

**ORDINANCE 432-13**

**AN ORDINANCE OF THE CITY OF BRADENTON BEACH, FLORIDA GRANTING AND AUTHORIZING A TWO YEAR OPTION AND PIER LEASE AND CONCESSIONAIRE AGREEMENT TO CAST AND CAGE, LLC WITH A RIGHT TO EXTEND THE LEASE TERM FOR THREE SEPARATE AND SUCCESSIVE TWO YEAR, THREE YEAR AND FIVE YEAR PERIODS TOTALING TWELVE LEASING YEARS FOR THE PURPOSE OF OPERATING A RESTAURANT AND RELATED RECREATIONAL AND SMALL BUSINESS FACILITIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BRADENTON BEACH, FLORIDA, AS FOLLOWS:**

**WHEREAS,** Article VIII, Section 2 of the Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable municipalities to conduct municipal government, perform municipal functions and render municipal services; and,

**WHEREAS,** Chapter 166, Florida Statutes, the "Municipal Home Rule Powers Act," implements the applicable provisions of the Florida Constitution and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law and to enact ordinances in furtherance thereof; and,

**WHEREAS,** the City Commission is authorized to lease, acquire, dispose of, or change the use of City real property pursuant to the City Charter, Article IV, Section 1,

**WHEREAS,** the City of Bradenton Beach ("City") owns and operates a City Pier located at 200 Bridge Street, Bradenton Beach, Florida (the "Pier"); and

**WHEREAS,** part of the funding for the 2006/2007 re-build Pier was from a recreational boating grant, wherein the entire Pier Structure was deemed a recreational facility; and

**WHEREAS,** the City advertised a Request for Proposal ("RFP") to lease and operate three structures on the Pier, a Restaurant area with an exclusive license to provide food and drink concessionaire services in accordance with Section 212.03(10), Florida Statutes, a Bait Shop and Harbor Master Office (collectively referred to as the "Property") within the City limits; and

**WHEREAS**, after receiving and evaluating all bids, the City accepted the proposal from Cast and Cage, LLC ("C&C"); and

**WHEREAS**, C&C desires to lease the Property for purposes of operating a Restaurant to provide food and drink concessionaire services and various low-impact recreational and tourist-friendly small businesses in the other two structures as set forth in the RFP; and

**WHEREAS**, C&C and the City have negotiated concessionaire and lease terms for the Property and wish to codify and finalize them in an ordinance pursuant to Article IV, Section 1 of the City of Bradenton Beach Charter; and

**WHEREAS**, the City Commission has determined that the enactment of this Ordinance is for a proper municipal purpose and protects the public health, safety and welfare,

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

**Section 1. Findings of Fact.** The WHEREAS clauses set forth above are adopted herein as findings of fact.

**Section 2. Lease Provisions.** Attached hereto and incorporated herein by reference as Exhibit A is the two-year lease and concessionaire agreement with options for renewal between the City of Bradenton Beach and C&C, LLC. Any lease amendments shall be stated in writing and approved in a public meeting by the City Commission.

**Section 3. Authorization.** The City Commission authorizes the Mayor of the City of Bradenton Beach to sign the lease and concessionaire agreement and all other documents deemed necessary to finalize the lease and concessionaire agreement.

**Section 4. Severability.** If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of the Ordinance.

**Section 5. Effective Date.** This Ordinance shall become effective immediately upon adoption.

**PASSED AND DULY ADOPTED** with a quorum present and voting this 8<sup>th</sup> day of November, 2013.

**CITY OF BRADENTON BEACH, FLORIDA, BY AND THROUGH THE CITY COMMISSION OF THE CITY OF BRADENTON BEACH.**

BY:   
JOHN SLAUGHTER, MAYOR

ATTEST:   
CITY CLERK/DEPUTY CITY CLERK

## **EXHIBIT A**

**LEASE AND CONCESSIONAIRE AGREEMENT  
BETWEEN  
CITY OF BRADENTON BEACH  
AND CAST AND CAGE, LLC**

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<b>EXHIBITS</b>

## LEASE AND CONCESSIONAIRE AGREEMENT

**THIS LEASE AND CONCESSIONAIRE AGREEMENT** (this "Lease") dated as of \_\_\_\_\_ by and between the **CITY OF BRADENTON BEACH**, a Florida municipal corporation, having an address at 107 Gulf Drive North, Bradenton Beach, Florida 34217 ("Landlord"), and **CAST AND CAGE, LLC**, a Florida Limited Liability Company, having an address at 132 48<sup>th</sup> Street, Holmes Beach, Florida 34217 ("Tenant").

1. Landlord owns certain real property located in Manatee County, Florida, which is classified as a publicly owned recreational facility, as more particularly described in Exhibit "A", a copy of which is attached to this Lease and incorporated by this reference (the "Parcel") upon which Landlord constructed a certain fishing pier as more particularly depicted in Exhibit "B", a copy of which is also attached to this Lease and incorporated by this reference (the "Pier").

2. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, a portion of the Pier as more particularly described on Exhibit "A" (the "Premises") for the purposes stated in this Lease, subject to the terms and conditions of this Lease.

**NOW, THEREFORE**, in consideration of the Premises and the mutual covenants contained in this Lease, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

### SECTION 1. DEFINITIONS.

The terms set forth below, when used in this Lease, shall be defined as follows:

- (a) "Florida Accessibility Code" shall have the meaning described in Section 6.
- (b) "Additional Rent" shall mean any sum or payment due under this Lease from Tenant to Landlord other than Base Rent. If no date is specified for the payment of Additional Rent, the same shall be due and payable within thirty (30) days after written demand therefor by Landlord.
- (c) "Affiliate" shall mean any person that, directly or indirectly controls, is controlled by, or is under common control with, Tenant.
- (d) "Base Rent" shall be the sum of Sixty-six Thousand Dollars (\$66,000.00) per year for the exclusive right and license to provide food and drink concessionaire services within the premises of Property 1 (Restaurant), Nine Thousand Dollars (\$9,000.00) for Property 2 (Bait Shop), and Six Thousand, Six Hundred Dollars (\$6,600.00) for Property 3 (Harbor Master Office) for a total of Seventy-five Thousand, Six Hundred Dollars (\$75,600.00), payable by Tenant to Landlord and increased annually in accordance with the provisions of Section 4(a).
- (e) "City" shall mean the City of Bradenton Beach in its capacity as a municipal government, and not as Landlord under this Agreement.
- (f) "County" shall mean Manatee County, a political subdivision of the State.
- (g) "CPA" shall have the meaning described in Section 4.
- (h) "Effective Date" shall mean the date of mutual execution and delivery of this Lease.
- (i) "Expiration Date" shall have the meaning described in Section 3(a).

(j) "Force Majeure" shall mean any event which results in the prevention or delay of performance by either Landlord or Tenant of its obligations under this Lease and which is beyond the reasonable control of such party including, but not limited to fire, earthquake, hurricane, tornado, unusual storm, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

(k) "Gross Revenue" means any and all revenues (whether cash, credit or barter) paid to or collected by or on account of Tenant (and any Subtenant(s) of tenant) derived from the operation of the Premises by Tenant and any Subtenant(s) (and any party that succeeds to the interest of Tenant and any Subtenant(s)). Gross Revenue shall expressly exclude all (i) insurance loss proceeds which are applied toward restoration of the Improvements; (ii) any award or payment made by a governmental authority in connection with the exercise of any right of eminent domain, condemnation, or similar right or power; (iii) sales taxes; (iv) employee meals, if free or discounted for such employees and their immediate family members, and (v) the proceeds of any sale of Tenant's business to a third party.

(l) "Hazardous Materials" shall have the meaning described in Section 23.

(m) "HVAC Allowance" shall have the meaning described in Section 10(d).

(n) "Improvements" means any fixtures, permanently affixed equipment, structures, improvements and alterations constructed within the Premises.

(o) "Landlord's Work" shall mean any and all Improvements and repairs to be performed by Landlord as detailed on Exhibit "D-2" which is incorporated into this Lease by this reference, and shall be completed in accordance with Section 6(j).

(p) "Lease Agreement" shall mean this Lease Agreement, including any supplements, modifications or amendment to it.

(q) "Lease Year" shall mean the consecutive twelve (12) month period that commences on the Rent Commencement Date and each anniversary thereafter except that if the Rent Commencement Date is a date other than the first day of a month, then the first Lease Year shall include the remaining days of such month after the Rent Commencement Date, however the first Lease Year shall be deemed to have commenced as of the first day of the first full month next following the Rent Commencement Date.

(r) "Licensed Areas" shall have the meaning described in Section 2(b).

(s) "Notices" shall have the meaning described in Section 22.

(t) "Parcel" shall mean the real property owned by the City known as the City Pier and expressly includes the Dry Dock. The Parcel is more particularly described in Exhibit "A".

(u) "Parking Lot" and similar words shall have the meaning described in Section 7.

(v) "Percentage Sum" shall mean twelve percent (12%) of the amount of the Gross Revenue derived from the Premises by Tenant and any Subtenant(s) (or any party who succeeds to the interest of Tenant or any Subtenant(s)).

(w) "Permitted Uses" shall have the meaning described in Section 5.

(x) "Person" shall mean any individual, trust, estate, partnership, joint venture, company, corporation, association, or any other legal entity or business enterprise.

(y) "Premises" shall mean that portion of the Pier containing 1,896 square feet as more particularly described in Exhibit "A", together with all improvements now existing or hereafter constructed on the Premises, the equipment permanently affixed in and to the Premises, such as electrical, plumbing, sprinkler, fire protection and fire alarm, HVAC system, steam, sewage, drainage, gas and other systems and their pipes, wires, mains, lines, tubes, conduits, equipment and fixtures together with all appurtenances, rights, privileges, permits and easements benefitting, belonging or pertaining to them; provided, however, the Premises specifically excludes any electrical, plumbing or other utilities owned by Landlord which service the Pier.

(z) "Rent" shall mean the collective amount of the Base Rent, Percentage Sum and all items of Additional Rent due under this Lease from time to time.

(aa) "Rent Commencement Date" shall mean the date set forth in Section 4(a).

(bb) "Required Use" shall mean a casual nautically themed neighborhood grill and bar and various low impact recreational/tourist friendly small business uses..

(cc) "Reserved Parking Area" shall have the meaning described in Section 7(d).

(dd) "Rules and Regulations" shall mean the rules and regulations in Exhibit "C", a copy of which is attached and it is incorporated into this Lease by this reference, and the same may be adopted, rescinded or amended from time to time by Landlord.

(ee) "State" shall mean the State of Florida.

(ff) "Statement" shall have the meaning described in Section 4.

(gg) "Structural Repairs" shall mean any structural element which is necessary to hold the building together, such as foundations, walls, roofs and floor structures, as opposed to an element which is necessary only for the use made of the building such as partition walls, stairways and windows, or merely "decorative" features such as carpeting. Mechanical systems, such as heating and plumbing, are not considered structural elements.

(hh) "Sublease" shall have the meaning described in Section 16.

(ii) "Subtenant" shall mean any Person that uses or occupies the Premises or any portion of them pursuant to an agreement including, but not limited to, a Sublease as defined in Section 17(b), license or concession, whether oral or written, between Tenant and such Person.

(jj) "Successors" shall have the meaning described in Section 16.

(kk) "Taking Date" shall have the meaning described in Section 13.

(ll) "Tenant" shall mean Cast and Cage, LLC having an address at 132 48<sup>th</sup> Street, Holmes Beach, Florida 34217 and 200 Bridge Street, Bradenton Beach Florida 34217, and successors and assigns as permitted by this Lease.

(mm) "Tenant's Work" shall mean any and all Improvements to be performed by Tenant in order to open and operate the Premises for the Required Use as set forth on the plans and specifications to be attached and incorporated into this Lease as Exhibit "D-1" once prepared and approved by the City, and shall be completed in accordance with Section 6.

(nn) "Term" and similar words shall be as defined in Section 3.



(oo) "Upgraded System" shall have the meaning described in Section 10(d).

## **SECTION 2. DEMISE.**

(a) Demise. Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord upon the terms and conditions of this Lease.

(b) License for Ingress/Egress. As additional consideration for the lease of the Premises by Landlord to Tenant, Landlord also grants Tenant (i) a non-exclusive license (for use in conjunction with the general public) for ingress and egress to and from the Premises and the Pier as shown on Exhibit "A". The foregoing license and use right shall continue only while, and for so long as Tenant is not in default beyond any notice and cure period under this Lease. In all events the licenses granted in this Lease shall terminate upon the expiration or earlier termination of this Lease.

(c) Uses. Tenant agrees to operate the Premises primarily for the Required Use and other ancillary Permitted Uses in accordance with Section 5.

(d) As Is. Except as expressly provided to the contrary in this Lease, the Premises and all components constituting the same, are leased in "AS IS CONDITION" without any representation or warranty as to fitness for any particular use or purpose whatsoever.

(e) Covenant of Quiet Enjoyment. Landlord covenants that, upon paying the Rent specified and performing and observing all of the other terms, covenants and conditions of this Lease on Tenant's part to be performed and observed, Tenant shall peacefully and quietly have, hold and enjoy the Premises during the Term, subject to the rights of Landlord set forth in this Lease.

## **SECTION 3. TERM.**

(a) Term. The term ("Initial Term") of this Lease shall commence on the Effective Date and shall terminate on the last day of the second (2<sup>nd</sup>) Lease Year of this Lease (the "Expiration Date"), unless sooner terminated or extended as provided in this Lease.

(b) Renewal Term(s). If Tenant is not in default under this Lease either at the time of its exercise of an option to renew or at the commencement of a Renewal Term, Tenant shall have the option to extend the Initial Term for up to three (3) separate, consecutive, additional renewal term(s) of two (2) years, three (3) years and five (5) years each totaling twelve (12) leasing years (each, a "Renewal Term"). Tenant shall exercise its options to renew the Term by giving Landlord written notice of the same not less than three (3) months prior to the then expiration of the Initial Term or the Renewal Term, as the case may be. If Tenant fails to timely exercise a renewal in the time period or in the manner provided in this Lease, such renewal shall be deemed to have lapsed and terminated, and shall be of no further force or effect without any action or notice required on the part of Landlord. All of the terms and conditions of this Lease, other than the amount of Rent, as discussed below, shall remain in full force and effect during each Renewal Term. If Tenant timely exercises a renewal for a Renewal Term as set forth above, the Expiration Date shall be the last day of the Renewal Term then in effect, unless sooner terminated as provided in this Lease. The Initial Term, as extended by a Renewal Term, if applicable, shall be referred to as the "Term". The failure or inability to exercise the first Renewal Term shall be a de facto termination of the right to exercise the second Renewal Term. If Tenant has been in default at any point during the Initial or Renewal Terms of the Lease (i.e., late Base Rent), Tenant's right to extend the Lease shall be conditioned upon City Commission approval following Tenant's written notice.

#### **SECTION 4. RENT ALLOWANCE.**

- (a) **Base Rent.** Provided Tenant has complied with its Approval Obligation (as defined below), the Rent Commencement Date shall be one hundred eighty (180) days following Tenant's receipt of all necessary building permits required to commence Tenant's Work within the confines of the restaurant building. Commencing on the Effective Date, Tenant is obligated to use its best possible efforts to diligently pursue and obtain on the earliest possible date all necessary building permits and licenses at Tenant's sole cost and expense (referred to in this Lease as Tenant's "Approval Obligation"). Tenant's performance of this Lease shall not be excused under any circumstances if the failure or inability to obtain such licenses or permits is due to the neglect or omission of Tenant. Landlord shall provide Tenant with all reasonable cooperation in obtaining such building permits and licenses. Should Tenant fail to fulfill its Approval Obligation then the Rent Commencement Date shall be deemed to have occurred as of the date, which is one hundred eighty (180) days from the Effective Date.

Commencing on the Rent Commencement Date, Tenant shall pay to Landlord the Base Rent, which Base Rent shall be paid in equal monthly installments on or before the first day of each month in advance. Commencing on the first anniversary of the Rent Commencement Date and the anniversary of such date throughout the Initial Term and any Renewal Term(s), Base Rent shall increase by three percent (3%) per Term (e.g., Initial Term Base Rent for Restaurant is \$5500 per month, Second Term of 3 years will be a base rent of \$5,665 per month, Third Term of 5 years will be a base rent of \$5,834.95 per month).

- (b) **Percentage Sum Rental.** It is the intent of the parties that Tenant shall pay to Landlord, as Rent, the greater of the Base Rent or the Percentage Sum on Gross Revenue for each Lease Year. If in any Lease year, the Percentage Sum is greater than the Base Rent for that Lease year, Tenant shall pay to Landlord the difference between the Base Rent and the Percentage Sum. Tenant will furnish to Landlord certified gross sales reports detailing its and any Subtenants' Gross Revenues for each Lease Year (the "Statement"), together with a calculation of the Percentage Sum within forty-five (45) days after the close of each Lease Year. The Statement shall be prepared both in accordance with generally accepted accounting principles and consistent with the form required by the State for the reporting of sales tax. In order to effectuate the intent of the parties, Tenant shall maintain sufficiently detailed daily and summarized monthly financial records of sales, receipts, banking deposits and State sales tax reporting for sales and revenue generated or derived from the Premises for each term, or a period of three (3) calendar years, whichever is less. Tenant shall, in addition to providing Landlord with the Statement, deliver true and complete copies of all monthly sales tax reports filed by Tenant with the State. The Statement will be certified by Tenant as a true and correct determination of the Percentage Sum based on the Gross Revenue for the applicable Lease Year and shall be accompanied by Tenant's payment of the difference between the Base Rent for such Lease Year and the Percentage Sum due based on Gross Revenue received for such Lease Year, if any. Within three (3) months after Landlord's receipt of the annual Statement, Landlord shall have the right at any time during business hours, and upon seven (7) days' prior notice to Tenant, to inspect and audit, or cause to be inspected and audited, by a certified public accountant (the "CPA") selected by Landlord, the business records, bookkeeping and accounting records, sales and income tax records and returns and other records of Tenant with respect to the Premises, including the books and records of Tenant in relation to any Subtenant(s). Landlord and Tenant shall fully cooperate with each other and the CPA. If any inspection by the CPA discloses an understatement by Tenant of the Percentage Sum due Landlord for the applicable Lease Year and if the Percentage Sum is in excess of the Base Rent due Landlord for the Lease Year, then Tenant shall pay to Landlord, within fifteen (15) days after receipt of the inspection or report, the amount due with respect to such understatement, plus interest (at the rate of 18.00%) from the date originally due until the date of payment. Tenant shall also reimburse Landlord for its reasonable costs incurred in conducting an audit in the event

the CPA determines a discrepancy of more than three percent (3%) in the amount of Gross Revenues reported by Tenant.

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

As to Sales and Use Tax On Commercial Real Property Rentals only, Tenant's Base Rent is inclusive of the tax.

Property 1 (Restaurant) is exempt from the Sales and Use Tax for the exclusive right/license to provide food and drink concessionaire services within the premises of said property. Should the State of Florida determine that the concessionaire services are not exempt, the sales tax should be taken from the Base Rent for Property 1 in the amount of \$357.50 per month.

\$701.25 plus \$48.75 sales tax per month.

\$514.25 plus \$35.75 sales tax per month.

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

(f) Utilities. From and after the Effective Date, Tenant shall pay when due all water, wastewater, electric, telephone, solid waste, recycling, and all other utility and other costs of any and all types whatsoever which are now or hereafter charged or assessed with respect to operations at the Premises. Tenant shall indemnify and hold Landlord harmless against any and all liability arising from Tenant's failure to promptly pay for any utility services to the Leased Premises. Tenant shall pay all fees or charges relative to the foregoing promptly prior to delinquency. Landlord represents and warrants that the aforesaid utilities that will be provided to the Premises are or will be separately metered and will not include any such utilities consumed on any other portion of the Pict.

(g) Late Payments -Interest. If Tenant shall fail to pay, when the same is due and payable, any monthly Base Rent, Percentage Sum Rental, Common Area Expenses, Additional Rent, or other amounts or charges, such unpaid amounts shall bear interest at a rate of 18% from the date due to the date of payment. In addition to bearing interest, if Tenant shall fail to pay any monthly installment of the Base Rent on or before the fifth day of the month for which such installment is due, or if Tenant shall fail to pay any Additional Rent when due, which failure continues for ten (10) days, the Late Charge shall become due and payable. Tenant hereby acknowledges that late payment of Tenant to Landlord of Base Rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges, which may be imposed upon Landlord by the terms of any mortgage or deed of trust covering the Premises. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of the 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. If Tenant pays any installment of Base Rent, Percentage Sum Rental Common Area Expenses, Additional Rent or other charges under this Lease by check and such check is returned for insufficient funds or other reasons not the fault of Landlord, then Tenant shall pay to Landlord a service charge in the amount of Two Hundred Fifty and No/100 Dollars (\$250.00), or an amount equal to five percent (5%) of the face amount of such check, whichever is greater, as well as all bank fees incurred by Landlord. Such payment shall be made within five (5) days after written notice by Landlord to Tenant that such check has not been honored.

(h) Request for rent abatement. Tenant shall be responsible for notifying the City in writing of any problem that reduces service or sales levels or impairs the Tenant's operation from the Common Area. Said notice shall include any request and amount desired for rent abatement until the City eliminates such problems. Failure to notify the City in writing of a request for rent abatement for more than two consecutive base rent payments after identifying or becoming aware of the problem shall bar the Tenant from any rate abatement associated with the problem. The Pier Team and Tenant shall negotiate and present to the City Commission a proposed amount of rent abatement, which shall be considered and approved, amended, or denied by the City Commission.

(i) Place of Payments. All payments of Rent required to be made by Tenant to Landlord under this Lease shall be made payable to "City of Bradenton Beach - Finance Department" and shall be paid to Landlord at 107 Gulf Drive North, Bradenton Beach, Florida 34217 or to such other office or address as may be substituted by Landlord for such address. All Rent (together with sales tax, which will be deducted from the Base Rent and paid by the Landlord) shall be payable without demand, offset or deduction, other than as set forth in this Lease.

(j) Security Deposit and Performance Bond. An amount equivalent to Two Thousand, Seven Hundred and Fifty Dollars (\$2,750.00) shall be deposited via a Cashier's Check (required on or before date of use and occupancy of the Premises) with the City Clerk, which may be used as a security deposit for any needed repairs at time of the termination.

(k) No Accord and Satisfaction. No acceptance by Landlord of a lesser sum than the monthly Base Rent, additional rent or any other charge then due shall be deemed to be other than on account of whichever installment of such rent or charge due as Landlord, at Landlord's sole discretion, so elects to apply, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent or other charge be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy as provided in this Lease.

## **SECTION 5. RIGHTS AND USES OF TENANT.**

(a) Use. Tenant shall commence as of the Rent Commencement Date, subject only to the duration of a Force Majeure, continuously use and operate the entire Premises for the Required Use. In addition to the Required Use, Tenant shall be permitted to use the Premises for the following ancillary uses ("Permitted Uses"):

- (1) Retail sales of food items, alcoholic beverages and other beverages in compliance with and subject to Section 212.031(10), Fla. Stat. and other applicable laws;
- (2) Recreational/tourist-friendly small business uses of low impact; and
- (3) Such other compatible uses as permitted under Applicable Law for which Landlord has given its prior written consent.

(b) Alcoholic Beverages. The sale of alcoholic beverages by Tenant and any Subtenant(s) shall only be permitted within the restaurant area of the Premises for on Premises consumption and (ii) in compliance with and subject to Applicable Laws. In no event shall alcoholic beverages be sold from any other location on the City Pier, including the Leased Premises and/or Common Areas.

(c) Prohibited Uses. Tenant shall be expressly prohibited from using the Premises for the following:

(1) Adult arcade, adult bookstore/adult video store, adult booth, adult dancing establishment, adult entertainment establishment, adult motel, or adult theater, as such terms are defined in City Ordinances from time to time.

(2) The sale or distribution of alcoholic beverages except as expressly provided in Section 5(b) above.

(3) Any use that requires the storing of hazardous substances, materials or both at the Premises in violation of Applicable Law.

(4) Any use of the Premises for residential purposes.

(5) Any use that is not a Permitted Use as set forth in Section 5(a) above.

(6) Any use prohibited by Applicable Laws.

#### **SECTION 6. CONSTRUCTION OF IMPROVEMENTS BY TENANT.**

(a) Schedule for Development of Premises. Except as otherwise set forth in paragraph (j) below entitled "Landlord's Work", Tenant shall perform at its sole expense the Tenant's Work. Tenant agrees that all work constituting Tenant's Work shall be completed by the Rent Commencement Date. The completion of Tenant's Work shall be evidenced by a certificate of occupancy issued by the City. Tenant shall be responsible for all costs and expenses for the planning, design, engineering, installation, and construction of Tenant's Work.

(b) Compliance with Applicable Laws. All Tenant's Work and subsequent Improvements constructed or installed by Tenant, its agents, or contractors, in or upon the Premises shall conform to all Applicable Laws, including, but not limited to Equal Opportunity Employment laws, the Florida Accessibility Code, and the Florida Building Code.

(c) Ownership of Improvements. Unless otherwise set forth in this Lease, upon completion, all Improvements including, but not limited to, all installed and permanently attached restaurant equipment such as stoves, sinks, coolers, refrigerators, freezers, dishwashers, and any additions and alterations of a permanent nature made to the Premises by Tenant, or at Tenant's direction (but excluding unattached, movable trade fixtures, furnishings and equipment owned by Tenant), shall become and remain Landlord's property free and clear of any liens and encumbrances whatsoever upon the expiration or earlier termination of this Lease.

(d) Encumbrances. Tenant represents, warrants and covenants to Landlord that the Premises shall be at all times kept free and clear of all liens, claims and encumbrances created by or through Tenant (other than those created or consented to by Landlord). If any claim of lien or notice of lien shall be filed against the Premises created by or through Tenant, Tenant shall, within thirty (30) calendar days after notice of any such filing, cause the same to be discharged of record by payment, deposit, transfer bond, or order of a court of competent jurisdiction. Tenant shall not be deemed to be Landlord's agent so as to confer upon any contractor or subcontractor providing labor or services to the Premises (whether in connection with Tenant's Improvements or otherwise) a construction lien, mechanic's lien or both against Landlord's estate

under the provisions of Chapters 255 and 713, Florida Statutes, as amended from time to time. The foregoing shall be contained in a notice or memorandum disclaiming such liability on the part of Landlord, which shall be recorded in the Public Records of Manatee County in accordance with Chapters 255 and 713, Florida Statutes.

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

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

(g) Contractor Insurance. Tenant shall require any contractor performing work on the Premises to provide, pay for and maintain in force, during the time such work is being performed, the following insurance policies: (i) comprehensive general liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) annual aggregate; (ii) a minimum of One Million Dollars (\$1,000,000.00) combined single limit automotive liability; (iii) Workers' Compensation and employer's liability insurance in the amounts specified in Section 11, below. With respect to the insurance to be obtained, Tenant shall provide to Landlord not less than thirty (30) calendar days prior to commencement of the construction of the Improvements at the Premises, certificates of such applicable insurance evidencing the insurance coverage as specified above and expressly including Landlord (including its elected officials, officers, employees and agents) as an additional named insured as its interests may appear. If the initial insurance expires prior to the completion of the improvements, renewal certificates of insurance shall be furnished thirty (30) calendar days prior to the date of their expiration. Insurance shall not be canceled, modified, or restricted, without thirty (30) calendar days' prior written notice to Landlord, and policies must be endorsed to provide the same. Carriers shall meet the insurance ratings specified in Section 11(b) below.

(h) Alterations During the Term. Except for the work required to perform the Tenant's Work as described in D-1 attached hereto, Tenant shall not cut, drill into, disfigure, deface or injure any part of the Premises or perform or undertake any alteration, addition, improvement or construction to or in the Premises, other than minor or cosmetic alterations which are interior and nonstructural in nature, without Landlord's prior written consent, which consent shall neither be unreasonably withheld nor delayed except, however, that Landlord may withhold or delay consent at Landlord's sole discretion, for any alteration or Improvement which (i) will alter or affect any portion of the plumbing, heating, ventilating, air conditioning, mechanical, electrical and other building systems, installations and facilities of the Premises or structure, facade, wall, roof, or foundation of the Premises, the Pier or both; (ii) will detract from the use or character of the Premises or be visible from the exterior of the Premises; (iii) will require amendment of any certificate of occupancy for the Premises; (iv) will require the consent of any insurer under any of Landlord's or Tenant's policies of insurance covering the Premises; or (v) void or otherwise adversely impair any applicable roofing guaranty in effect. All alterations and Improvements by Tenant shall be performed at the sole cost of Tenant.

(i) Requirements During the Term. The foregoing requirements set forth in this Section 6 shall be applicable for the construction and installation of all Improvements and alterations during the Term including without limitation Tenant's Work.

(j) Landlord's Work. Landlord shall perform, at its sole cost and expense, and in accordance with all Applicable Laws, the Improvements and repairs specified on Exhibit "D-2" attached hereto. Tenant expressly acknowledges that Landlord's Work will be undertaken and performed subsequent to the Effective Date. Tenant agrees to cooperate with Landlord and permit Landlord reasonable access into the Premises to the extent necessary to enable Landlord to complete Landlord's Work.

#### **SECTION 7. OPERATIONAL REQUIREMENTS OF TENANT; PARKING.**

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

(b) Operating Schedule. Tenant shall generally provide its services not less than six (6) days a week except for any holidays as determined by Tenant.

(c) Quality of Services. Tenant shall conduct its operations in a first class, neat, sanitary and professional manner and in accordance with and subject to the terms and conditions of this Lease and all Applicable Laws. Tenant shall ensure at all times that its standards of operation are commensurate with the service, food and quality of its Affiliates and other similar restaurants in the State. Tenant shall control the conduct, demeanor, performance and appearance of its officers, members, employees, agents, volunteers, independent contractors, representatives, guests, and invitees consistent with the operation of a first class restaurant establishment and otherwise in accordance with Applicable Laws. Tenant shall post and enforce strict behavior and usage policies on and about the Premises, which policies, at a minimum, shall prohibit fighting, reckless actions, abusive language, and misbehavior.

(d) Parking. Tenant shall have the non-exclusive right in common with the general public to utilize the Landlord's pier municipal parking lot consisting in excess of twenty (20) parking spaces located immediately adjacent to the Pier (the "Parking Lot") as shown on Exhibit "A". In addition, subject to the terms set forth below, Landlord grants Tenant the non-exclusive right in common with the general public to utilize nearby municipal parking lots that are in close proximity to the Premises (the "Reserved Parking Area"). Upon 72-hours' prior written notice by either Party to this Lease, the Parking Lot may be utilized for special events held or sponsored by Landlord or Tenant at the Premises. The Parties will establish a mutually acceptable reserved parking plan and fees for use of the Reserved Parking Area. Tenant's special event use of the Parking Lot shall at all times be subject to Landlord's prior written consent which consent may be withheld or granted in Landlord's sole, but reasonable discretion.

(e) Underwater Pier Cameras. Provided Tenant has obtained any required consent from all applicable federal and State agencies, Tenant may install underwater Pier cameras for video display in the Premises.

#### **SECTION 8. OBLIGATIONS OF TENANT.**

(a) Garbage. Tenant shall remove from the Premises or otherwise dispose of all garbage, debris and other waste materials (whether solid or liquid) arising out of the use and occupancy of the Premises or out of any operations conducted within or upon the Premises in accordance the highest standards of sanitary practice and at all times in accordance with Applicable Laws. When removing such waste, Tenant shall comply with all Applicable Laws relating to sanitation and waste disposal. Any items shall be kept in suitable garbage and waste receptacles, as approved in writing by Landlord. Tenant shall have the exclusive (non-public) use of the existing dumpster area at which Tenant shall store its refuse, garbage and waste materials. Tenant shall make arrangements with the City's solid waste provider for removal of its refuse, garbage and waste at its sole expense and cost. All refuse, garbage and waste generated on the public and non-Premises portion of the Pier shall not be the responsibility of the Tenant to remove.

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

(c) Tenant shall have the right to install directional signage and monument and other signage identifying Tenant's name of "Cast and Cage" within the Premises, and Landlord will cooperate with Tenant to provide additional directional signage to the Bradenton Beach Pier area provided that such signage is consistent with Landlord's sign ordinances, requirements of the State and approved by all applicable governmental authorities having jurisdiction. Any exterior signage shall require the approval of Landlord and any and all applicable governmental authorities. Notwithstanding anything in this Lease to the contrary, billboard signs are expressly prohibited within the municipal limits of the City.

(d) Grease Traps. Tenant agrees to utilize and maintain (or install at its own expense if required by Landlord) any and all existing grease traps.

## **SECTION 9. COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS.**

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

## **SECTION 10. MAINTENANCE AND REPAIR.**

(a) Tenant shall throughout the Term assume the entire responsibility and shall relieve Landlord from all responsibility for all repair, maintenance, replacements and capital improvements whatsoever with respect to the Premises, except for structural and roof repairs which are the responsibility of Landlord as set forth in Section 10(b) below. Tenant shall perform all maintenance, repairs, replacements and capital improvements in a good and workmanlike manner in accordance with all Applicable Laws. All materials utilized in any repairs or replacements shall be of a quality and grade comparable or superior to that in existence in the Premises as of the Effective Date. Except as otherwise set forth in this Lease, Tenant shall be required to keep the Premises in good, tenantable, useable condition throughout the Term (subject to casualty, condemnation and the other provisions of this Lease with regard to development and the redevelopment of the Premises), and without limiting the generality of the foregoing, Tenant shall:

- (1) Keep and maintain the Premises at all times in a clean and orderly condition and appearance.
- (2) Provide and maintain all lights and similar devices, fire protection and safety equipment and all other equipment of every kind and nature required by Applicable Laws in good working order and condition.
- (3) Be responsible for the maintenance and repair of all utilities servicing the Premises including but not limited to, utility meters, pipes and conduits, service lines for the supply of water, gas service lines, electrical power and telephone conduits and lines, sanitary sewers and storm sewers which are now or which may be subsequently located upon any portion of the Premises which are controlled by Tenant.



(4) Provide adequate security for the Premises and all portions of them for the purposes of protecting persons and property.

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

(6) Be responsible for the maintenance and repair of all fixtures, air conditioning and heating equipment serving the Premises and other equipment therein, the storefront or storefronts, all of Tenant's signs, locks and closing devices, all window sashes, all windows and other glass fixtures, casements or frames, door and door frames, floor coverings.

(7) Tenant shall contract and keep in force with a licensed service company approved by Landlord a service contract for the monthly maintenance of the heating, ventilating and air conditioning equipment and a service contract for routine maintenance of the exhaust and ventilation system. A copy of the service contract shall be furnished to Landlord within ten (10) days after the Commencement Date and a copy of any subsequent contract(s) shall be furnished from time to time during the Lease Term.

(8) All glass, both exterior and interior, is at the sole risk of Tenant, and any glass broken shall be promptly replaced by Tenant with glass of the same kind, size and quality.

(9) All mats shall be cleaned through an off-site service provider or may be cleaned onsite; however, cleaning shall be contained to a designated area that shall take place prior to 10:00 p.m. and all grease and leftover debris shall be promptly removed from the area by Tenant.

(b) During the Term, subject to the provisions of Section 12 below, the maintenance, repair or replacement of the roof (including repairing leaks not caused by Tenant, its agents, contractors and employees) as well as any structural repairs (such as exterior walls, structural floor, pipes and conduits outside the Premises for the furnishing to the Premises of various utilities (except to the extent that such repairs may be the obligation of the appropriate public utility company) as defined in Section 1, or replacements to the Premises, Pier or any or all of the foregoing, shall be undertaken by Landlord, unless such repairs or replacement are required due to the wrongful acts or omissions of Tenant, its employees, agents, contractors, invitees or guests. Tenant shall not cause or permit any penetrations into the roof membrane or otherwise perform any alteration on or about the roof that may void or limit Landlord's roofing warranty. To the extent any roofing penetration is necessary, Tenant shall if required by Landlord, hire Landlord's designated roofing contractor to perform or supervise such roof penetration work so as to prevent any voiding or impairment of Landlord's roofing warranty.

(c) Landlord shall paint the exterior of the Premises for the balance of the Term, including any Renewal Terms.

(d) No later than the Rent Commencement Date, Landlord shall be responsible to have in working order an HVAC system for the Premises. Provided Tenant is not in default hereunder, should Tenant in its reasonable business judgment determine during the Initial Term that additional air-conditioning tonnage in the interior of the Premises is required, Tenant may provide additional HVAC. If Tenant elects to add such additional HVAC within the Premises, Tenant shall provide to Landlord for its review and approval, not to be unreasonably withheld, plans and specifications from a qualified, licensed HVAC contractor detailing the supplemental air conditioning to be installed within the Premises (the "Upgraded System"). Tenant is responsible for any supplemental HVAC costs. All HVAC work for the Upgraded System shall be performed using new equipment and components in a good and workmanlike manner in accordance with all Applicable Laws.

## **SECTION 11. INSURANCE REQUIREMENTS FOR LANDLORD AND TENANT.**

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

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

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

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

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

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

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

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

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

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

(c) Certificates. Tenant shall furnish to Landlord, certificates of insurance or endorsements evidencing the insurance coverages specified by this Article prior to the Commencement Date. The required certificates of insurance shall name the types of policies provided, refer specifically to this Lease, and state that such insurance is as required by this Lease. All policies of such insurance and renewals of them (except for

Workers' Compensation coverage) required to be provided by Tenant shall name Landlord (including its elected officials, officers, employees and agents), as additional named insureds as their interests may appear, and shall provide that the loss, if any, shall be adjusted with and payable to Tenant and Landlord (as their interests may appear), except as otherwise provided in Section 12 of this Lease.

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

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

(f) Review of Coverage. The aforesaid minimum limits of insurance shall be reviewed from time to time by Landlord (but no more frequently than every two (2) Lease Years) and may be adjusted if Landlord reasonably determines that such adjustments are necessary to protect Landlord's interest, provided such coverages shall not exceed the amount of coverage required at the time of such review by similar quality projects in Manatee County, Florida.

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

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

## **SECTION 12. DAMAGE TO OR DESTRUCTION OF PREMISES.**

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

(b) Minor Damage. If Improvements located on the Premises or any part of them shall be damaged by fire, the elements, or other casualty but not rendered wholly untenable or unusable, Rent shall continue unabated. The Premises shall be repaired and restored promptly to the condition they were in prior to such casualty by Landlord and by Tenant (the scope of each such party's obligation to repair being described in Section 10 hereof), and to the extent that such damage is covered by Landlord's and Tenant's insurance, the proceeds shall be made available for that purpose.

(c) Damage to or Destruction of the Premises, Pier. If the Premises, Pier, both of them or any part of them shall be destroyed or so damaged by fire, the elements, or other casualty as to render either or both untenable or unusable, nothing in this Lease shall be deemed or construed to require or obligate Landlord to repair, rebuild, replace or restore either or both or any portion of the Premises or Pier; provided, however, in the event of damage to the Premises or Pier which renders the Premises untenable or unusable, and Landlord elects not to repair, rebuild, replace or restore the Premises or Pier pursuant to a written notice to Tenant, which Landlord shall give no later than thirty (30) days after

such casualty, then the Lease shall be terminated effective as of the date of such casualty. Provided the casualty resulting in the damage or destruction was not caused by the negligence or wrongful act or omission of Tenant, any security deposit paid to Landlord shall be refunded to Tenant and all insurance proceeds payable to Tenant under its policies shall be retained by Tenant without any obligation to pay any portion thereof to Landlord. Upon termination, Tenant shall surrender the Premises to Landlord immediately and the parties will have no further obligations to each other hereunder, except as otherwise provided to the contrary in Section 14 of this Lease.

### **SECTION 13. CONDEMNATION/TRANSFER OF PROPERTY FOR OTHER PUBLIC PURPOSES.**

(a) Total or Partial Taking. The whole of the Premises, or such portion of them as will make the Premises unusable for the Required Use, shall be taken by any public authority under the power of eminent domain or sold to public authority under threat or in lieu of such taking, the Term shall cease as of the day possession or title shall be taken by such public authority, whichever is earlier ("Taking Date"), whereupon the Rent and all other charges shall be paid up to the Taking Date with a proportionate refund by Landlord of any Rent and all other charges paid for a period subsequent to the Taking Date. If less than the whole of the Premises is taken, but the Premises may be restored to a configuration in Tenant's reasonable business judgment that will enable the continued use of the Premises for the Required Use, then the Term shall cease only as to the part so taken as of the Taking Date, and Tenant shall pay Rent and other charges up to the Taking Date, with appropriate credit by Landlord (toward the next installment of Rent due from Tenant) of any Rent or charges paid for a period subsequent to the Taking Date. Base Rent, but not the Percentage Sum, shall be reduced as of the Taking Date in proportion to the amount of the Premises taken. If the Lease is not terminated then Landlord shall be responsible to reconfigure the Premises into one contiguous space from the condemnation proceeds, which shall be accomplished with reasonable diligence after the Taking Date.

(b) Award. All compensation awarded or paid upon a total or partial taking of the Premises including the value of the leasehold estate created by this Lease shall belong to and be the property of Landlord without any participation by Tenant; Tenant shall have no claim to any such award based on Tenant's leasehold interest. However, nothing contained in this Lease shall be construed to preclude Tenant, at its cost, from independently prosecuting any claim directly against the condemning authority in such condemnation proceeding for damage to, or cost of removal of, unattached movable trade fixtures, furniture, and other personal property belonging to Tenant; provided, however, that no such claim shall diminish or otherwise adversely affect Landlord's award.

### **SECTION 14. INDEMNITY.**

Tenant shall indemnify and hold harmless Landlord (including its elected officials, officers, employees and agents) from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of architects, attorneys, and other professionals, and all court or other dispute resolution costs), liabilities, expenditures, or causes of action of any kind (including negligent, reckless, or willful or intentional acts or omissions of Tenant, any Subtenant, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any work or anyone for whose acts any of them may be liable), arising from, relative to, or caused in connection with this Lease except, and only to the extent, that such claim is caused by Landlord's negligence or misconduct (subject to applicable sovereign immunity). This indemnity includes, but is not limited to, claims attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible property, including the Improvements, and including the loss of use resulting from them. Payment of any amount due pursuant to this Section shall, after receipt of Notice by Tenant from Landlord that such amount is due, be paid by Tenant if Landlord becomes legally obligated to pay same, or Tenant agrees that it is responsible for such claim, or in the alternative, Landlord, at Landlord's option, may make payment of an amount so due and Tenant shall promptly reimburse Landlord for same. Where the basis

for a claim for damages brought against Landlord by a third party is that Landlord has breached a contract or other duty to the third party, and the action or inaction which constitutes the breach was a result of the negligent or wrongful act or omission of Tenant, then Tenant agrees, at Tenant's expense, after written notice from Landlord to defend any action against Landlord that falls within the scope of this Section, or Landlord, at Landlord's option, may elect not to tender such defense and may elect instead to secure its own attorney to defend any such action. If the claimant prevails in a lawsuit on the basis that the breach was a result of the negligent or wrongful act or omission of Tenant, then the reasonable costs and expenses of Landlord incurred in defending such action shall be payable by Tenant. If either Landlord or Tenant is required to incur attorney fees or costs to enforce this Section, the prevailing party in any litigation shall recover all of its attorney fees and costs at both trial and appellate levels.

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

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

#### **SECTION 15. RIGHTS OF ENTRY RESERVED.**

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

(b) Maintenance. Without limiting the generality of the foregoing, Landlord, by its officers, employees, agents, representatives, contractors and furnishers of utilities and other services, shall have the right upon reasonable advance notice (except in case of emergency, in which case no notice is necessary), at its own cost and expense, for its own benefit or for the

benefit of others than Tenant, to maintain existing utility systems and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations as may, in the reasonable opinion of Landlord, be deemed necessary or advisable and from time to time to maintain such systems or parts of them and in connection with such maintenance.

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

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

#### **SECTION 16. ASSIGNMENT AND SUBLETTING.**

(a) Assignment. Tenant shall not sell, convey, transfer or assign (all of the foregoing being deemed as an "Assignment") all or any portion of its interest in this Lease, without the prior written consent of Landlord (which shall not be unreasonably withheld or delayed, provided that the factors set forth below are

fulfilled to Landlord's satisfaction), provided that no such Assignment shall be deemed valid or binding upon Landlord and Tenant shall not be released from its obligations under this Lease. For purposes of this Section, an "Assignment" will include: (i) any transfer of the Lease by merger, consolidation, liquidation or by operation of law, or (ii) if Tenant is or becomes a corporation, any change or transfer (other than to Affiliates of shareholders or partners of the individuals first named as Tenant in the Lease) in ownership or power to vote a majority of the outstanding voting stock thereof from those controlling the power to vote such stock on the date of the Lease, or (iii) if Tenant is or becomes a limited or a general partnership, joint venture, or a limited liability company, any transfer of an interest in the partnership, joint venture or limited liability company (other than to an existing partner or member or any Affiliates of existing partners or members) resulting in a majority of the voting or equity interests of Tenant being transferred.

The factors upon which Landlord may base its decision upon whether to grant consent under this Section will include, but not be limited to: (A) whether Tenant is or has been in default of this Lease, (B) whether the proposed assignee meets standards of creditworthiness and financial resources and responsibility as originally expected of the Tenant, (C) whether the proposed assignee has the ability to perform the obligations of Tenant hereunder, and (D) whether the proposed assignee has prior related business experience for operating or owning property for the Required Use comparable to that of Tenant.

(b) Subletting. Tenant shall not sublet portions or the whole of the Premises, or grant licenses or concessions in any of them (all of the foregoing being deemed a "Sublease") without the prior written consent of Landlord in each instance, which consent may be not be unreasonably withheld by Landlord, it being expressly understood that the management and operation of the Premises by Tenant is material to Landlord's lease of the Premises to Tenant. The following terms and conditions shall apply in each instance where Landlord has consented to a Sublease:

(1) Each Sublease shall contain a self-operative provision that it is subject and subordinate to this Lease and any amendments, modifications and extensions of this Lease, including, but not limited to, all use restrictions.

(2) No Sublease shall relieve Tenant from liability for any of its obligations under this Lease, and in the event of any such Sublease, Tenant shall continue to remain primarily liable for and continue to make payments for the payments required to be made pursuant to this Lease and for the performance and observance of the other agreements on its part as contained in this Lease.

(3) The form of such Sublease shall be subject to the review and approval of Landlord and shall, at a minimum, contain all of the material provisions of this Lease with respect to the obligations of Tenant.

(c) Reimbursement of Costs. Tenant agrees to reimburse Landlord for Landlord's attorney fees and costs incurred in connection with the processing and documentation of any request made pursuant to this Section 16. Tenant shall deliver to Landlord, within five (5) days after execution by Tenant, an original counterpart of any executed Sublease or instrument of Assignment, together with Tenant's and the subtenant's (or assignee's) affidavit that such Sublease or Assignment instrument is the true and complete statement of the subletting or Assignment and reflects all sums and other consideration passing between the parties. Tenant shall pay, indemnify and hold Landlord harmless from and against, any and all cost or expense (including reasonable attorney fees and disbursements) and liability in connection with any compensation, commissions or charges claimed by any broker or agent with respect to any Assignment or Sublease.

(d) In the event of an Assignment of this Lease or a Sublease of all or a portion of the Premises, the Percentage Sum may be increased to fourteen percent (14%) of the Gross Revenues per annum commencing as of the date such Assignment or Sublease first becomes effective. Said increase shall cease at the time a sublease is terminated.

## **SECTION 17. DEFAULT; REMEDIES.**

(a) Default. If anyone or more of the following events shall occur, same shall be an event of default under this Lease:

(1) Tenant shall voluntarily abandon the Premises or discontinue its operations on the Premises for a period of thirty (30) consecutive calendar days, other than as a result of casualty, condemnation, major renovation, or one or more acts of Force Majeure; or

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

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

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

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

(6) Tenant makes an assignment for the benefit of creditors; or

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

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

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

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

(b) Remedies. Upon the occurrence of any event set forth in Section 17(a), above, or at any time thereafter during the continuance of such event, Landlord may exercise any of the following rights and remedies:

(1) TERMINATE AND RELET. Landlord may, pursuant to written notice to Tenant, terminate this Lease and, pursuant to appropriate legal proceedings, re-enter, retake and resume possession of the Premises for Landlord's own account and, for Tenant's breach of and default under this Lease, recover immediately from Tenant any and all rents and other sums and damages due or in existence at the time of such termination, including without limitation,

- (i) all Base Rent and Additional Rent;
- (ii) all other sums, charges, payments, costs and expenses agreed, and required or both to be paid by Tenant to Landlord under this Lease;
- (iii) all costs and expenses of Landlord in connection with the recovery of possession of the Premises, including reasonable attorney fees and court costs; and
- (iv) all costs and expenses of Landlord in connection with any reletting or attempted reletting of the Premises or any part or parts of them including without limitation, brokerage fees, attorney fees and the cost of any alterations or repairs which may be reasonably required to so relet the Premises, or any part or parts of them; or

(2) NOT TERMINATE AND RELET. Landlord may, pursuant to any prior notice required by law or this Lease, and without terminating this Lease, pursuant to appropriate legal proceedings, re-enter, retake and resume possession of the Premises for the account of Tenant, make such alterations of and repairs to the Premises as may be reasonably necessary in order to relet the same or any part or parts of them and relet or attempt to relet the Premises or any part or parts of them for such Term or terms (which may be for a term or terms extending beyond the Initial Term), at such rents and upon such other terms and provisions as Landlord, in its sole, but reasonable, discretion, may deem advisable.

If Landlord relets or attempts to relet the Premises, Landlord shall be the sole judge as to the terms and provisions of any new lease or sublease and of whether or not a particular proposed new tenant or subtenant is acceptable to Landlord. Upon any reletting, all rents, whether Base Rent or Additional Rent received by Landlord from such reletting shall be applied:

- (a) first to the payment of all costs and expenses of recovering possession of the Premises;
- (b) second, to the payment of any costs and expenses of such reletting, including brokerage fees, attorney fees and the cost of any alterations, restorations and repairs reasonably required for such reletting;
- (c) third, to the payment of any indebtedness, other than Rent, due under this Lease from Tenant to Landlord;
- (d) fifth, to the payment of all Rents due and unpaid under this Lease;



(e) sixth, the residue, if any, shall be held by Landlord and applied to payment of future Rent when the same may become due and payable under this Lease.

If the rents received from such reletting during any period shall be less than that required to be paid during that period by Tenant under this Lease, Tenant shall pay any such deficiency to Landlord within ten (10) days after demand therefor and, upon Tenant's failure to do so, Landlord shall immediately be entitled to institute legal proceedings for the recovery and collection of the same. Such deficiency may be calculated and paid at the time each or any payment of Rent shall otherwise become due under this Lease, or, at the option of Landlord, at any times during or at the end of the Term.

Landlord shall, in addition, be immediately entitled to sue for and otherwise recover from Tenant any other damages occasioned by or resulting from any abandonment of the Premises or other breach of or default under this Lease other than a default in the payment of Rent.

No such re-entry, retaking or resumption of possession of the Premises by Landlord for the account of Tenant shall be construed as an election on the part of Landlord to terminate this Lease unless a written notice of such intention shall be given to Tenant. Notwithstanding any such re-entry and reletting or attempted reletting of the Premises or any part or parts of them for the account of Tenant without termination, Landlord may, at any time thereafter upon written notice to Tenant, elect to terminate this Lease or pursue any other remedy available to Landlord for Tenant's previous breach of or default under this Lease; and Landlord may, without re-entering, retaking or resuming possession of the Premises, sue for all rents, including Base Rent and Additional Rent, and all other sums, charges, payments, costs and expenses due from Tenant to Landlord under this Lease, either:

- (i) as they become due under this Lease; or
- (ii) (ii) at Landlord's option, Landlord may accelerate the maturity and due date of the whole or any part of Base Rent and Additional Rent for the entire then-remaining unexpired balance of the Term, together with the amount of all free rent credits and rental abatements, if any, granted to Tenant as concessions in connection with this Lease, as well as all other sums, charges, payments, costs and expenses required to be paid by Tenant to Landlord under this Lease, including without limitation, damages for breach or default of Tenant's obligations under this Lease in existence at the time of such acceleration, such that all sums due and payable under this Lease shall, following such acceleration, be treated as being and, in fact, be due and payable in advance as of the date of such acceleration.

Regardless of which of the alternative remedies is chosen by Landlord under the foregoing provisions of this paragraph, Landlord shall not be required to relet the Premises nor exercise any other right granted to Landlord pursuant to this Lease, nor shall Landlord be under any obligation to minimize or mitigate Landlord's damages or Tenant's loss as a result of Tenant's breach of or default under this Lease.

Landlord shall have, receive, and enjoy as Landlord's sole and absolute property, any and all sums collected by Landlord as rent or otherwise upon reletting the Premises after Landlord shall resume possession of the Premises as provided by this Lease, including, without limitation, any amounts by which the sum or sums so collected shall exceed the continuing liability of Tenant under this Lease.

(c) Additional Remedies. In addition to the remedies specified above, Landlord shall have the right of injunction and shall have and may exercise the right to invoke any other remedies allowed at law or in equity as if the remedies of re-entry, unlawful detainer proceedings and other remedies were not provided in this Lease. Accordingly, the mention in this Lease of any particular remedy shall not preclude Landlord

from having or exercising any other remedy set forth in this Lease or at law or in equity. Nothing contained in this Lease shall be construed as precluding the Landlord from having or exercising such lawful remedies as may be and become necessary in order to preserve the right or the interest of the Landlord in the Premises and in this Lease.

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

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

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

#### **SECTION 18. REMEDIES TO BE NON-EXCLUSIVE.**

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

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

## **SECTION 19. SURRENDER.**

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

## **SECTION 20. ACCEPTANCE OF SURRENDER OF LEASE.**

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

## **SECTION 21. REMOVAL OF PROPERTY.**

(a) Removal. Tenant shall have the right at any time during the Term to remove its unattached, movable trade fixtures and other personal property from the Premises excluding any property owned by Landlord as set forth in this Lease provided the same is immediately replaced with no less than comparable personalty of an equal or higher value. Tenant shall immediately repair any damage to the structure or any portion of the Premises caused by its removal of any personal property or unattached, movable trade fixtures. If Tenant shall fail to remove its inventories, unattached, movable trade fixtures, and personal property by the termination or expiration of this Lease, then Tenant shall be considered to be holding over and subject to charges under Section 25(m), of this Lease, and after fourteen (14) calendar days following such termination or expiration, at Landlord's option: (i) title to same shall vest in Landlord, at no cost to Landlord; or (ii) Landlord may remove such property to a public warehouse for deposit; or (iii) Landlord may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, second, to any sums owed by Tenant to Landlord, with any balance remaining to be paid to Tenant; or Landlord may dispose of such property in any manner permitted by law. If the expenses of such removal, storage and sale shall exceed the proceeds of sale, Tenant shall pay such excess to Landlord upon demand.

(b) Transfer of Interest. Upon the termination of this Lease the ownership of all Improvements shall vest in Landlord (except for those specific items described herein for which the ownership will remain in Tenant) and Tenant agrees to execute such documentation required by Landlord to effectuate the foregoing.

(c) Survival. The provisions of this Section shall survive the expiration or termination of this Lease.

## **SECTION 22. NOTICES.**

Whenever either party desires to give notice to the other (a "Notice"), such Notice must be in writing, sent either by certified United States Mail, postage prepaid, return receipt requested, recognized overnight delivery courier service or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving Notice shall remain the same as set forth in this Lease until changed in writing upon not less than thirty (30) days' notice (provided that Landlord shall be permitted at all times to deliver Notice to Tenant at the Premises which may not be changed in accordance with the terms hereof) in the manner provided in this Section. The parties designate the following addresses for Notice:

**FOR LANDLORD:**

City of Bradenton Beach  
107 Gulf Drive North  
Bradenton Beach, Florida 34217  
Attn: City Clerk

**With a copy to:**

City of Bradenton Beach  
107 Gulf Drive North  
Bradenton Beach, Florida 34217  
Attn: City Attorney

**FOR TENANT:**

Cast and Cage, LLC  
132 48<sup>th</sup> Street  
Holmes Beach, Florida 34217

Or

Cast and Cage, LLC  
200 Bridge Street  
Bradenton Beach, Florida 34217

All Notices, approvals and consents required under this Lease must be in writing to be effective. Notices sent by United States mail in the manner set forth above shall be deemed effective three (3) days after deposit. Notices sent by overnight delivery shall be deemed effective as of the next business day as evidenced by the courier tracking confirmation and Notices delivered in person shall be deemed effective on delivery.

**SECTION 23. ENVIRONMENTAL COMPLIANCE.**

Tenant shall at all times during the Term keep the Premises free of Hazardous Materials (as defined below), and neither Tenant nor any of its employees, agents, invitees, licensees, contractors or subtenants (if permitted) shall use, generate, manufacture, refine, treat, process, produce, store, deposit, handle, transport, release, or dispose of Hazardous Materials in, on or about the Premises or the Parcel, or the groundwater of them in violation of any federal, state or municipal law, decision, statute, rule, ordinance or regulation currently in existence or subsequently enacted or rendered. Tenant shall give Landlord prompt written notice of any claim received by Tenant from any person, entity or governmental agency that a release or disposal of Hazardous Materials has occurred on the Premises, or the parcel. As used in this Lease, the term "Hazardous Materials" shall mean and be defined as any and all toxic or hazardous substances, chemicals, materials or pollutants, of any kind or nature, including the disposal of grease or grease products as a result of Tenant's restaurant operation which are regulated, governed, restricted or prohibited by any federal, state or local law, decision, statute, rule, or ordinance currently in existence or hereafter enacted or rendered. Tenant shall not discharge into any sanitary sewer system serving the Premises any toxic or hazardous sewage or waste other than that which is normal domestic wastewater. Any toxic or hazardous sewage or waste which is produced or generated by Tenant or in connection with the operation of Tenant's business, including the disposal of grease generated as part of Tenant's restaurant operation, shall be handled and disposed of as required by and in compliance with Applicable Laws or shall be pretreated to the level of domestic wastewater prior to discharge into any sanitary sewer system serving the Premises.

## **SECTION 24. NON-DISCRIMINATION.**

(a) Florida Accessibility Code. Tenant shall comply with the Florida Accessibility Code regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, familial status or physical or mental disability. In addition, Tenant shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

(b) Equal Opportunity. Tenant shall take appropriate action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, familial status or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

(c) Non-Discrimination. Tenant shall not engage in or commit any discriminatory practice in violation of Applicable Laws, statutes, ordinances, rules or regulations.

## **SECTION 25. MISCELLANEOUS.**

(a) Headings. The section and paragraph headings in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision of this Lease.

(b) Jurisdiction. This Lease shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Disputes shall be resolved in the 12th Judicial Circuit Court of Manatee County or in the federal courts in the Middle District of Florida, whichever jurisdiction is appropriate.

(c) Severance. In the event this Lease or a portion of this Lease is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective to the fullest extent permitted by law.

(d) Relationship of Parties/Independent Contractor. It is the intent of the parties that the relationship of Landlord and Tenant under this Lease is the relationship of landlord and tenant. Nothing contained in this Lease shall create or be deemed or construed to create a partnership, joint venture, joint enterprise or any other agency or other similar such relationship between the parties to this Lease.

(e) Third Party Beneficiaries. Neither Tenant nor Landlord intend to directly or substantially benefit a third party by this Lease. Therefore, the parties agree that there are no third party beneficiaries to this Lease and that no third party shall be entitled to assert a claim against either of them based upon this Lease.

(f) Force Majeure. Notwithstanding anything contained in this Lease to the contrary, other than Tenant's obligation to timely pay its Rent (which shall not be subject to extension as a result of Force Majeure), neither Landlord nor Tenant shall be considered to be in default of this Lease if delays in or failure of performance shall be due to Force Majeure, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid and in such event, the time for performance shall be extended by the period of such Force Majeure event(s).

(g) Negotiated Lease. Both parties have substantially contributed to the negotiations which resulted in the preparation of this Lease and this Lease shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other. The parties to this Lease acknowledge that they have thoroughly read this Lease, including all Exhibits and attachments to it, and have sought and received (or had the means, ability and ample opportunity to do so) whatever competent advice and counsel, legal or otherwise, which was necessary for them to form a full and complete understanding of all rights and obligations contained in this Lease.

(h) Incorporation by Reference. The truth and accuracy of each "Recital" clause set forth above is acknowledged by the parties.

(i) Estoppel Statement. The parties agree that from time to time, upon not less than fifteen (15) days prior request by a party to this Lease, the other party may deliver a statement in writing certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease as modified is in full force and effect and stating the modifications); (b) the dates to which the Rent and other charges have been paid; (c) that neither party is in default under any provisions of this Lease, or, if in default, the nature of such default, described in detail; and (d) such other information pertaining to this Lease as either party may reasonably request.

(j) Amendments. No modification, amendment, or alteration in the terms or conditions contained in this Lease shall be effective unless contained in a written document prepared with the same or similar formality as this Lease and executed by Landlord and Tenant.

(k) Prior Agreements. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Lease and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Lease that are not contained in this document. Accordingly, the parties agree that no deviation from the terms of the Lease shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained in this Lease shall be effective unless contained in a written document in accordance with subparagraph (j), above.

(l) References. All personal pronouns used in this Lease shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Whenever reference is made to a Section of this Lease, such reference is to the Section as a whole, including all of the subsections and subparagraphs of such Section, unless the reference is made to a particular subsection or subparagraph of such Section.

(m) Holdover. It is agreed and understood that any holding over of Tenant after the termination of this Lease shall not renew and extend same, but shall operate and be construed as a license from month to month. At the option of Landlord, upon written notice to Tenant, Tenant shall be required to pay to Landlord during any holdover period, monthly license fees which shall be equal to one and one half (1 1/2) the amount of the monthly installment of rental that was due and payable for the month immediately preceding the termination date of this Lease. In addition, Tenant shall be required to pay to Landlord any other charges required to be paid under this Lease during any such holdover period. Tenant shall be liable to Landlord for all loss or damage on account of any such holding over against Landlord's will after the termination of this Lease, whether such loss or damage may be contemplated at the execution of this Lease or not. It is expressly agreed that acceptance of the foregoing payments by Landlord in the event that Tenant fails or refuses to surrender possession shall not operate or give Tenant any right to remain in possession nor shall it constitute a waiver by Landlord of its right to immediate possession of the Premises.

(n) Agent for Service of Process. It is expressly understood and agreed that if Tenant is not a resident of the State of Florida, or is an association, corporation or partnership without a registered agent for service of process in the State of Florida, then in any such event Tenant does designate the Secretary of State, State of Florida, its agent for the purpose of service of process in any court action between it and Landlord arising out of or based upon this Lease, and the service shall be made as provided by the laws of the State for service upon a non-resident, who has designated the Secretary of State as agent for service. Tenant shall designate an agent for service process in Florida. It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, Tenant may be personally served with such process out of this State by certified mailing to Tenant at the address set forth in this Lease. Any such service out of this State shall constitute valid service upon Tenant as of the date of mailing. It is further expressly agreed that Tenant is amenable to and does agree to the process so served, submits to the jurisdiction, and waives any and all objections and protest to such service.

(o) Waiver of Claims. Landlord shall not be liable for any loss, damage or injury of any kind or character to any person or property (i) arising from any use of the Premises or any part of them; (ii) caused by any defect in any building, structure, or other Improvements on them or in any equipment or other facility located in them; (iii) caused by or arising from any act or omission of Tenant, or of any of its agents, employees, licensees or invitees; (iv) arising from any accident on the Premises or any fire or other casualty on them; (v) occasioned by Tenant's failure to maintain the Premises in a safe condition; or (vi) arising from any other cause; unless, in any of such events, caused by the gross negligence or willful act of Landlord. Tenant agrees that Landlord shall not be liable for injury to Tenant's business for any loss of income therefrom or from loss or damage for merchandise or property of Tenant or its employees, invitees, customers, commercial tenants or other persons in or about the Premises, nor shall Landlord be liable for injuries to any persons on or about the Premises whether such damage is caused by or as a result of theft, fire, electricity, water, rain or from breakage, leakage, obstruction or other defect of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or for any other condition arising upon the Premises, or from any new construction or repair, alteration or improvement on the part of Tenant's improvements or the equipment, fixtures or appurtenances to them, other than as a result of Landlord's default of its obligations under this Lease. Landlord does not waive any rights of sovereign immunity that it has under Applicable Law. Notwithstanding anything contained in this Lease to the contrary, in no event shall Landlord be liable for any consequential or punitive damages in connection with this Lease.

(p) Drug-Free Workplace. Tenant covenants and agrees to implement a policy consistent with Applicable Laws with respect to maintaining a drug-free workplace and otherwise to diligently try to provide and maintain during the Term a drug-free workplace at the Premises.

(q) Financial Interests. No elected official, officer, agent or employee of the City shall have a financial interest directly or indirectly in this Lease or any compensation to be paid under it, and further, no City employee who acts in the City as a "purchasing agent" as defined by Section 112.312(20), Florida Statutes, nor any elected or appointed officer of the City, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, may be a partner, officer, director or proprietor of and, further, no such City purchasing agent, employee or elected or appointed officer, or the spouse or child of any of them, alone or in combination, may have a material interest in Tenant. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of Tenant.

(r) Successors and Assigns Bound. This Lease shall be binding upon and inure to the benefit of the successors and assigns of the parties to this Lease where permitted by this Lease.

(s) Time of Essence. Time is expressed to be of the essence of this Lease.

(t) Written Approvals. All approvals and consents required to be obtained under this Lease must be in writing to be effective.

(u) Authority of Individuals To Execute Lease. Tenant shall provide to Landlord upon the execution of this Lease a written certification of Tenant granting to the individuals executing this Lease full authority to execute the same on behalf of Tenant.

(v) Recording of Memorandum of Lease. Landlord consents to Tenant recording a Memorandum of this Lease in the Public Records of Manatee County, Florida, which Memorandum shall set forth, and shall only set forth: (i) the names of the parties; (ii) the Effective Date and Term, and (iii) a notice of non-responsibility to advise all contractors and subcontractors that Tenant shall not have the right to create a lien against Landlord's interest in and to the Premises. Tenant shall not record this Lease in the Public Records of Manatee County, Florida. Tenant agrees that upon any termination of the Lease that it will execute a document in form reasonably requested by Landlord terminating the memorandum of record.

(w) No Set Off. Tenant acknowledges that, as of the Effective Date, it has no claims against Landlord with respect to any or the matters covered by this Lease and as of the Effective Date it has no claim of set off or counterclaims against any of the amounts payable by Tenant to Landlord under this Lease. Reciprocally, Landlord acknowledges that, as of the Effective Date, it has no claims against Tenant with respect to any of the matters covered by this Lease and as of the Effective Date it has no claim of set off or counterclaims against any of the amounts payable by Tenant to Landlord under this Lease.

(x) Police/Regulatory Powers. Landlord cannot, and specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as they may relate to regulations of general applicability which may govern the Premises, any improvements on them, or any operations at the Premises. Nothing in this Lease shall be deemed to create an affirmative duty of Landlord to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules and regulations, federal laws and regulations, State laws and regulations, and grant agreements. In addition, nothing in this Lease shall be considered zoning by contract. The foregoing notwithstanding, Landlord represents and warrants to Tenant that (i) the Required Use of the Premises is in conformity with the existing land use plan and zoning code of the City and (ii) Landlord will not modify the zoning or land use plan during the Term of this Lease in any manner which would prohibit or impair the Required Use of the Premises.

(y) 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 the local public health unit.

(z) Broker. Each party represents and warrants to the other that it has not dealt with any broker or finder in connection with the execution of this Lease. To the extent a broker or finder's fee is claimed, the party who is alleged to have dealt with such claimant shall be responsible for the payment of any and all costs related to the disposition of such claim.

(aa) Counterparts. This Lease may be executed in counterparts, each of which shall be deemed to be an original.

(bb) Attorney Fees. In the event of any litigation which arises out of, pertains to, or relates to this Lease or the breach of it, or the standard of performance required in it, the prevailing party shall be entitled to recover reasonable attorney fees from the non-prevailing party.



(cc) Rules and Regulations. Tenant agrees to comply with all rules and regulations deemed reasonably necessary by Landlord which Landlord may adopt from time to time for the protection, welfare and operation of the Pier, Premises and parking facilities and the protection and welfare of its tenants, invitees, visitors and occupants, provided that such rules and regulations do not materially negate, reduce or impair the rights granted to Tenant under this Lease. The present rules and regulations, with which Tenant agrees to comply, entitled "Rules and Regulations" are attached as Exhibit "C" and they are by this reference incorporated into this Lease. Any future rules and regulations shall become a part of this Lease and Tenant hereby agrees to comply with the same upon delivery of a copy of them to Tenant, providing the same do not deprive Tenant of its rights established under this Lease.

(dd) Satellite Dish.

(1) Notwithstanding anything contained in this Lease to the contrary, in addition to the other rights granted by this Lease, Tenant shall have the right, subject to Applicable Laws, but not the obligation, during the Term to install, maintain and operate a satellite dish antenna or similar rooftop antenna, in any case subject to Landlord's reasonable consent as to the size and power of such antenna and the frequency at which it will receive and/or broadcast (the "Antenna") on the Premises' roof in a location mutually acceptable to both Landlord and Tenant (the "Antenna Site").

(2) Landlord shall have the right to use the remainder of the roof for any purpose including permitting other tenants or occupants of the Pier to lease space on the roof provided that (i) Tenant continues to have reasonable access to the Antenna Site and the Antenna, and (ii) any other equipment installed on the roof pursuant to leases or other agreements entered into after the date of this Lease will not block the ability of the Antenna to receive satellite signals. Landlord, at its expense, may relocate the Antenna on the roof from time to time.

(3) Tenant shall install and maintain the Antenna and related cabling at its expense. Tenant shall have access to the Antenna Site at all times, subject to any reasonable restrictions of Landlord. The installation of the Antenna shall be completed in a good and workmanlike manner and in accordance with all Applicable Laws and otherwise in accordance with the terms of this Lease. Tenant shall install the Antenna using a non-penetrating roof mount. Tenant shall comply with all floor load limitations. Tenant shall also maintain insurance on the Antenna and the Antenna Site as is satisfactory to Landlord in its reasonable judgment. At the termination of this Lease (whether upon the expiration of the Lease Term or otherwise) Tenant shall, at Tenant's sole cost and expense, remove the Antenna and restore the Antenna Site to the condition it was prior to installation of the Antenna (which obligation shall survive the termination or expiration of this Lease).

(cc) Personal Guaranty. As a material inducement to Landlord's entry into this Lease, each of the Affiliates shall provide a joint and several guaranty of Tenant's obligations of this Lease in the form attached hereto as Exhibit "E". The effectiveness of this Lease is conditioned upon the delivery of the guaranties by the guarantors.

(ff) No pending claims against Tenant. Tenant hereby warrants and represents that there are no administrative claims or lawsuits pending or threatened against Tenant as of the date Tenant has executed this Lease.

(gg) Waiver of Jury Trial; No Counter-claims relating to Rent. It is mutually agreed that in the event Landlord commences any summary proceeding for non-payment of rent, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding. Tenant and Landlord hereby knowingly and voluntarily waive trial by jury in any action whatsoever brought by Landlord or Tenant to

construe or enforce this Lease. The foregoing waiver is a material inducement to the willingness of Landlord and Tenant to construe or enforce this Lease.

(lh) Contingent on Ordinance. The parties acknowledge that this Lease must be authorized by an ordinance properly adopted by the City Commission for the City of Bradenton Beach, Florida. If the City Commission fails to adopt an ordinance authorizing this Lease, the Lease shall have no force or effect between the parties and shall be deemed null and void ab initio.

## **SECTION 26. COMMON AREAS AND COMMON AREA EXPENSES.**

A. **DEFINITION.** The term "Common Areas" refers to all areas within the pier boundaries and ingress and egress portions of the City Pier, including the Parking Area, which are now or in future available for general use, convenience and benefit of Landlord, Tenant and all other tenants and other persons entitled to occupy City Pier including, without limitation, automobile, bicycle, and boat parking areas, sidewalks, landscaped and planted areas, Pier infrastructure, service areas and all other service facilities and equipment.

B. **TENANT'S RIGHT TO USE COMMON AREAS.** Tenant and Tenant's employees and invitees are, except as otherwise specifically provided in this Lease, authorized, empowered and privileged to use the Common Areas in common with other persons during the Lease Term. Landlord shall keep or cause to be kept the portions of the Common Areas owned by Landlord in a neat, clean and orderly condition, properly lighted and landscaped, and shall repair any damage to the Common Areas facilities.

C. **COMMON AREA EXPENSES/COMMON AREA MAINTENANCE (CAM).** The "Common Area Expenses" incurred by Landlord shall be apportioned among the various occupants of the City Pier, and Tenant shall pay to Landlord 20% for Restaurant, 10% for Bait Shop, and 10% for Harbor Master's Office, of such Common Area Expenses. "Common Area Expenses" shall include, but not be limited to:

- (i) all sums expended in connection with the Common Areas for all general maintenance, repairs, replacements, resurfacing or restriping, and cleaning;
- (ii) commercially reasonable periodic up-grading of the Common Areas and the mechanical, electrical, plumbing, computer and other systems serving the Common Areas; sweeping and janitorial maintenance and supplies (including painting);
- (iii) repair of vertical transportation systems, sidewalks, curbs, gutters, Pier directories and signs and other components of the Common Areas;
- (iv) maintenance of parking areas, sprinkler systems, public restrooms, planting and landscaping;
- (v) painting the exteriors of the buildings on the City Pier;
- (vi) lighting, telecommunication, and other utilities, including without limitation all domestic and fire water, electricity, gas, fiber optic, internet, cable tv, steam, chilled water, fire and sanitary and storm sewer systems, back-flow preventers and lines, and any and all usage, service, hook-up, connection, availability and/or standby fees, deposits or charges pertaining to same, and maintenance or replacement of pipes, cables, lines and underlying easements if not maintained or replaced by utility companies;
- (vii) directional signs and other markers and bumpers; maintenance and repair of any fire protection systems, lighting systems, storm drainage systems and other utility systems;
- (viii) personnel, including professional services, to implement such services;
- (ix) labor costs and service contracts; removing rubbish and trash including from adjacent sidewalks and street curbs and maintaining refuse receptacles and recycling facilities;
- (x) security services, including, if Landlord deems necessary, the cost of security guards;

- (xi) promotional materials, installing and maintaining art work, holiday decorations; on and off site billboards and audio, visual and computer based promotional production services which may be used for the City Pier;
- (xii) costs of valet parking and shuttle services if offered to tenants of the City Pier;
- (xiii) depreciation on maintenance and operating machinery and equipment (if owned) and rental paid for such machinery and equipment (if rented);
- (xiv) legal, accounting, consulting and other professional fees incurred in connection with the ownership and operation of the Common Areas;
- (xv) rental payments for any parking structures or for leased portions of the parking lot and other expenses for off-site parking in the event that Landlord, in its reasonable business judgment determines that such off-site parking is necessary;
- (xvi) and on-site management and/or security offices; telephone and stationary costs;
- (xvii) license fees;

D. **PAYMENT OF COMMON AREA EXPENSES.** Tenant's pro rata share of Common Area Expenses shall be paid within thirty (30) days of receipt of Landlord's written common area expense demand.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, the parties hereto have caused this Lease And Concessionaire Agreement to be executed the day, month, and year first above written.

WITNESSES:

CONCESSIONAIRE/LESSEE:

CAST AND CAGE, LLC,  
a Florida limited liability company

Sammy Johnson  
Signature  
Sammy Johnson  
Print Name  
Audra Lanzaro  
Signature  
Audra Lanzaro  
Print Name, As to Lessee

By: Roland Peña  
Print: Roland Peña  
Title: Member

Sammy Johnson  
Signature  
Sammy Johnson  
Print Name  
Audra Lanzaro  
Signature  
Audra Lanzaro  
Print Name, As to Lessee

By: Tami R. Blumpe Peña  
Print: Tami R. Blumpe Peña  
Title: Member

LESSOR:

CITY OF BRADENTON BEACH,  
a Municipal Corporation of the State of Florida

Sammy Johnson  
Signature  
Sammy Johnson  
Print Name  
Audra Lanzaro  
Signature  
Audra Lanzaro  
Print Name, As to Lessor

By: John Shaughtnessy  
Its: Mayor of the City of Bradenton Beach

STATE OF FLORIDA  
COUNTY OF MANATEE

The foregoing instrument was subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Roland Peña, as Member of Cast and Cage, LLC, a Florida limited liability company,

☒ who is personally known to me,

☐ who produced \_\_\_\_\_ as identification, and who acknowledged before me that he executed the same freely and voluntarily for the purposes therein expressed under authority duly vested in it by said company.

My Commission Expires:

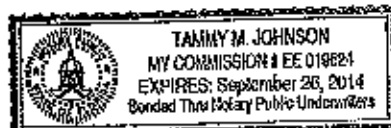
Signature

Print Name

NOTARY PUBLIC - STATE OF \_\_\_\_\_

Commission No. \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF MANATEE



The foregoing instrument was subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Tami Kemper-Peña, as Member of Cast and Cage, LLC, a Florida limited liability company,

☒ who is personally known to me,

☐ who produced \_\_\_\_\_ as identification, and who acknowledged before me that she executed the same freely and voluntarily for the purposes therein expressed under authority duly vested in it by said company.

My Commission Expires:

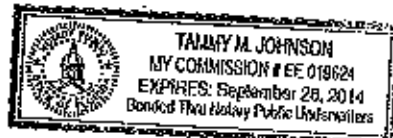
Signature

Print Name

NOTARY PUBLIC - STATE OF \_\_\_\_\_

Commission No. \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF MANATEE



The foregoing instrument was subscribed and sworn to before me this 12 day of November, 2013, by John Shaughnessy, as Mayor of the City of Bradenton Beach, a Florida municipal corporation,

☒ who is personally known to me,

☐ who produced \_\_\_\_\_ as identification, and who acknowledged before me that he executed the same freely and voluntarily for the purposes therein expressed under authority duly vested in him by said corporation.

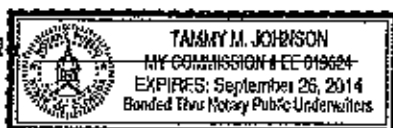
My Commission Expires:

Signature

Print Name

NOTARY PUBLIC - STATE OF FLORIDA

Commission No. \_\_\_\_\_



**EXHIBITS:**

**EXHIBIT "A" LEASED PREMISES, PARKING & COMMON AREAS**

**EXHIBIT "B" LANDLORD'S PARCEL/FISHING PIER**

**EXHIBIT "C" RULES & REGULATIONS**

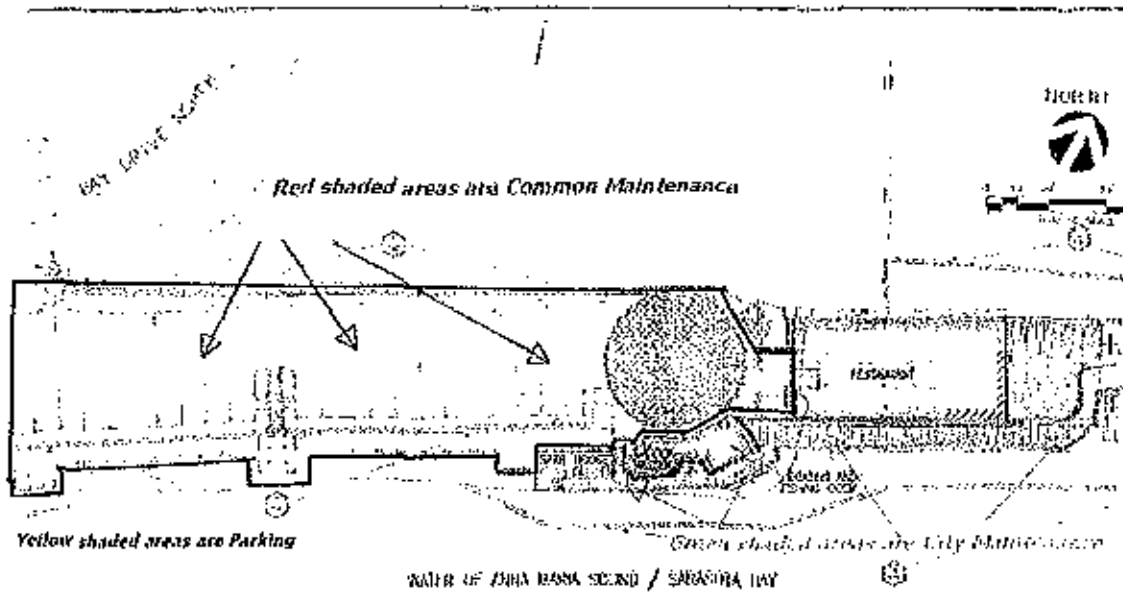
**EXHIBIT "D 1" TENANT'S WORK**

**EXHIBIT "D 2" LANDLORD'S WORK**

**EXHIBIT "E" PERSONAL GUARANTEES**

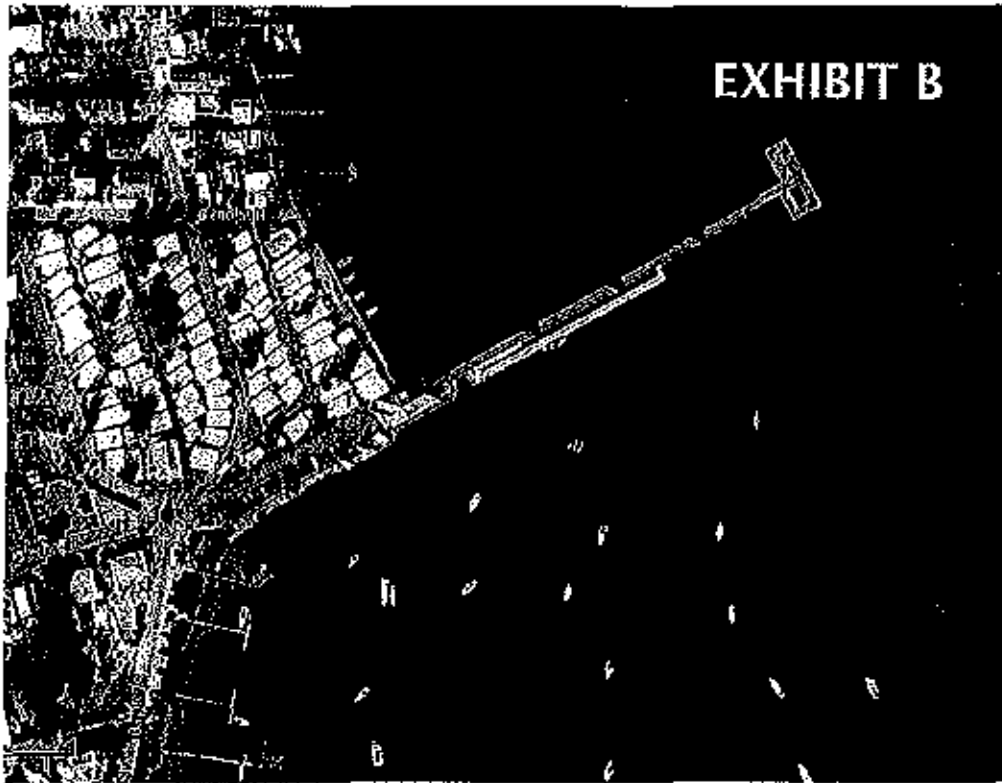
**EXHIBIT "A" LEASED PREMISES, PARKING & COMMON AREAS**

**Exhibit A**



**Leased areas include those areas marked:  
Restaurant, Boating and Fishing Kiosk, and Dock Master**

**EXHIBIT "B" LANDLORD'S PARCEL/FISHING PIER**





**EXHIBIT "C"**  
**RULES AND REGULATIONS**

1. BLOCKING OF ENTRIES, ETC. Tenant, its officers, agents, servants and employees shall not block or obstruct any of the entries, passages, doors, hallways or stairways of the Pier or place, empty or throw any rubbish, litter, trash or material of any nature into such areas, or permit such areas to be used at any time except for ingress or egress of Tenant, its officers, agents, servants, employees, patrons, licensees, customers, visitors or invitees.
2. SIGNS. No sign, door plaque, advertisement or notice shall be displayed, painted or affixed by Tenant, its officers, agents, servants, employees, patrons, licensees, customers, visitors or invitees in or on any part of the outside or inside of the Premises, without the prior written consent of Landlord and then only of such color, size, character, style and material and in such places as shall be approved and designated by Landlord in accordance with local laws. Signs on doors and entrances to the Premises shall be placed by a contractor approved by Landlord and paid for by Tenant.
3. LOST OR STOLEN PROPERTY. Landlord will not be responsible for lost or stolen personal property, equipment, money or articles taken from the Premises, the Pier or parking facilities regardless of how or when loss occurs.
4. RESTRICTIONS. Tenant, its officers, agents, servants, employees, patrons, licensees, customers, visitors or invitees **SHALL NOT:**
  - A. Equipment and Inflammable Fluids. Install or operate any heating or air conditioning apparatus or carry on any mechanical operation or bring into the Premises, Pier or parking facilities any flammable fluids or explosives without written permission of Landlord, beyond what is necessary to operate a restaurant, including natural gas and air compressor(s).
  - B. Housing. Use the Premises, Pier or parking facilities for housing, lodging or sleeping purposes without the prior written consent of Landlord.
  - C. Animals. Bring in or upon the parking facilities, the Pier or the Premises or keep in the Premises any fowl, reptile, insect or animal except service animals or allow the entry into the Premises any bicycle or other vehicle, except baby carriages or wheelchairs, without the prior written consent of Landlord.
  - D. Noise. Subject to Applicable Laws.
  - E. Solicitation. Solicit business in the parking facilities or on the Pier, nor shall Tenant distribute any handbills or other advertising matter on automobiles parked in the parking facilities.
  - F. Nuisance. Conduct its business and control its officers, agents, employees, servants, patrons, customers, licensees, and visitors in such a manner as to create any nuisance, or interfere with, or disturb any other tenant in its operation of the Premises.
  - G. Smoking. Smoking is limited to the outside of the Premises.
5. LOCKS. No additional locks shall be placed on any door in the Premises without the prior written consent of Landlord.
6. PLATE GLASS. All plate and other glass in the Premises which is broken through cause attributable to Tenant, its officers, agents, visitors or invitees shall be replaced by and at the expense of Tenant under the direction of Landlord.

7. NOTICE OF ACCIDENT. Tenant shall give Landlord prompt written notice of all accidents that occur within or about the Premises.

8. PLUMBING FACILITIES. The plumbing facilities shall not be used for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be deposited or thrown in them and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Tenant, who shall, or whose officers, employees, agents, servants, patrons, customers, licensees, visitors, or invitees shall, have caused it.

9. NO CANVASSING OR SOLICITING. Canvassing, soliciting or peddling in the Premises, on the Pier or parking facilities is prohibited and Tenant shall cooperate to prevent the same.

10. DISPOSAL OF CRATES, BOXES, ETC. In the event Tenant must dispose of crates, boxes, etc. it will be the responsibility of Tenant to dispose of same in outside dumpsters. All crates, boxes, etc. shall be flattened prior to dumpster placement. In no event shall Tenant set such items in the public hallways or other areas of the Pier or parking facilities, excepting Tenant's own Premises, for disposal.

11. INFESTATION. If the Premises become infested with vermin, Tenant, at its sole cost and expense, shall cause the Premises to be exterminated from time to time, to the satisfaction of Landlord.

12. NO ANTENNAS. Except as otherwise provided in the Lease, Tenant shall not install any antenna or aerial wires, or radio or television equipment, or any other type of equipment, inside or outside of the Premises, without Landlord's prior approval in writing and upon such terms and conditions as may be specified by Landlord in each and every instance.

**EXHIBIT "D-1"**  
**TENANT'S WORK**

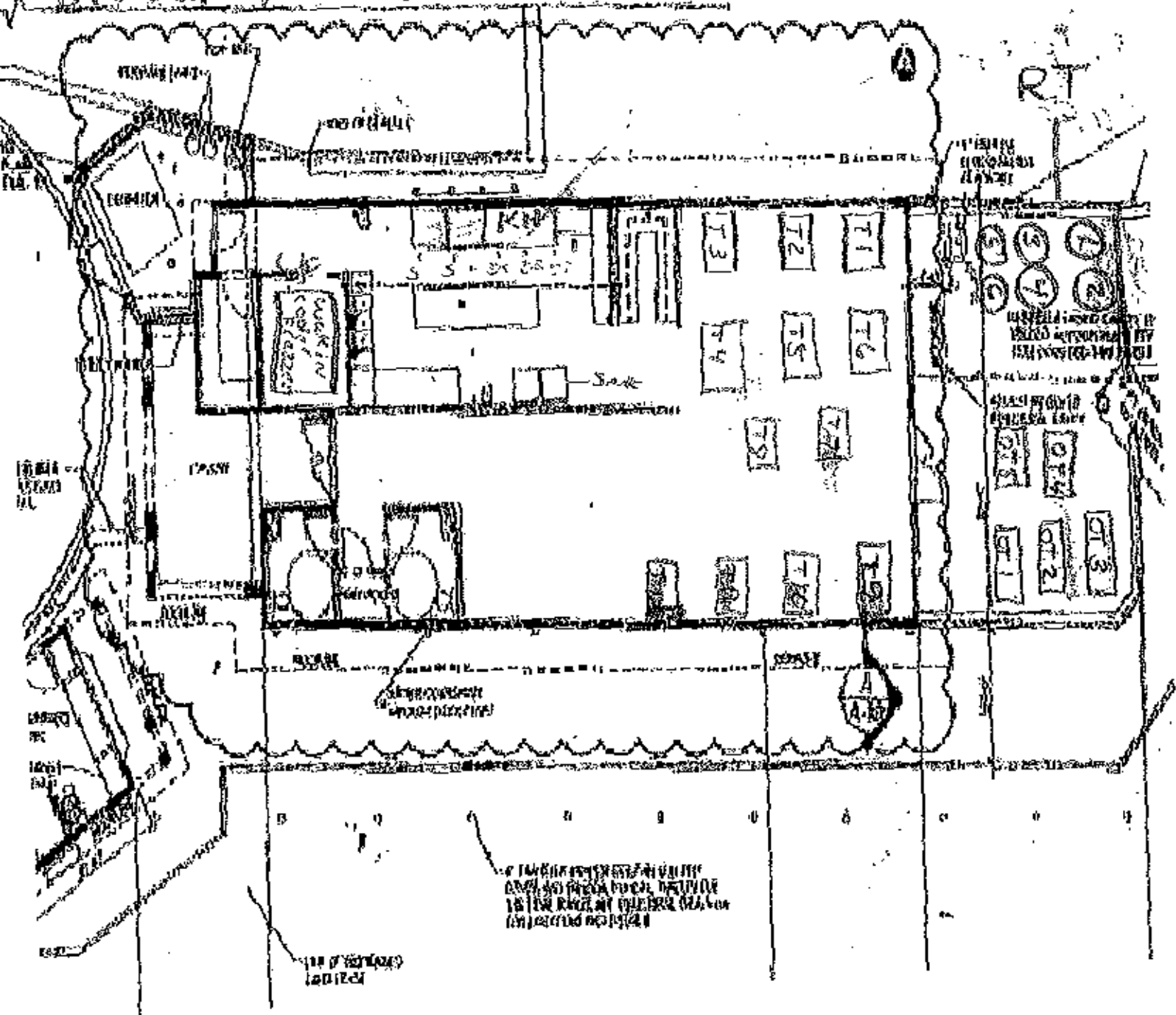
EXHIBIT "D-2" LANDLORD'S WORK

Landlord shall perform the following work (collectively, "Landlord's Work") in or about the Premises and Pier which shall be completed on or before the Rent Commencement Date:

EXHIBIT "F" PERSONAL GUARANTEES

KH = Kitchen Hood T = TABLE  
 DE = Deep Fryer S = STOVE

CT = walk in cooler / freezer  
 GL = Gas Lines



OT = out side TABLES  
 RT = out Side round TABLE