option, terminate this Lease from the time title to or right to possession of the Building shall vest in or be taken for such public or quasi-public use or purpose. Tenant shall not be entitled to receive any portion of any award made or paid to Landlord representing the property or interest of Landlord taken or damaged and Tenant hereby expressly waives and relinquishes any right or claim to any portion of any such award regardless of whether any such award includes any value attributable to Tenant's leasehold estate. However, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such special and separate damages as may be recoverable by Tenant independent of and without diminution of Landlord's recovery. Except as set



forth above, any non-material partial taking shall be treated in the same manner as a casualty loss for which neither party elects to terminate this Lease, as provided herein.

**31.0 Surrender of Demised Premises.** Tenant agrees to surrender the Premises at the termination of the tenancy herein created, in good, reasonable, and broom-swept condition, reasonable use and wear thereof excepted including all kitchen equipment and fixtures that were part of the Premises at Lease Commencement. 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 Premises, then Tenant shall pay to Landlord all damages that Landlord may suffer on account of Tenant's failure to so surrender to Landlord possession of said Premises, and will indemnify and save Landlord harmless from and against all claims made by any succeeding tenant of 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. At the end of this Lease, the Tenant shall surrender all locks and keys for the Premises to the Landlord at the same address where the Tenant is then paying rent to the Landlord. Tenant agrees that if Tenant does not perform all of its covenants under this paragraph, then Tenant shall pay to Landlord all damages that Landlord may suffer on account of Tenant's failure to so surrender the Premises, and will indemnify and save Landlord harmless from and against all claims made by any succeeding tenant of the Premises against Landlord on account of delay of Landlord in delivering possession of the Premises to the succeeding tenant so far as such delay is occasioned by failure of Tenant to so surrender the Premises in accordance herewith or otherwise.

**32.0 Holding Over.** In case of holding over by Tenant after expiration or termination of this Lease, Tenant shall be deemed a tenant at sufferance and will be liable for Landlord's damages due to such holdover and, in addition, shall pay for each month of such holdover period two hundred percent (200%) of the amount of the Base Rent and other charges accruing for the last month during the term of this Lease. No holding over by Tenant after the term of this Lease shall operate to extend the Lease, except that Landlord, at its option, by written notice to Tenant, may elect to consider Tenant's withholding of the Premises as a holdover of this Lease and treat Tenant as a tenant for another year on the same terms and conditions as are contracted in this Lease, in which case the total rental Base Rent shall be double the rate stipulated herein.

**33.0 Quiet Enjoyment.** Tenant shall and may peaceably have, hold and enjoy the Premises subject to the terms of this Lease and provided Tenant pays the rental Base Rent herein reserved and performs all the covenants and agreements herein contained.

**34.0 Attornment.** In the event of any foreclosure of any mortgage encumbering the Building, or deed-in-lieu thereof, or sale of the Building, Landlord shall be released from all liability hereunder and Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Landlord under this Lease.

**35.0 Estoppel Certificate.** Within five (5) days after request therefor by Landlord, Tenant shall deliver to Landlord, in a form satisfactory to Landlord, a certificate certifying: (i) the good standing and absence of default under this Lease; (ii) the absence of set-offs to charges hereunder; (iii) the validity and completeness of a copy of this Lease and all amendments to be attached to the certificate; (iv) the amount of pre-paid rent; (v) the amount of security deposit; (vi) the commencement and expiration dates hereof; (vii) the dates and amounts of the last made and next due rental installments; and (viii) such other matters as Landlord shall request. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage covering the Premises whose name and address shall have theretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligations; provided, however, that if the nature of Landlord's obligations is such that more than thirty (30) days are required for performance, Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

**36.0 Signage and Window Treatments.** Except with the prior written consent of Landlord, which consent shall not be unreasonably withheld, the Tenant shall not erect, install, display, inscribe, paint or affix any window treatments, signs, lettering or advertising mediums, in, upon, or above any exterior or interior portion of the Premises including, without limitation, the storefront as well as the exterior glass surfaces thereof. Notwithstanding the foregoing, Tenant shall have the right to prominent signage on the Building in a size and location reasonably approved by the Landlord, subject to all applicable laws and ordinances.

**37.0 Parking.** Landlord shall not be liable with respect to parking by Tenant, its employees, invitees and customers. Tenant has not relied on the use of any parking facilities in entering into this Lease. The use of the adjoining municipal parking area, if any, and/or on street parking by Tenant, its employees, guests and invitees shall be at Tenant's



and their sole risk. Landlord has not provided security for any municipal parking area or any other parking area that Tenant, its employees, invitees and/or customers may use.

**38.0 Brokerage.** Landlord and Tenant each warrant to the other that no real estate broker or agent has been used or consulted in connection with the lease of the Premises except as shown in the BLI Rider to whom commission shall be paid by Landlord pursuant to a separate agreement. Each covenants and agrees to defend, indemnify and save the other harmless from and against any actions, damages, real estate commissions, fees, costs and/or expenses (including reasonable attorneys' fees), resulting or arising from any commissions, fees, costs and/or expenses due or claimed to be due to any other real estate broker or agent because of the lease of the Premises and the execution and delivery of this Lease, due to the acts of the indemnifying party.

**39.0 Recording.** Tenant or anyone claiming under Tenant shall not record this Lease or any memorandum thereof without the prior written consent of Landlord. Landlord shall be entitled, but not required, to record a short form of memorandum (the "Memorandum") of this Lease. Within five (5) days of written request by Landlord, Tenant shall execute Landlord's form Memorandum and promptly return such to Landlord.

**40.0 Authority.** Tenant is a duly authorized and existing limited liability company qualified to do business in the state in which the Premises are located, and Tenant has full right and authority to enter into this Lease and each of the persons signing on Tenant's behalf are authorized to do so. In addition, Tenant warrants that it is not necessary for any other person, firm, corporation, or entity to join in the execution of this Lease to make the Tenant's execution complete, appropriate and binding.

**41.0 Severability.** Inapplicability, invalidation, or unenforceability of any one or more of the provisions of this Lease or any instrument executed and delivered pursuant hereto, by judgment, court order or otherwise, shall in no way affect any other provision of this Lease or any other such instrument, which shall remain in full force and effect.

**42.0 Lien Upon Tenant's Property, Renunciation of Exemptions, and Abandonment of Personal Property.** Tenant hereby pledges and assigns to Landlord as security for the payment of any and all Base Rent, Tenant's Share of Real Estate Tax, Insurance Costs and Operating Expenses or other sums or amounts provided for herein, all of the furniture, fixtures, equipment, goods and chattels of Tenant which shall or may be brought or put into the Premises, and Tenant agrees that in the event Tenant defaults under the terms of this Lease, said lien may be enforced by distress, foreclosure or otherwise, at the election of the Landlord. Tenant further agrees that in the event of any monetary breach, the Tenant shall immediately itemize each item of property located on the Premises, including, without limitation, all inventory, and the approximate value of each item of property. Tenant agrees that by failing to comply with this provision the Tenant shall have given the Landlord a lawful basis for a pre-judgment writ of distress to ensure that no property is removed from the Premises before the entry of a judgment for unpaid rent. Tenant hereby expressly waives and renounces for himself and family any and all homestead and exemption rights, including, without limitation, head of household, he may now or hereafter acquire under or by virtue of the constitution and laws of the State of Florida or of any other state, or of the United States, as against the payment of said rent or any other obligation or damage that may accrue under the terms of this Lease. Any and all personal property within the Premises as of the termination of this Lease shall be considered abandoned and shall be the property of the Landlord without further consideration and Tenant hereby irrevocably grants Landlord the right to use or dispose of said property as Landlord sees fit in its sole and absolute discretion. In the event Tenant has abandoned property in the premises, Tenant automatically relinquishes any right or interest in the property, and Tenant hereby irrevocably authorizes Landlord to destroy any or all abandoned property, relet the Premises with said property, or sell, or dispose of said property. Any cash proceeds realized by the Landlord from the sale of the property may be applied by the Landlord to the account of the Tenant or to the payment of expenses incurred by the Landlord on behalf of the Tenant, including, without limitation, any charges for moving or storing property of the Tenant after the Lease is terminated. Tenant shall have no interest in any excess proceeds realized from the sale or other disposition of property after same has been abandoned by Tenant. Under no circumstance shall the Landlord be responsible for the safekeeping of any property left in the Premises after termination of the Lease, regardless of whether the keys and locks to the premises have been changed by the Landlord or the property has been relocated by the Landlord.

**43.0 Effect of Unlawful Retention of Premises by Others.** If Landlord is unable to deliver possession of the Premises to Tenant on the Commencement Date because of the unlawful retention of possession by a previous tenant, Landlord shall not be liable to Tenant in damages or otherwise and this Lease shall not terminate, but Tenant shall have no obligation to pay rent until possession of the Premises is delivered to Tenant.

Handwritten signature and a circled number 3.

**44.0 Binding Effect.** Submission of this instrument for examination does not constitute a reservation of or option for the Premises nor an offer to rent the same. The instrument becomes effective as a Lease only upon execution and delivery of both Landlord and Tenant.

**45.0 OFAC Certification.** Tenant certifies that: (i) it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation.

Tenant hereby agrees to defend, indemnify, and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

**46.0 Force Majeure.** For the purposes hereof, an "Event of Force Majeure" shall be defined as the occurrence of any of the following (to the extent the same is unforeseeable): Act of God, war, terrorism, civil commotion, Casualty, extreme weather conditions, labor difficulties, general shortages of labor, materials or equipment, government regulations or other causes beyond the reasonable control of such party, its agents, employees, contractors or subcontractors (other than causes related to such party's financial condition). To qualify as an Event of Force Majeure, the delayed party must have: (i) provided notice to the other party hereto of such Event of Force Majeure within a reasonable time after the occurrence of same; (ii) thereafter periodically kept the other party hereto fully advised by notice of such delays; and (iii) used commercially reasonable efforts and all due diligence to effect the required performance. The provisions of this Section 47.0 shall only apply where expressly set forth in this Lease and shall in no event be applicable with respect to the payment of Base Rent or other sums due by Tenant hereunder, or delays caused by lack of suitable financing or changes in economic or market conditions.

**47.0 Environmental Concerns.** The Tenant represents and warrants that except to the extent of those materials and substances required and regulated in connection with its use of the Premises as allowed hereby: (a) it will not cause or permit the generation, storage, transportation, disposal, release or discharge of hazardous materials, hazardous waste, hazardous substances, solid waste or pollution upon, in, over or under the Premises and that it will not, to the extent practicable, cause or permit such materials or pollution to migrate to the Premises from neighboring property; (b) that the Tenant will not become involved in operations at the Premises or at other locations owned or operated by the Tenant which would lead to the imposition on the Tenant of liability under Florida Statutes, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et. seq.* ("RCRA"), the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et. seq.* ("CERCLA") or any other federal, state or local ordinances, laws or regulations regarding environmental matters or hazardous substances; (c) Tenant will promptly comply with the requirements of Florida Statutes, RCRA, CERCLA and all federal, state and local laws and regulations regarding environmental matters or hazardous substances as the same may each be amended from time to time (including all federal, state and local laws and regulations regarding underground storage tanks), and all such laws and regulations relating to asbestos and asbestos-containing materials, PCB's, radon gas, urea formaldehyde foam insulation, and will notify Landlord promptly in the event of any release or discharge or a threatened release or discharge of hazardous materials, hazardous wastes, hazardous substances, solid waste or pollution upon, in, over or under the Premises as those terms are defined in Florida Statutes and any federal, state or local ordinances, laws or regulations regarding environmental matters or hazardous substances, or the presence of asbestos or asbestos-containing materials, PCB's, radon gas or urea formaldehyde foam insulation at the Premises, or of the receipt by Tenant of any notice from any governmental agency or authority or from any other person or entity with respect to any alleged such release or presence promptly upon discovery of such release, or promptly upon receipt of such notice, and will promptly send Landlord copies of all results of any tests regarding same on the Premises.

(a) Tenant agrees to indemnify, defend and hold the Landlord harmless from and against any claims, losses, damages, liabilities (including, without limitation, all foreseeable and unforeseeable consequential damages), penalties, fines, charges, interest, judgments, including without limitation attorneys' and paralegals' fees and disbursements through all administrative, trial and appellate proceedings and any clean-up costs, incurred by the Landlord arising out of or in connection with any handling, storage, transportation or disposal of hazardous substances, or any spill, discharge, release, escape or cleanup of hazardous substances ("Hazardous Discharge") or failure to comply with any governmental law, rule or regulation, by the Tenant or any other user or operator of the Premises. For the purposes of this indemnity, any acts or omissions by Tenant or by its employees, agents, contractors or others acting for or on behalf of Tenant (whether or



not they are negligent or intentional) shall be strictly attributable to Tenant. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

(b) Landlord agrees to indemnify and hold Tenant and its directors, officers, employees, and agents, harmless from and against any and all claims, demands, liabilities, obligations, damages, actions, causes of action, judgments, liens, bonding requirements, losses, expenses, fines, charges, penalties administrative and judicial proceedings and orders, and enforcement actions of every kind (any and all of the foregoing, "Claims"), to the full extent that such claim is attributable, directly or indirectly, to the presence of hazardous substances in or on the Premises on the Commencement Date, or to the presence, use, generation, storage, release, or disposal of hazardous substances by Landlord or its employees, contractors or agents during the term of this Lease. This indemnification shall include, without limitation, all costs and expenses incurred in connection with any Claim, including payment of reasonable attorneys' fees incurred by Tenant in connection with the defense of any such Claim, which attorneys' fees shall be paid as incurred, or the conduct of Tenant's defense by Landlord if Tenant shall so elect. The foregoing indemnity shall survive the expiration or earlier termination of the Lease except if such Lease is terminated as a result of Tenant's default hereunder.

(c) Tenant hereby agrees to provide to the Landlord, promptly upon becoming available, copies of all notices, reports, correspondence and filings made by, or received from, any governmental or regulatory authority or insurance company, and such other information as the Landlord may from time to time reasonably request with respect to the use of all or any part of any of the Premises for the handling, storage, transportation, or disposal of hazardous substances. Tenant shall give immediate notice to Landlord of the occurrence of any Hazardous Discharge.

(d) Tenant shall not install any storage tanks on the Premises without Landlord's prior written consent, which consent may be granted or withheld in Landlord's sole discretion. In the event that any storage tanks are installed, maintained, repaired, or replaced on the Premises, the Tenant agrees to comply with any and all federal, state or local environmental laws, rules or regulations which apply to the use of storage tanks. In addition, the Tenant agrees to install monitoring wells around any underground storage tanks that may be installed on the Premises and to regularly monitor such wells to ensure that no leakage has occurred or is occurring into the surrounding surface or ground water. All such storage tanks on the Premises shall be the then current state of the art in design and material.

**48.0 Security Measures.** Tenant hereby acknowledges that Landlord shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises or the Project, and Landlord shall have no liability to Tenant due to its failure to provide such services. Tenant assumes all responsibility for the protection of Tenant, its agents, employees, contractors and invitees and the property of Tenant and of Tenant's agents, employees, contractors and invitees from acts of third parties. Nothing herein contained shall prevent Landlord, at Landlord's sole option, from implementing security measures for the Project or any part thereof, in which event Tenant shall participate in such security measures and the cost thereof shall be included within the definition of Operating Expenses, and Landlord shall have no liability to Tenant and its agents, employees, contractors and invitees arising out of Landlord's negligent provision of security measures.

**49.0 Rules and Regulations.** The rules and regulations as may be hereafter adopted and modified from time to time by Landlord for the safety, cleanliness and operation of the Building and the preservation of good order therein and for the most efficient use by all tenants, agents, employees, invitees and visitors are expressly made a part of this Lease and Tenant agrees to comply with such rules and regulations. No rules and regulations shall prohibit the reasonable use of the Premises by Tenant, its agents, employees, invitees and visitors for the purposes permitted by this Lease. The Landlord shall not be responsible to Tenant for any nonobservance of such rules and regulations by any other tenant of the Building. The rules and regulations shall be binding upon the Tenant upon delivery of a copy of them to Tenant. A copy of the current rules and regulations are attached hereto as Exhibit "C."

**50.0 General Provisions.**

(a) The captions, sections, clauses, article numbers, section numbers and table of contents, if any, of this Lease are inserted for convenience only and in no way limit, enlarge, define or otherwise affect the scope or intent of the Lease or any provision thereof.

(b) The parties hereto intend that the interpretation and enforcement of this Lease be governed by the laws of the State of Florida.



(c) The words "Landlord" and "Tenant" shall also extend to and mean the successors in interest of the respective parties hereto and their permitted assigns, although this shall not be construed as conferring upon the Tenant the right to assign this Lease or sublet the Premises or confer rights of occupancy upon anyone other than Tenant.

(d) All charges due from Tenant to Landlord hereunder, including, without limitation, any charges against Tenant by Landlord for services or work done on the Premises by order of Tenant, except sales tax, shall be deemed additional rent, shall be included in any lien for rent, and shall be paid (including sales tax) without setoff or defense of any kind.

(e) This Lease has been fully negotiated and reviewed by the parties and their counsel and is the work product of both Landlord and Tenant; it shall not be more strictly construed against either party. Provisions inserted herein or affixed hereto shall not be valid unless appearing in the duplicate original hereof held by the Landlord and initialed by the Parties hereto. In the event of variation or discrepancy, the Landlord's duplicate shall control.

(f) This Lease and the exhibits, schedules, addenda, riders, and guaranty, if any, attached hereto are incorporated herein and set forth the entire agreement between the Landlord and Tenant concerning the Premises and Building and there are no other agreements or understandings between them. Nothing in this Lease creates any relationship between the parties other than that of lessor and lessee and nothing in this Lease constitutes the Landlord a partner of the Tenant or a joint venturer or member of a common enterprise with the Tenant.

(g) Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating a relationship of principal and agent or of partnership or of joint venture between the parties hereto. Neither the method of computation of rent, nor any other provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

(h) The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof. Landlord and Tenant acknowledge that they were each represented by counsel in connection with this Lease and that each of them or their respective counsel reviewed and revised this Lease and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party or Landlord shall not be employed in the interpretation of this Lease.

(i) Each provision performable by Tenant shall be deemed both a covenant and a condition. This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of modification.

(j) Subject to the provisions hereof restricting assignment or subletting by Tenant and regarding Landlord's liability, this Lease shall bind the parties, their heirs, personal representatives, successors and assigns. This Lease shall be governed by the laws of the State of Florida.

(k) The "Effective Date" of this Lease shall be the date last executed by the last of the parties to execute this Lease without amendment or deletion to this Lease and its Exhibits.

(l) The submission of this Lease for examination by Tenant does not constitute an offer or an option to lease the Demised Premises, nor is it intended as a reservation of the Demised Premises for the benefit of Tenant, nor shall this Lease have any force or validity until and unless a copy of it is returned to Tenant duly executed by Landlord.

**53. STATUTORY NOTICE REQUIREMENT.** Tenant hereby acknowledges receipt of the following notice as required by Chapter 88-285, Laws of Florida:

**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 PUBLIC**



**HEALTH UNIT.**

[SIGNATURES ON FOLLOWING PAGE]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed on this 30 day of March, 2019 this Lease in several counterparts, each of which counterpart shall be considered an executed original. In making proof of this Lease it shall not be necessary to produce or account for more than one counterpart.

Witness:

  
Francisco Hernandez

**"LANDLORD"**

**5501 NE 2<sup>ND</sup> AVENUE, LLC**  
a Florida limited liability company

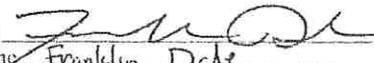
By:   
Name: Francisco Hernandez  
Its: Landlord

Witness:

  
Francisco Hernandez

**"TENANT"**

**District Live, LLC**  
a Florida limited liability company

By:   
Name: Franklin Dale  
Its: MGR

SCHEDULE OF EXHIBITS

EXHIBIT "A" - LANDLORD'S WORK (NONE)

EXHIBIT "B" - TENANT'S IMPROVEMENTS

EXHIBIT "C" - RULES & REGULATIONS

EXHIBIT "D" - BOUNDARY SURVEY

①  
②

EXHIBIT "A"

LANDLORD'S WORK

TENANT is familiar with the premises and is leasing the same in its "as is" condition. LANDLORD shall have no obligation for any improvements to the premises, except as specifically provided to the contrary in the Lease.



**EXHIBIT "B"**

**TENANT'S IMPROVEMENTS**

TENANT WILL BE RESPONSIBLE FOR ALL OF THE IMPROVEMENTS TO THE PREMISES WHICH ARE NECESSARY FOR THE OPERATION OF A BAR RESTAURANT LIVE MUSIC VENUE FACILITY, SUBJECT, IN ALL RESPECTS TO THE TERMS AND CONDITIONS SET FORTH IN SECTION 16.0 OF THE LEASE.

ALL WORK MUST BE DONE BY A LICENSED AND INSURED GENERAL CONTRACTOR WITH ALL OF THE NECESSARY PERMITS.

TENANT IS RESPONSIBLE TO OBTAIN ANY AND ALL PERMITS AND LICENSES NECESSARY TO OPERATE ITS BUSINESS IN THE CITY OF MIAMI, MIAMI-DADE COUNTY, FLORIDA.



EXHIBIT "C"

RULES AND REGULATIONS

1. In the event of any conflict between the terms of these rules and regulations and the express provisions of the Lease, the express, applicable provisions of the Lease shall control. Landlord reserves the right, without the approval of Tenant, to rescind, add to and amend any rules or regulations with respect to any tenant or tenants. Tenant shall provide a copy of these rules and regulations to each of its employees to facilitate compliance with these standards.
2. The sidewalks, walks, plaza entries, corridors, ramps, staircases and elevators, if any, of the premises shall not be obstructed, and shall not be used by Tenant, or the employees, agents, servants, visitors or invitees of Tenants, for any purpose other than ingress and egress to and from the Premises.
3. Tenant, or the employees, agents, servants, visitors or invitees of Tenant, shall not at any time place, leave or discard any rubbish, paper, articles, or object of any kind whatsoever outside the doors of the Premises or in the corridors or passageways of the Premises.
4. Tenant shall not place, or cause or allow to be placed, any sign, placard, picture, advertisement, notice or lettering whatsoever, in, about or on the exterior of the Premises or Building except in compliance with all applicable laws and ordinances and governmental regulations.
5. Tenant shall not place, or cause or allow to be placed, any satellite dish, communications equipment, computer or microwave receiving equipment, antennae or other similar equipment about or on the roof or exterior of the Premises. Any such equipment so placed without the Landlord's prior written consent may be removed by Landlord without notice to and at the expense of Tenant.
6. Tenant shall not bring or permit to be brought or kept in or on the Premises any inflammable, combustible, corrosive, caustic, poisonous, or explosive substance, or firearms, or cause or permit any odors to permeate in or emanate from the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to neighboring tenants by reason of light, radiation, magnetism, noise odors and/or vibrations.
7. Tenant shall give immediate notice to Landlord in case of known theft, unauthorized solicitation or accident in the Premises or of known defects therein or in any fixtures or equipment, or of any known emergency in the Building.
8. No animals or birds shall be brought or kept in or about the Premises, with the exception of guide dogs accompanying visually handicapped persons.
9. No portion of the Premises or any other part of the Building shall at any time be used or occupied as sleeping or lodging quarters.
10. Tenant shall at all times keep the Premises neat and orderly.

GUARANTY OF LEASE AGREEMENT

THIS GUARANTEE TO THE LEASE AGREEMENT ("Guaranty Agreement") executed this the 30 day of March 2019 by Franklin Dale collectively ("Guarantor"), and joined in by District Live, LLC (hereinafter called "LESSEE" or "TENANT"); for the benefit of 5501 NE 2<sup>nd</sup> Avenue, LLC, a Florida limited liability company, and its successors or assigns ("Landlord").

**WITNESSETH:**

WHEREAS, Landlord and Tenant are simultaneously herewith entering into a Lease Agreement (the "Lease"), which Lease covers the (see attached plan) Space located at : 5501 NE 2<sup>nd</sup> Avenue (Also Known As 215 NE 55<sup>th</sup> Street), 206 NE 55<sup>th</sup> Terrace, 5431 NE 2<sup>nd</sup> Avenue and 222 NE 55<sup>th</sup> Street Miami, FL 33137 (the "Demised Premises"); and

WHEREAS, Guarantor is the parent company of and has a financial interest in Tenant and desires to induce Landlord to enter into the Lease with Tenant; and

WHEREAS, Landlord would not enter into the Lease without this Guaranty of Lease Agreement.

NOW, THEREFORE, in consideration of the premises and for Ten (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged by Guarantor from Landlord, and to induce Landlord to enter into the Lease, Guarantor and Landlord do hereby agree as follows:

1. The foregoing recitations are true and correct and are incorporated herein by reference.
2. The Guarantor, jointly and severally (if more than one), does hereby guarantee unto Landlord the full, complete, faithful and timely payment and performance of each and every of the obligations, covenants and agreements which Tenant is required to do or perform or cause to be done or performed from and after the execution of the Lease, through, including the expiration thereof, and further including but not limited to the prompt payment, when due, of all rents and other sums due and to become due under the Lease.
3. Landlord shall have the right to proceed against Tenant without first proceeding against any Guarantor, and shall have the right to proceed against any Guarantor without proceeding against Tenant or any other Guarantors, and Landlord shall, and does have the right to, release Tenant or any Guarantors from any and all liability under the Lease or under this Guaranty of Lease Agreement and the same shall not in any way prejudice the rights of Landlord against the Tenant or the Guarantors not so released.
4. No defense which Tenant or any Guarantor may have with respect to this Guaranty of Lease Agreement or the Lease (including, but not limited to, any defense based upon or arising from any insolvency or bankruptcy or otherwise) shall operate as a defense with respect to any other Guarantor, all such other Guarantors remaining fully liable hereunder to Landlord with the rights of Landlord as to such Guarantors not being prejudiced thereby. Furthermore, no act of forbearance on the part of Landlord or grant of an extension of time by Landlord to Tenant shall operate as a defense to the Guarantor or release any Guarantor from any obligations or liabilities under this Guaranty Agreement, nor shall any waiver by Landlord of any of the obligations of Tenant under the Lease in any manner by Tenant and Landlord operate to release the Guarantor from any obligation or liability under this Guaranty of Lease Agreement; the Guarantor being bound by, and deemed to consent to, any such waiver, modification or amendment.
5. Guarantor shall be deemed to have notice of any matter or thing as to which Tenant has notice and any notice given to Tenant, as provided for in the Lease, shall be deemed notice to the Guarantor, though the Guarantor recognizes and agrees that Guarantor is not entitled to, and waives, any notice of any matter or thing as to which Tenant is not entitled to notice under the Lease.
6. In the event it becomes necessary to enforce this Guaranty of Lease Agreement through an attorney, with or without litigation, Landlord shall be entitled to recover from the Guarantor all costs incurred, including reasonable attorneys' fees, which shall include Landlord's reasonable attorneys' fees through and including all appeals and whether or not suit be instituted.
7. The rights of Landlord under this Guaranty of Lease Agreement are in addition to and not in lieu of Landlord's rights under the Lease in the event of a default by Tenant.
8. This Guaranty Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, successors and assigns.

②

9. The Guaranty Agreement for the initial Lease Term (April 1st, 2019 thru March 31st, 2022) shall be for a maximum of Three Hundred Eighty Eight Thousand Eight Hundred Dollars (\$388,800.00). Should the Lease Renewal Term Options be exercised between the Landlord and Tenant this Guaranty shall apply to that full Lease Term's dollar amount.

10. THE PARTIES KNOWINGLY AND BEING FULLY ADVISED, HEREBY WAIVE TRIAL BY JURY IN ANY PROCEEDING BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE DEMISED PREMISES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE.

IN WITNESS WHEREOF, Landlord, Guarantor and Tenant have executed this Guaranty of Lease Agreement (Tenant executing this Guaranty of Lease Agreement to evidence its consent to the terms and provisions hereof) the day and year first above written.

WITNESSES:

  
Print Name: Franklin Dale

Print Name: \_\_\_\_\_  
(As to "Tenant")

  
Print Name: Franklin Dale  
(As to "Guarantor")

Print Name: \_\_\_\_\_  
(As to "Guarantor")

District Live, LLC

By:   
Title: Manager

"TENANT"

BY: Franklin Dale

  
with full authority

"GUARANTOR"

**ADDENDUM**

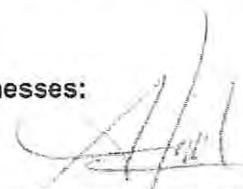
- 5501 NE 2nd Ave (a.k.a. 215 NE 55th St)
- 206 NE 55th Terrace
- 5431 NE 2nd Avenue
- 222 NE 55th Street, Miami, FL 33137
- 4COP Liquor License Rental

This Addendum is executed on the 1st day of April 2019 by and between 5501 NE 2ND AVENUE, LLC, CHURCHILL'S PUB, LLC and DISTRICT LIVE AGENCY, LLC ("Lessee") (collectively the "Parties"), and made part of: that certain lease dated April 1, 2019; the guarantee of lease agreement dated March 30, 2019; and the liquor license rental agreement dated April 1, 2019.

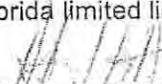
**LESSEE COMPANY NAME**

The correct company name of the Lessee is "DISTRICT LIVE AGENCY, LLC", a Florida limited liability company. The Parties hereby agree to correct the company name of the Lessee in all three documents, replacing the incorrect DISTRICT LIVE, LLC with DISTRICT LIVE AGENCY, LLC, in every instance where it appears.

**Witnesses:**

  
\_\_\_\_\_  
Name: Francisco Hernandez  
\_\_\_\_\_  
Name: TEDDY PIERRE-LOUIS

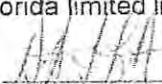
**5501 NE 2nd Avenue, LLC**  
a Florida limited liability company

By:   
\_\_\_\_\_  
Name: Donita Leavitt  
Title: Manager

**Witnesses:**

  
\_\_\_\_\_  
Name: Francisco Hernandez  
\_\_\_\_\_  
Name: TEDDY PIERRE-LOUIS

**Churchill's Pub, LLC**  
a Florida limited liability company

By:   
\_\_\_\_\_  
Name: Donita Leavitt  
Title: Manager

**Witnesses:**

  
\_\_\_\_\_  
Name: Francisco Hernandez  
\_\_\_\_\_  
Name: TEDDY PIERRE-LOUIS

**District Live Agency, LLC**  
a Florida limited liability company

By:   
\_\_\_\_\_  
Name: Franklin Dale  
Title: Manager

**COMPOSITE  
EXHIBIT B**

# Churchill's Pub's Post

Ian Michael >

Sat, Aug 22, 8:51 PM

Can I get the new IG PW? I would love to make a post for Walter. He passed away today. He was a Churchills legend.

Of course.

4Publnsta!

Thanks man. Walter Lure. He last played the pub 2012.

123521

That's me signing in

Thank you

Look, I'm in the middle of a dogfight, and I'm trying to deal with some real time shit.

I'm trusting you with access at your level.



iMessage





# Churchill's Pub's Post



Ian Michael >

Thank you. Let me know how I can help.

I just ask that you trust me, that I'm fighting for the best interest of Church.

At some point we can download.

I know we've had a few hiccups between us but I still believe Churchills and little haiti has a better future with you in it. I'm not sure if I ever told you but I do really appreciate the opportunities you have given me

Thank you.

We're not done by any measure, just challenges getting through this.

Unfortunately Mal's accident had a negative impact on how he conducts business. And he's being held accountable.



iMessage





# Churchill's Pub's Post



Ian Michael

I hope he gets well soon and comes to his senses.

I've noticed venues are doing events now. Sweat is having record store day. Inhale is starting an open mic. Rain dogs up in Jacksonville and Brass mug in Tampa doing shows.

They are small shows, limited, raindogs charging \$20 and including dinner

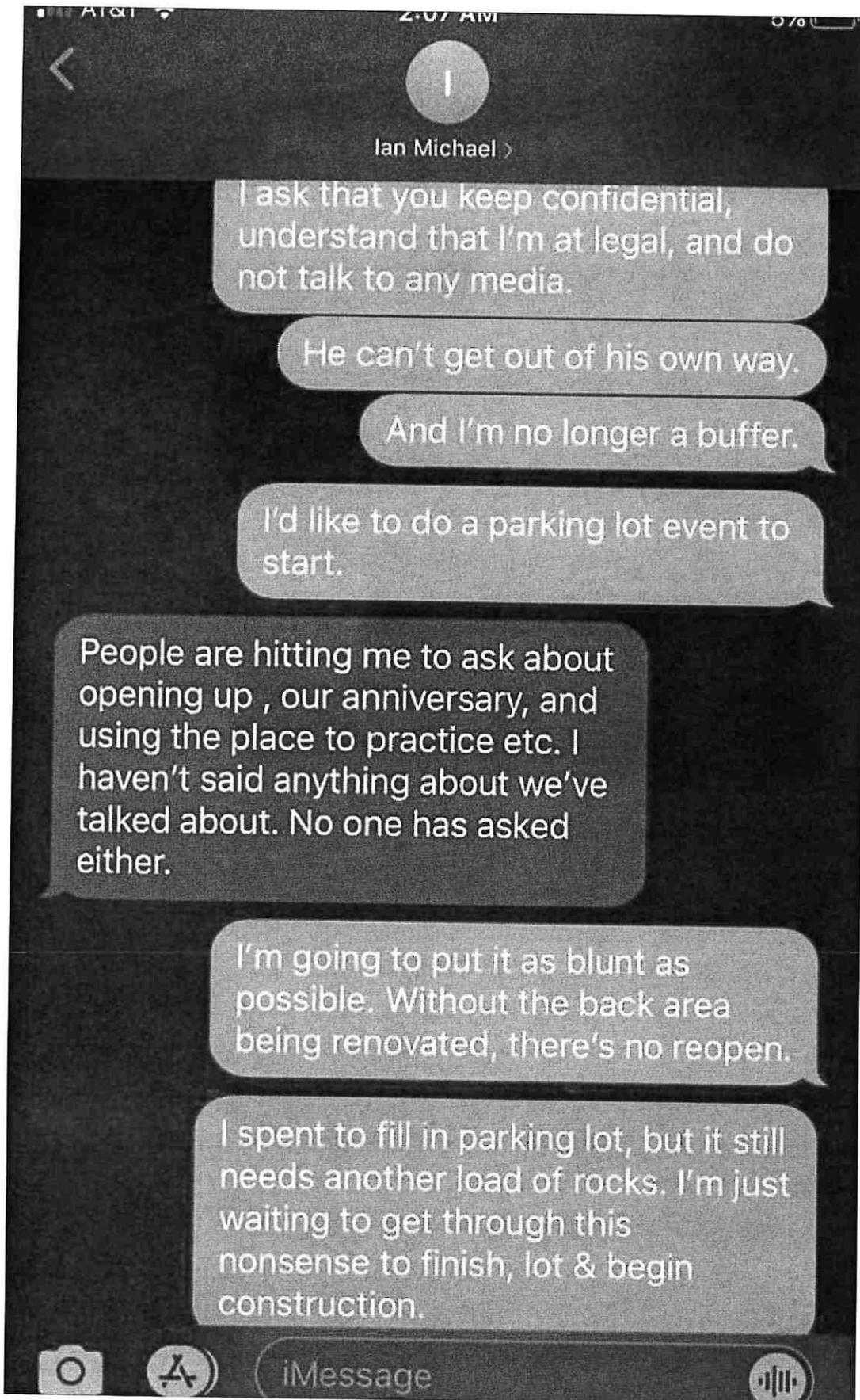
I've adjusted, maneuvered, & rerouted a lot of shit that impacted the pub, all that had nothing to do with that business. Luckily the transition last year helped, but also created an opportunity he couldn't resist trying to benefit from.

Doesn't Mal always do that? You've mentioned him being like that with everything





## Churchill's Pub's Post





Ian Michael >

We need to open with an outside, and we'll crush.

You're right about that for sure outside is better. It's kind of funny too, you can even joke market like, "you always spend the show in the parking lot, show we brought the show outside!"

Hopefully numbers keep going down and we see a September. We're right in middle of hurricane season, no rush.

The places that are doing shows only book 1-2 weeks ahead because nobody knows what will happen

Exactly

Small local acoustic acts only at rain dogs

Brass mug had bands



iMessage





Ian Michael >

I pictured us blocking out the lot and everything out there.

Outdoor with tables spaced far apart sounds great 👍

I just need Mal to pull his shit together.

I think this week will move the needle.

He loves the fight.

Fri, Sep 4, 11:21 PM

Yo.

U working on Google Business as Winston Churchill?

??

I'm getting notices

Yes



iMessage





Ian Michael >

Yes

Why?

I was trying to remove myself so I would stop getting emails from it

I need to be the primary owner of the account.

I understand.

Can you transfer?

Emails to pub address?

????

Sat, Sep 5, 11:02 AM

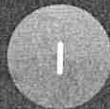
I'm not sure what the deal is, but I'm going to be clear with you. If you need anything regarding the pub, please talk to me first.

If you decide to assist Mallory and



iMessage





Ian Michael >

If you decide to assist Mallory and restrain our trade in any way, I will include you in the legal battle that ensues.

Perhaps I'm completely reading this wrong, but any actions to anything that is under my contract, will be seen as deliberate.

Understood. I passed out last night. It looks like you switched it. Thank you. I haven't heard from Mal. No worries.

Sunday 10:02 AM

Did you change Churchill's Group?

What's with the fire in that group?

Do you know Renzo?

Steven has been sharing a photo of the eviction notice around

Facebook. Rumors are flying. Maybe



iMessage





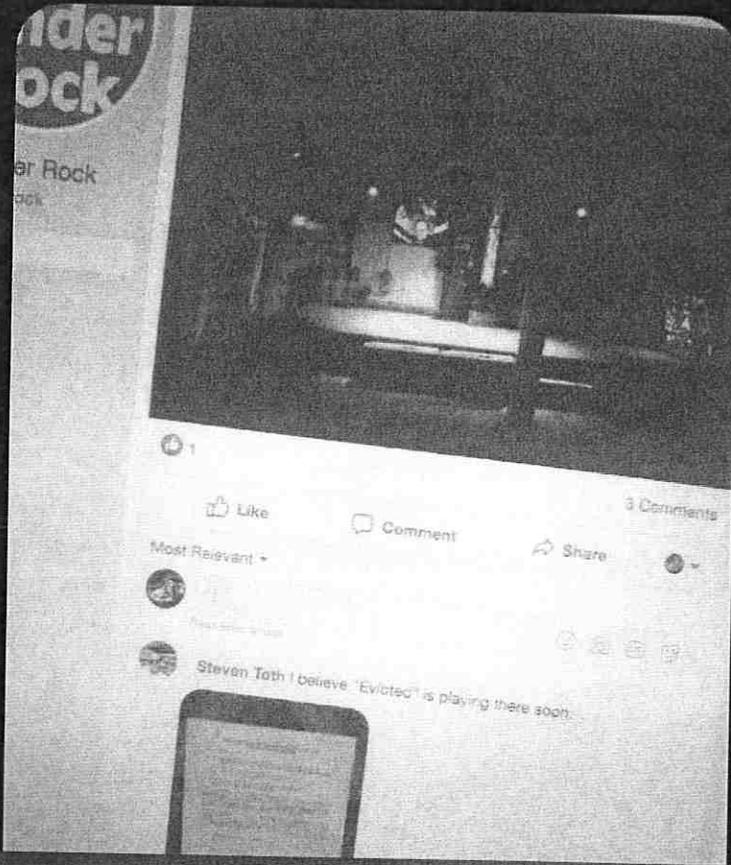
Ian Michael >

Did you change Churchill's Group?

What's with the fire in that group?

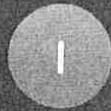
Do you know Renzo?

Steven has been sharing a photo of the eviction notice around Facebook. Rumors are flying. Maybe ask him to stop?



iMessage





Ian Michael >

I know that.

I'm asking about the group.

I was an admin, now I'm not.

It was changed from Churchill's Pub, to Churchill's

Did we get hacked, or did you make changes?

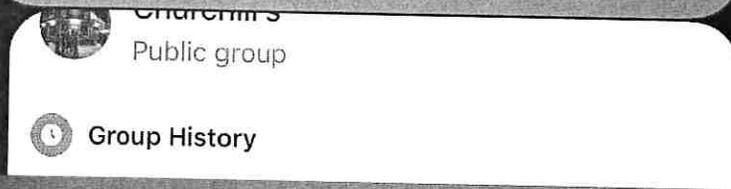
Idk I'll check. Did you FB get hacked?

No.

Looks like some changed group settings.

I can't delete posts.

It's telling me to join group, when I was an admin



iMessage





Ian Michael >

Changed yesterday...

Who's responsible for that?



This group is located in Miami, Florida



History

Group created on April 8, 2010. Name recently changed from Churchill's Pub.

Members

See All



Ian is an admin.

There are Pages in this group. Pages may be managed by multiple people who can see all group members and content. [Learn More](#)

??

Is there something you need to tell me?



iMessage



**COMPOSITE  
EXHIBIT C**

All Inboxes



google-my-business-noreply... 1:47 PM

To: Franklin Dale >

# Ian Michael has requested access to Churchill's Pub on Google My Business

Google My Business

Franklin Dale

Someone has requested ownership of **Churchill's Pub** on Google My Business.



Ian Michael, Employee  
imloughlin@gmail.com  
3055429481

Review Request

Visit our Help Center



X Manage users



Owners



Franklin Dale (Primary owner)

Invited Users



Pablo Barg



# Business

## Google My Business

Franklin Dale

Someone has requested ownership of **Churchill's Pub** on Google My Business.



Ian Michael, Employee  
imloughlin@gmail.com  
3055429481

Ian Michael will now be allowed to verify their affiliation with the business to gain access. If they complete verification, your listing will become unverified.

Review Request

 Visit our Help Center

Google Inc., 1600 Amphitheatre Parkway, Mountain View, CA 94043  
You have received this email to update you about important changes related to your Google My Business product or listing.



 All Inboxes  

Google My Business

3:08 PM

To: FD@districtliveagency.com &gt;

## Churchill's Pub's Business Profile is a duplicate

Google My Business

### Your profile has been marked as a duplicate

Churchill's Pub at 5501 Northeast 2nd Avenue, Miami, FL 33137, your Business Profile on Google has been marked as a duplicate. When you add a location that's already been verified in Google My Business, it won't appear on Google Maps and Search and will be marked as a "duplicate location" in your account.

To avoid confusion, and to make sure the correct Business Profile shows up on Google, remove the duplicate Business Profile in your Google My Business account today. If you'd like to get access to a profile that's already been verified, you can request ownership of it.



Visit [Google My Business Help](#) to learn more.



# **EXHIBIT D**



churchills pub

- All
- News
- Maps
- Images
- Videos
- More
- Settings
- Tools

About 747,000 results (0.82 seconds)

<https://churchillspub.com>

### Churchill's Pub - Miami

Churchill's Pub @churchillspub. If you reside in Miami Dade and plan to get the vaccine you should know pre registration is now open to all ages. V... <https://t.co/> ...  
Calendar · Hours · About Us · Menu

<https://www.facebook.com/ChurchillsPub>

### Churchill's Pub - Miami, Florida | Facebook

Churchill's Pub · 119 likes · 6 talking about this. Miami's home for live music since 1979.

<https://www.miamiherald.com/music/churchills-pub>

### Churchill's Pub in Miami Is Not Closing Despite Eviction ...

Sep 15, 2020 — Franklin Dale, who is in the process of being evicted as tenant operator of Churchill's Pub, asserts that he owns the venue. According to ...

[https://www.tripadvisor.com/Attraction\\_Review-g344...](https://www.tripadvisor.com/Attraction_Review-g344...)

### Churchill's Pub (Miami) - 2021 All You Need to Know BEFORE ...

Churchill's Pub · 17 Reviews: #24 of ... Yes, it's not a high end expensive bar like Miami beach places.. more of a simple bar without all the bullsh-t. Nice people ...  
Rating: 4 · 17 reviews

When is Churchill's Pub open?

What restaurants are near Churchill's Pub?

<https://www.yelp.com/Nightlife/Bars>

### CHURCHILLS - 139 Photos & 200 Reviews - Music Venues ...

4/13/2019. Before grungy bars went mainstream, Churchill's was there. In all it's grt and glory, this British Dive Bar oozing the perfect mix of ... read more. Useful.  
Rating: 4 · 200 reviews · Price range: \$



Temporarily closed

## Churchill's Pub

Website Directions Save Call

4.4 927 Google reviews

\$ Pub

Featuring local bands since 1979, this no-frills spot also has pool tables, full bar & sports on TV.

Address: 5501 NE 2nd Ave, Miami, FL 33137

Menu: churchillspub.com

Phone: (305) 757-1807

Suggest an edit · Own this business?

Add missing information

Add business hours

Questions & answers

See all questions (12)

Ask a question

Critic reviews

https://twitter.com/churchillspub

### Churchill's Pub (@churchillspub) | Twitter

The latest Tweets from Churchill's Pub (@churchillspub). Miami's home for live music since 1979. We ain't going no where. 5501 NE 2nd Ave Miami, FL 33137.

#### Images for churchills pub

marilyn manson miami florida little haiti churchillspub miami fl

View all

Report images

https://www.10best.com/nightlife/churchills-pub

### Churchill's Pub - Best Nightlife in Miami - 10Best

Little Haiti isn't the first place you'd expect to find a punk rock British pub, but that's exactly where you'll find Churchill's. This long-standing Miami icon has often...

**Bars:** "Football (that's soccer to us Americans)..." **Hours:** Daily 11am-3am  
**Live Music:** "Come on Mondays for jazz or folk..." **Comedy Clubs:** "Monday nights are both op...  
Review by Priscilla Blossom

https://miamirail.org/essays/our-beloved-shithole-a-...

### Our Beloved Shithole: A Eulogy for Churchill's Pub | Miami Rail

Equally a kitschy punk slash rock destination for tourists, and a locally infamous, near-flawless dive bar and live venue, Churchill's Pub is a special place not at...

https://www.theinfatuation.com/miami/churchills-pub

### Churchill's Pub - Little Haiti - Miami - The Infatuation

Churchill's is a grimy dive bar in Little Haiti with live music seven nights a week. And we absolutely love it.

Review by Ryan Pfeffer · Price range: \$

*Churchill's is a grimy dive bar in Little Haiti with live music seven nights a week. And we absolutely love it.*  
Full review

**Ryan Pfeffer**  
The Infatuation

*One of the city's premier spaces for live rock, this Little Haiti joint promotes the local music scene, hosting many bands for a fun, no-frills crowd. Monday is open-mic night.* Full review

**Zagat**

Send to your phone Send

Reviews Edit your review Add a photo

**Z** "Awesome music, atmosphere, and good price for drinks!"

**Bartenders** scammed my credit card after giving me awful service"

**C** "Great place to relax, people watch, eat good food or all the above."

**P** **Pablo Barg** - Edit a year ago

View all Google reviews

### From Churchill's Pub

"We are closed & have been since March 2020 due to the COVID19 pandemic. We should re-open in late 2021. Please stay tuned for updates. Since 1979, Churchill's has grown to become a staple of the Miami Music Scene. Often referred to as the "CBGB of...  
More

churchills pub - Google Search

Related searches :

churchills pub Instagram

churchill's pub facebook

las rosas miami

churchill's little haiti

churchills barber miami

grammps miami

churchill's pub savannah

churchill's bar menu

Updates from Churchill's Pub

View previous updates on Google

Profiles

Facebook Twitter Instagram YouTube

People also search for View 15+ more

1 2 3 4 5 6 7 8 9 10 Next

Ball & Chain Live Music Grammps Bar Lagniappe Bar Nancy Live music bar

About this data

Feedback

33127, Miami, FL - Based on your past activity - Use precise location - Learn more

Help Send feedback Privacy Terms

# **EXHIBIT E**

# Churchill's Pub, LLC

## LIQUOR LICENSE RENTAL AGREEMENT

DATE OF AGREEMENT	TERM OF AGREEMENT	MONTHLY RENT
4/1/19	Month to Month	\$1,300.00

LICENSE NUMBER	BEV 2300396 4COP
LESSEE:	DISTRICT LIVE, LLC
ADDRESS:	16003 Kingsmoore Way, Miami, FL 33104
LESSOR:	CHURCHILLS PUB, LLC
BUSINESS ADDRESS:	5501 NE 2 <sup>ND</sup> AVENUE, MIAMI, FL 33137

In consideration of the mutual covenants and herein stated, Lessor hereby rents to Lessee and Lessee hereby rents from Lessor the right to use the above designated State of Florida Department of Business and Professional Regulation Division of Alcoholic Beverages & Tobacco 4COP Liquor License (the "License"), together with the rights thereto, for the above Term to operate the bar known as Churchill's Pub.

### Additional Agreements:

A) Hold Harmless: Lessee agrees to indemnify and save harmless Lessor from and against any and all loss, damage, claim, demand, liability or expense by any reason to any person, or the License Holder which may arise or be claimed to have arisen as a result of the Lessee's use of said License by the Lessee or by any reason thereof or in any way arising on account of any injury or damage caused including indemnification from and against the claims of any party claiming by, through or under the License Holder.

B) Municipal Violations: Lessee agrees to immediately cure any Municipal violations that may arise from its use of the License.

NOTE: ALL RENTS ARE PAYABLE TO "CHURCHILL'S PUB LLC" AND DUE ON THE FIRST OF EACH MONTH. IF RENT IS UNPAID AFTER THE 5TH OF ANY MONTH, A LATE CHARGE OF \$50.00 PLUS \$5.00 PER DAY THEREAFTER WILL ALSO BE DUE.

\_\_\_\_\_  
Lessee: DISTRICT LIVE, LLC  
By Franklin Dale

\_\_\_\_\_  
Lessor: CHURCHILL'S PUB, LLC  
By: Donita Leavitt

\_\_\_\_\_  
By Franklin Dale

# **EXHIBIT F**

5:16:09 PM 3/25/2021

**Data Contained In Search Results Is Current As Of 03/25/2021 05:15 PM.**

### Search Results

Please see our [glossary of terms](#) for an explanation of the license status shown in these search results.

For additional information, including any complaints or discipline, click on the name.

License Type	Name	Name Type	License Number/ Rank	Status/Expires
Permanent Food Service	<b><u>CHURCHILL'S PUB</u></b>	DBA	SEA2303043 Seating	Current, Active 10/01/2021
	<b>License Location Address*:</b>	5501 NE 2 AVE MIAMI, FL 33137		
	<b>Main Address*:</b>	5501 NE 2 AVE MIAMI, FL 33137		
	<b>Mailing Address*:</b>	5501 NE 2 AVE MIAMI, FL 33137		
Permanent Food Service	<b><u>CHURCHILL'S PUB LLC</u></b>	Primary	SEA2303043 Seating	Current, Active 10/01/2021
	<b>License Location Address*:</b>	5501 NE 2 AVE MIAMI, FL 33137		
	<b>Main Address*:</b>	5501 NE 2 AVE MIAMI, FL 33137		
	<b>Mailing Address*:</b>	5501 NE 2 AVE MIAMI, FL 33137		
Retail Beverage	<b><u>CHURCHILLS PUB</u></b>	DBA	BEV2300396 4COP	Inactive, Inactive 03/31/2021
	<b>License Location Address*:</b>	INACTIVE INACTIVE- MIAMI DADE NO CITY CODE - 99999, FL 99999		
	<b>Main Address*:</b>	300 NE 71 STREET MIAMI, FL 33138		
Retail Beverage	<b><u>CHURCHILLS PUB LLC</u></b>	Primary	BEV2300396 4COP	Inactive, Inactive 03/31/2021
	<b>License Location Address*:</b>	INACTIVE INACTIVE- MIAMI DADE NO CITY CODE - 99999, FL 99999		
	<b>Main Address*:</b>	300 NE 71 STREET MIAMI, FL 33138		

[Back](#)
[New Search](#)

**\* denotes**

Main Address - This address is the Primary Address on file.

Mailing Address - This is the address where the mail associated with a particular license will be sent (if different from the Main or License Location addresses).

License Location Address - This is the address where the place of business is physically located.

**2601 Blair Stone Road, Tallahassee FL 32399** :: Email: **Customer Contact Center** :: Customer Contact Center: