

The Port District Riverfront Restaurant Lease

**Absolute Net
Non-Subordinated Lease**

Lessor:

The City of Port St. Lucie, Florida

and

Lessee:

PIII Investments, LLC

Dated _____, 2023

The Port District Riverfront Restaurant Lease
(Absolute Net Non-Subordinated Lease)

THIS ABSOLUTE NET NON-SUBORDINATED LAND LEASE (the “Lease”), executed on the dates hereinafter set forth and commencing on the date provided herein, between the CITY OF PORT ST. LUCIE, a Florida municipal corporation (“Lessor”, “City”, or “Port St. Lucie City Council”, as appropriate), and PIII INVESTMENTS, LLC, a Florida limited liability company (“Lessee”, or “PIII Investments”, as appropriate), for the following uses and purposes:

RECITALS

WHEREAS, the City, as fee simple title owner of the Property (as defined below), desires to lease the Property to PIII Investments to be operated as a restaurant as an ancillary use to The Port District Riverfront Park (as defined below); and

WHEREAS, the City has determined that Lessee possesses the financial capacity, a good reputation, and sound managerial ability to operate a restaurant as an ancillary use to The Port District Riverfront Park successfully on the Leased Property; and

WHEREAS, Lessee has approved this Lease, and authorized and directed its execution by the duly Authorized Representatives of, and on behalf of, Lessee.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

LEASE AGREEMENT

1. **RECITALS.** The foregoing recitals are true, correct, and incorporated into this Lease.
2. **DEFINITIONS.** Capitalized terms used in this Lease shall have the following definitions:

2.1. As to each of the following definitions, use of the masculine gender shall be considered and construed to include correlative words of the feminine and neuter genders. Unless the context shall indicate otherwise, the singular shall include the plural as well as the singular number.

2.1.1. “Absolute Net Rent” means this Lease (that is sometimes colloquially called a “triple net lease”) in which the Lessee pays rent, plus all the costs of ownership and operation, including but not limited to insurance, real estate taxes and assessments, maintenance, repair and replacement, cleaning, landscaping, and utilities. All obligations of the Lessee under the terms of this Lease shall be deemed as a rental obligation, regardless of the description or location in this Lease.

2.1.2. “Additional Rent” means any additional obligation of the Lessee to promptly pay when due any and all charges, fees, or costs, directly and indirectly associated with or attributable to the Leased Property and the activities conducted thereon and therein, together with all interest and penalties that accrue thereon in the event of the failure of Lessee to pay those items when due. Additional Rent shall mean any amount owed to the Lessor for sums paid on behalf of the Lessee for any and all taxes or insurance premiums, when due, and as required to be maintained by the Lessee

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during any Term of this Lease. It shall also mean any other sum that is due to the Lessor from the Lessee as a result of its default, including but not limited to sums paid on behalf of the Lessee, and Lessor's reasonable attorneys' fees and costs.

2.1.3. "Anticipated Delivery Date" means July 31, 2023, the date Lessor anticipates completion of the Lessor Improvements in the Required Condition.

2.1.4. "Authorized Representative" means the natural or corporate Person or Persons designated and appointed from time to time as such by either party. Unless otherwise specifically provided in this Lease, whenever the consent, approval or authorization of the Lessor is required herein, (specifically excluding any amendment of this Lease), the Lessor's City Manager or their designee shall be the Authorized Representative of the Lessor with authority to grant, modify or deny such consent, approval or authorization and for any amendment of this Lease, the Lessor's City Council or its designee shall be the Authorized Representative of the Lessor with authority to grant, modify or deny such amendment. Furthermore, any such amendment, consent, approval or authorization shall be given in a manner consistent with the terms of the Charter of the City of Port St. Lucie and City Codes.

2.1.5. "The "Botanical Gardens" means the area north and immediately adjacent to The Port District Riverfront Park consisting of approximately 19.71 acres of land identified under the Saint Lucie County Property Appraiser's Parcel Information No.: 4410-411-0003-000-4.

2.1.6. "Building Construction Plans" means the plans and specifications submitted by the Lessee and approved by the City that conform to the requirements of the Florida Building Code, and when approved, are satisfactory for the details of construction of the structures on the Property which, upon the final inspection and approval by the Building Official shall become the Leasehold Improvements.

2.1.7. "Building Official" means that Person or those Persons authorized under City's ordinances and the Florida Building Code to perform building inspections and issue, on behalf of the City, a Certificate of Occupancy, a Temporary Certification of Occupancy, or a Certificate of Completion, as provided by law.

2.1.8. "Building Permit" means for all or each part of the Project to be constructed on the Leased Property, any permit, including demolition or foundation only permits, issued by the City of Port St. Lucie as the governmental authority having jurisdiction over construction on the Project.

2.1.9. "Certificate of Occupancy" means the final Certificate of Occupancy or Certificate of Completion, as appropriate, issued for the Leasehold Improvements by a Building Official pursuant to the Florida Building Code.

2.1.10. "City" means the City of Port St. Lucie, a municipal corporation created under the laws of the State of Florida.

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2.1.11. "City Codes" or "Codes" means the ordinances and codes of the City of Port St. Lucie that regulate the development and construction of the Project, including but not limited to: the Port St. Lucie City Charter, the Port St. Lucie City Code of Ordinances, the Port St. Lucie Land Development Code, the Port St. Lucie Comprehensive Plan, and the Florida Building Code, including all of its separate codes, standards, provisions, and appendices.

2.1.12. "City Council" or "Port St. Lucie City Council" means the elected governing body of the City, by whatever name known or however constituted from time to time.

2.1.13. "Construction Commencement Date" means the date that Lessee commences construction of the Leasehold Improvements on the Leased Property.

2.1.14. "Contingency Periods" means the Due Diligence Period and the Permit Period.

2.1.15. "Delivery Date" means the later of (i) the date Lessor tenders and Lessee accepts actual, physical and exclusive possession of the Leased Property in the Required Condition and (ii) the date Lessee obtains all final and unappealable required Permits and Approvals for the construction and use of the Leasehold Improvements. In no event, however, shall the Delivery Date occur on or before the expiration of the Contingency Periods unless Lessee accepts delivery prior thereto in Lessee's sole discretion. Lessor hereby warrants and represents that from and after the Delivery Date, Lessee shall have exclusive possession of the Leased Property.

2.1.16. "Due Diligence Period" means that Lessee will be permitted to inspect the Leased Property, at Lessee's sole cost and expense, for a period beginning on the Effective Date and ending on the ninetieth (90th) day after the Effective Date; provided that such ninety (90) day period shall be automatically extended until that certain Ground Lease between the City of Port St. Lucie, Florida and the Port St. Lucie Governmental Finance Corporation recorded in Official Records Book 1919, Page 2423 of the Public Records of Saint Lucie County, Florida as amended by that certain First Amendment to Ground Lease recorded in Official Records Book 2789, Page 2901 of the Public Records of Saint Lucie County, Florida has been amended or terminated so that it no longer encumbers the Leased Property. The Lessor's City Manager or their designee shall be permitted to grant short term extensions of the Due Diligence Period.

2.1.17. "Effective Date" means the date upon which this Lease has been executed by the last of Lessor and Lessee.

2.1.18. "Expiration Date" means the date on which this Lease expires.

2.1.19. "Gross Sales" means the entire amount of the sales prices of all food, beverage, goods and merchandise sold (including gift and merchandise certificates when redeemed), and the charges for all services and all other receipts in, on or from any part of the Leased Property, whether for cash or credit, and shall include telephone orders received or filled at the Leased Property, orders taken from the Leased Property, although the orders may be filled elsewhere, and all monies or other things of value received from food and beverage sales from the Leased Property. The following shall be deducted or excluded, as the case may be, from Gross Sales: (a) refunds to customers; (b) sales, use,

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excise, retailer's, occupation, alcoholic beverage or similar taxes imposed in a specific amount, or percentage upon, or determined by, the amount of sales if actually paid to the taxing authority; (c) returns to shippers and manufacturers; and (d) sales not in the ordinary course of business, or machinery, furnishings or equipment which Lessee removes from the Leased Property; (e) the amount of any discounts or complimentary meals or beverages to the extent there is no payment therefor; (g) the amount of any tips, gratuities, or service charges to the extent same are expressly designated as such and separately added to the total price charged, whether the same are collected by Lessee as a stated percentage of the gross cost of a meal, or which are voluntarily paid by restaurant patrons, and paid by Lessee to its employees directly; (g) the value of complimentary or discounted sales and promotional donations or trade outs; or the value of coupons used by customers for free or discounted meals; (h) interest, service or activity charges or fees paid to third-party issuers of credit cards in connection with credit card transactions included in Gross Sales, and any penalties or other charges charged by Lessee for returned checks; (i) uncollected accounts as written off by Lessee as bad debts for income tax purposes; (j) insurance proceeds or other sums or credits received in settlement of claims for loss or damage related to the Leased Property, Lessee's merchandise, trade fixtures or equipment, or interruption of Lessee's business; (k) delivery fees and charges that are collected by Lessee from a customer, which are payable by Lessee back to unaffiliated third parties for handling such deliveries or amounts that Lessee collects for delivery charges and delivery fees to the extent such amounts are paid by Lessee to third parties; (l) proceeds from charity or similar benefit events held at the Leased Property to the extent Lessee does not receive any profit therefor; (m) exchange of merchandise between locations where such exchanges are made solely for the convenient operation of Lessee's business and not for the purpose of consummating a sale at another location which has been made, in fact, at, in, on or from the Leased Property; (n) sales of gift certificates unless and until and to the extent redeemed at the Leased Property; (o) transfers of goods to affiliates of Lessee in connection with normal operation of business; (p) rents and similar payments paid to Lessee in connection with an assignment, subletting or operating agreement of portions of the Leasehold Improvements provided the gross sales of the sublessee, assignee or party holding under an operating agreement have been included in the determination of Gross Sales; and (p) fees collected by Lessee and included in Gross Sales on behalf of third-party companies for making reservations of tables at the restaurant such as "Open Table" and then paid back by Lessee to such companies, provided that such fees and the amounts thereof are customary and reasonable per restaurant industry standards.

2.1.20. "Lease Commencement Date" means the date of the issuance of a Certificate of Occupancy for the Project allowing for the Project to commence commercial operations on the Leased Property.

2.1.21. "Leasehold Interest" means the Lessee's interest under this Lease as well as any equitable interest in the Leased Property, the Leasehold Improvements, and all easements and rights appurtenant thereto, as provided by this Lease and applicable law.

2.1.22. "Leasehold Improvements" means the improvements associated with the Project constructed by or on behalf of the Lessee on the Leased Property, including, all structures on and improvements to the Leased Property.

2.1.23. "Leased Property" or "Property" means the real property described in **Exhibit "A"** and depicted on **Exhibit "A-1"** consisting of two areas, the first consisting of approximately 47,338 square feet of land and the second consisting of approximately 1,180 square feet of land. The final square footage of the Leased Property shall be determined prior to the expiration of the Due Diligence Period and, if necessary, the parties shall enter into an amendment of this Lease to correct any changes needed to be made to **Exhibit A** or to **Exhibit A-1**.

2.1.24. "Legal Requirements" means all federal, state, and local laws and ordinances and lawful orders and regulations affecting the Leased Property, and the health, cleanliness, safety, construction, occupancy and use of same. Except in such minute quantities used in the ordinary course of business and in compliance with applicable law, Lessee shall not cause or permit the use, generation, storage, or disposal in, on or about the Leased Property any substance, materials or wastes in violation of any federal, state, or local laws from time to time in effect concerning hazardous, toxic, or radioactive materials ("Hazardous Substances"). Lessee shall promptly and fully comply with all state and local laws in effect from time to time prohibiting discrimination or segregation by reason of race, color, religion, disability, sex, or national origin or otherwise.

2.1.25. "Lessor Improvements" means the improvements associated with the Project constructed or to be constructed by or on behalf of the Lessor on or adjacent to the Leased Property, as outlined on **Exhibit "B"**.

2.1.26. "Major Alteration" means any addition, alteration, change or improvement to the exterior of any of the Leasehold Improvements that constitutes a substantial deviation from those depicted on the approved Plans and Specifications for the Leasehold Improvements, provided, however, such term shall not include periodic maintenance activities such as replanting or replacing of landscaping, repainting exteriors, and replacing damaged, worn, or obsolete fixtures, or replacing approved signage.

2.1.27. "Permit Period" means the period commencing on the Effective Date and ending 240 days thereafter; provided however, the Permit Period shall be deemed to have expired on the date that Lessee obtains all of its final and non-appealable Permits and Approvals (as defined below) if such date is prior to the expiration of the 240 day period identified above. During the Permit Period, Lessee shall use good faith efforts to obtain all necessary Permits and Approvals from applicable governmental authorities for the Leasehold Improvements. The Lessor's City Manager or their designee shall be permitted to grant short term extensions of the Permit Period.

2.1.28. "Permits and Approvals" means all necessary permits and approvals from applicable governmental authorities for the Leasehold Improvements, Lessee's signage, and the development and operation of the Leased Property for the Project, including but not limited to final site plan approvals and building permits, on terms and conditions acceptable to Lessee in Lessee's sole discretion.

2.1.29. "Person" means any natural person, firm, partnership (general or limited), corporation, company, joint venture, estate, trust, business trust, cooperative, limited liability corporation, limited liability partnership, limited liability company or body politic, including any

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heir, executor, administrator, trustee, receiver, successor or assignee, or other person acting in a similar representative capacity.

2.1.30. "Plans and Specifications" mean each and every of the plans and specifications submitted by either the Lessor or Lessee and including, (i) for the Lessor Improvements, those separately identified as Exhibits in the approved planned Unit Development Ordinance ("PUD") for the Project, and (ii) for the Leasehold Improvements, all Building Permits, and all of the Building Construction Plans and Permits for the Leasehold Improvements. The Plans and Specifications include such plan documents and specifications as may be later submitted, amended, modified, or restated from time to time, all of which must be substantially consistent with the scale, height, quality, and content of the Conceptual Site Plan (SP-1) attached hereto as **Exhibit "C."**

2.1.31. "Project" means a multi-venue food garden concept consisting of one or more structures that may include a full service anchor restaurant and bar, including liquor, beer, and wine sales for on-premises consumption, live music and entertainment, the incidental sale of Lessee's branded clothing and other non-branded merchandise, as well as a tiki bar, two additional smaller restaurant venues, back office space and related ancillary uses, together comprising up to 15,000 total square feet of indoor space and additional outdoor landscaped restaurant area. Lessee shall also be permitted to use the additional temporary structures identified in Section 4.12 on the Leased Property.

2.1.32. "Rent" means all rent as provided in Section 6, together with all taxes due and owing on the Property or the Lease, all unpaid liability or casualty insurance premiums as described in the Lease, and any late rent that is due and owing.

2.1.33. "Required Condition" means that the Lessor Improvements have been completed as required pursuant to **Exhibit "B"** hereto including the issuance of any Certificates of Completion or any other approvals required for the Lessee's use of the Lessor Improvements for the construction of the Leasehold Improvements.

2.1.34. "Right to Contest" means the procedure set forth in Section 16 for challenging any lien, payment, charge, or compliance with any law, rule, regulation, or other legal requirement as described therein.

2.1.35. "Tenant" means any entity sub-leasing or licensing any portion of the Leasehold Improvements from Lessee, as permitted in Section 19 hereof.

2.1.36. "The Port District Riverfront Park" or "Park" means the area formerly identified as the Westmoreland Middle Tract, located adjacent and south of the City's Botanical Gardens, and includes such improvements as Boardwalks, Pioneer Park Playground, Historic Homes, Event Lawn, and other related park improvements. The Port District Riverfront Park includes approximately 9.75 acres of land identified under the Saint Lucie County Property Appraiser's Parcel Information No.: 4410-413-0001-000-6 and is described on **Exhibit "A-2"**.

2.1.37. “Unavoidable Delay” means those events constituting excuse from timely performance by a party hereto from any of its obligations hereunder, as such events are more specifically defined in and subject to the conditions described in Section 26 hereof.

3. LEASE.

The Lessor leases to the Lessee, and the Lessee accepts from the Lessor, the Leased Property upon and subject to the terms of this Lease. Subject to the completion of the Lessor's Improvements, Lessee accepts the Leased Property in “AS IS” and “Where IS” condition, without any warranties express or implied. Nothing in this Lease shall be interpreted to create an equitable ownership of the Leased Property in Lessee’s name. Lessee specifically confirms that it is not the equitable owner of the Leased Property and waives any benefits which may accrue to Lessee in the event it was deemed to be an equitable owner of the Leased Property. At all times during this Lease, Lessor shall remain the owner of the Leased Property.

4. USES.

4.1. **Lessee’s Use.** Subject to the terms and conditions of this Lease and in compliance with the Legal Requirements, the Lessee shall use the Leased Property for the construction and operation of the Project, and for no other use without Lessor's prior written consent. Lessee’s use of the Leased Property for the operation of multiple restaurants, including multiple food and beverage venues, live music and entertainment, shall serve as ancillary uses for The Port District Riverfront Park recreation area.

4.1.1. Hours of Operation. Lessee shall be open and operating for service of lunch and for service of dinner for a minimum of ten (10) hours per day, seven (7) days per week, with the exception of Easter, Thanksgiving and Christmas, unless agreed otherwise in writing by Lessor's City Manager or their designee and except for closures resulting from: (a) Unavoidable Delays, (b) periods when the access to the Leased Property is closed by Lessor, and (c) with Lessor’s written consent, for periods during which the Leasehold Improvements are undergoing repair or renovation, but any such period for repairs and renovations shall not exceed three (3) contiguous months. Lessee further acknowledges the need for the continuous and regular operation of its restaurant facility, including the duty to exercise best management practices. Notwithstanding the above and in recognition that the Leasehold Improvements may consist of several venues serving various types of food and beverages, not all portions of the Leasehold Improvements shall be required to be open for a minimum of ten (10) hours per day, seven (7) days per week so long as one or more venues (or several over the course of the 10 hour operating period) are open and operating each day. In addition, the main dining venue shall be permitted to be closed one day per week, on either Monday or Tuesday, provided at least one other venue is open and serving food and beverages. The Lessee agrees that any live music associated with the operation of the Project shall end at 11:00 p.m., unless advance written permission from the Lessor is obtained. In any event, all music and other activities must comply with the City of Port St. Lucie’s noise ordinance. Lessee shall be permitted to close all or portions of the Leasehold Improvements to the general public during the hours that the Leasehold Improvements are used for special events such as charitable and fund-raising events, wedding receptions and other private events, with any such closure being coordinated with Lessor's City

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Manager or their designee, limited to one day per week unless otherwise approved by Lessor's City Manager or its designee. Lessor shall periodically deliver to Lessee a schedule of the events planned for the Park providing for at least a future six (6) month time period so that Lessor and Lessee can coordinate their respective schedules for when the Lessee will be able to schedule closures of the Leasehold Improvements for special events and otherwise plan for any increase activities at the Park. Lessor and Lessee agree to cooperate in good faith as to the scheduling of their respective events so that no closure of the Leasehold Improvements for special events will interfere with Lessor's events planned at the Botanical Gardens or the Park. During the entire Term of this Lease, Lessee and Lessee's Tenants and their respective agents, contractors, subcontractors, employees, invitees, customers and representatives shall have unfettered and unrestricted access to the Leased Property twenty-four (24) hours a day, seven (7) days a week.

4.2. **Construction and Maintenance.** Lessee shall construct and maintain the Project in accordance with the terms and conditions of this Lease.

4.3. **Public Park.** The parties acknowledge and agree that Lessee's restaurant is an ancillary use for The Port District Riverfront Park recreation area and therefore, except as specifically provided herein, all common areas outside of the Leased Property must remain open to the public without restricted or conditional access.

4.4. **Parking.** The Lessee acknowledges that the Project will have shared parking, accessible to the employees, customers and invitees of the Project, with The Port District Riverfront Park and that other than parking spaces that may be located wholly within the boundaries of the Leased Property, there will be no specifically dedicated parking for the Project. Except for those parking spaces that may be located wholly within the boundaries of the Leased Property, Lessor shall maintain all such shared parking spaces in a clean and safe condition in accordance with all applicable Legal Requirements and with appropriate levels for lighting for use at night. Lessor hereby agrees that the shared parking spaces to be located within The Port District Riverfront Park shall be available for and included in the number of available parking spaces that may be required under applicable land use, zoning and building Codes for purposes of the City's and other governmental agencies' review and approval of the Plans and Specifications for the Leasehold Improvements and the issuance of all Permits and Approvals, including, but not limited to, the Building Permits and the Certificates of Occupancy for the Leasehold Improvements. In the event that any governmental agency restricts the period of time any particular area of the Leased Property or The Port District Riverfront Park can be used for parking based on environmental, wildlife, wetlands or other considerations, Lessor shall work with Lessee to make other portions of The Port District Riverfront Park available for parking by Lessee and its employees, contractors, suppliers and invitees. Subject to compliance with Code, Lessee shall be permitted to install any ADA accessible parking spaces required for the Leasehold Improvements in the Leased Property. To the extent possible, Lessee shall request that deliveries to the Leasehold Improvements be made outside of the peak usage times of the Park's playground area that will located to the east of the Leased Property.

4.5. **Valet Parking.** Lessee shall be permitted to provide, or to engage third party contractors to provide, valet parking services to the Project. During the Lease Term, including any exercised Renewal Terms and subject to review and approval by Lessor's Authorized Representative, such approval not to be unreasonably delayed, conditioned or denied, Lessor shall identify an area or areas within The Port District Riverfront Park for the parking of vehicles from the Project by Lessee's valet services. Valet services to the Project shall be limited to 5pm to close of business (except during times of special events approved pursuant to Section 4.1.1 hereof) and shall not be provided during Lessor's events planned at the Botanical Gardens or The Port District Riverfront Park as identified to Lessee pursuant to Section 4.1.1 hereof.

4.6. **Access to the Project.** During the Lease Term, including any exercised Renewal Terms, Lessor shall maintain open paved access for Lessee's employees, customers and invitees from adjacent public rights of way to the Leased Property. Such access shall remain open during all hours of Lessee's operation of the Leased Property. All such access shall meet all Legal Requirements and City Codes. The access rights provided for in this Section shall be included in the memorandum of lease to be recorded pursuant to Section 13.11 hereof.

4.7. **Access and Parking Easement.** Lessor hereby grants Lessee and Lessee's Tenants, subtenants, licensees, invitees, agents, contractors, employees, successors and assigns (the "Benefitted Parties") during the Lease Term, including any exercised Renewal Term, (i) a non-exclusive easement over and through The Port District Riverfront Park for vehicular and pedestrian ingress and egress over and upon the existing and any future driveways, access ways, sidewalks, paths, parking areas and other portions of The Port District Riverfront Park as are necessary to access any portions of the Leased Property and as reasonably designated by Lessor from time to time, and (ii) a non-exclusive right and license to use, benefit from and enjoy the parking areas located within The Port District Riverfront Park for their intended purpose, all in such manner as may be reasonably regulated from time to time by Lessor.

4.8. **Temporary Construction Easement.** Lessor hereby grants Lessee and the Benefitted Parties a temporary non-exclusive easement over and upon the existing and any future driveways, access ways, sidewalks, and other portions of The Port District Riverfront Park, as reasonably necessary for vehicular and pedestrian ingress and egress for sole purpose of Lessee's and the Benefitted Parties' construction of the Leasehold Improvements on the Leased Property (collectively, the "Temporary Construction Easement"). The Temporary Construction Easement shall terminate thirty (30) days after the issuance of a final Certificate of Occupancy for all of the Leasehold Improvements. The easement provided for in this Section, along with the Exhibits, shall be included in the memorandum of lease to be recorded pursuant to Section 13.11 hereof. The Lessor's City Manager or their designee shall be permitted to grant short term extensions of the Temporary Construction Easement and allow for the temporary use of space outside of the Leased Property for staging of construction materials and equipment if needed by Lessee or the Benefitted Parties.

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4.9. **Signage.** Lessor shall, at its sole cost and expense, construct and thereafter maintain a lighted monument or pylon sign structure at the entrance to the Park and adjacent to S.E. Westmoreland Boulevard upon which Lessee may install and maintain Lessee's signs. Subject to Lessor's Master Sign Program and Code requirements, Lessee may erect and maintain signs upon the exterior of the Leasehold Improvements. Lessee's signs, including Lessee's signage on any sign structure(s) provided by Lessor, shall be fabricated, installed and maintained by Lessee at its sole cost and expense. Subject to City Code requirements, during the period of construction described in Section 9, Lessee shall have the right to construct temporary signage on the Lessor's monument or pylon sign adjacent to S.E. Westmoreland Boulevard indicating the anticipated opening of the Project for business. Additionally, the Master Sign Program shall allow Lessee, through the ninetieth (90th) day following the opening of the Project for business, and for so long a time thereafter as approved by Lessor, to advertise such new business by means of banners, flags and other signage attached to or in the area of Lessor's monument or pylon sign adjacent to S.E. Westmoreland Boulevard. The Lessor's City Manager or their designee shall be permitted to consent to Lessee's proposed signage if different from that provided above.

4.10. **Security.** Lessee shall be responsible for security within the boundaries of the Leased Property and Lessor shall be responsible for security within The Port District Riverfront Park (other than the Leased Property) and the Botanical Gardens. This provision is not meant to affect in any way the level of service to be provided by the City to the Project by the City's police, fire and or paramedic services, or their access to the Project, but rather is meant to address which party is responsible for determining the appropriate level of security that may be required in the areas to be maintained by such party.

4.11. **Project Name.** Lessee shall be permitted to identify a name and or brand for the Project and modify or change such name or brand from time to time. Lessor hereby grants and allows Lessee the right to include in the name or brand of the Project at Lessee's discretion the phrase "in The Port District Riverfront Park" or other references to the location of the Project in the area of The Port District Riverfront Park.

4.12. **Temporary Facilities.** In accordance with City Codes, Lessee shall be permitted to install kiosks, tents, temporary food stations, food trucks and similar facilities on the Leased Property for special events being held on the Leased Property and during periods when there are events being held in The Port District Riverfront Park and/or the Botanical Gardens to service the additional public needs during such events.

4.13. **Retention or Drainage Ponds.** If a retention or drainage pond is required to receive stormwater from the Leased Property for the construction of the Leasehold Improvements, the Lessor shall make land available outside of the Leased Property for such retention or drainage pond; provided that Lessee shall be responsible for designing, constructing and maintaining any such area in coordination with the Lessor's engineer and/or contractor.

4.14. **Exclusive Use and Right of First Refusal.** Lessor hereby agrees that, except as specifically provided below in this Section 4.14, during the Lease Term, including any exercised Renewal Terms, the Leasehold Improvements constructed in the Leased Property shall be the only improvements in The Port District Riverfront Park that operate as a restaurant, bar, or for the sale of food and or beverages, including any permanent or temporary kiosks, food trucks or similar facilities that sell food or beverages ("Protected Use"). Notwithstanding the above, Lessor shall be permitted to enter into short term leases or licenses to Competing Businesses (as defined below) for the sale of food and or beverages within The Port District Riverfront Park during special events held by the Lessor provided that: (i) each such lease or license does not exceed the duration of the special event hosted by Lessor, but in no event to exceed three (3) consecutive days and no more often than one time per calendar month; (ii) such Competing Business cannot be located within a permanent structure currently existing or constructed / installed in the future within The Port District Riverfront Park, (iii) such Competing Business cannot be located within the Leased Property and (iv) that before the Lessor leases or licenses any portion of The Port District Riverfront Park to a Competing Business, Lessor shall first offer such lease or license to Lessee on the same terms and conditions as are offered to a Competing Business. Lessee shall have ten (10) days during which to accept said offer, in writing. If Lessee does not accept said offer within the ten (10) day period, Lessor shall be free to accept the Competing Business's offer. Notwithstanding anything contained herein to the contrary, Lessee acknowledges that in no event shall Lessee's Protected Use prevent Lessor from permitting catered events in the Botanical Gardens or prevent Lessor from maintaining vending machines for food and beverages inside of the improvements located in the Botanical Gardens. "Competing Business" shall mean a business not affiliated with Lessee that uses any portion of The Port District Riverfront Park for the Protected Use. If Lessor violates this Section 4.14, Lessor shall pay Lessee or Lessee may deduct from Base Rent and or Percentage Rent becoming due hereunder (at Lessee's election) the greater of One Thousand Dollars (\$1,000.00) per event or four percent (4%) of the Gross Sales made by such Competing Business during the period of such violation. This section 4.14 shall not apply to any events that are held or sponsored in The Port District Riverfront Park by any party other than the City (a "Non-City Sponsored Event"), provided that Non-City Sponsored Events occur no more often than one (1) time in any ninety (90) day period and last for no more than two (2) consecutive days in total.

4.15. **Additional Amenities and Concessions.** If Lessor determines that any additional revenue producing amenities or concessions will be granted in The Port District Riverfront Park for public use or entertainment, prior to offering such amenities or concessions to any third parties (excluding however any short term fairs, concerts and similar special events hosted by Lessor), Lessor shall first offer them to Lessee and provide Lessee sufficient time to review and negotiate such amenities or concessions with Lessor prior to offering them to third parties. Notwithstanding the above, this Section shall not apply to any concessions awarded by the City of Port Saint Lucie prior to the Effective Date of this Lease that are applicable to The Port District Riverfront Park and/or the Botanical Gardens. This section 4.15 shall not apply to any Non-City Sponsored Events, provided that Non-City Sponsored Events occur no more often than one (1) time in any ninety (90) day period and last for no more than two (2) consecutive days in total.

5. LEASE TERM (30 YEARS TOTAL).

The term of this Lease shall commence on the Lease Commencement Date and shall continue for a period of Thirty (30) years and shall end at 11:59 P.M. on the day of the 30th anniversary of the Lease Commencement Date (the "Lease Term"). Following the Lease Term and subject to the Lessee not being in material default under the terms of this Lease past any applicable notice and cure periods, Lessee shall have the right to renew this Lease for four (4) five-year renewal options by giving the Lessor a written Notice of Renewal not later than one hundred eighty (180) days prior to the expiration of the Lease Term or the then applicable exercised Renewal Term (each renewal being referred to herein as a "Renewal Term"). In the event of a renewal of this Lease, the terms and conditions of this Lease shall remain in full force and effect for the duration of a Renewal Term, unless otherwise agreed in writing by the parties. Each twelve-month period after the Lease Commencement Date shall be defined as a "Lease Year." When the Lease Commencement Date has been established, a Commencement Date Agreement in substantially the form attached hereto as **Exhibit "D"**, shall be executed by Lessor and Lessee. Notwithstanding that the Lease Term will commence on the Lease Commencement Date, this Lease shall be fully binding and in full force and effect from and after the Effective Date of this Lease (subject to the terms and conditions of this Lease, including but not limited to, Lessee's termination rights as set forth in this Lease).

6. ABSOLUTE NET RENT.

6.1. It is the intent of the parties that, except as specifically provided herein, this Lease shall provide for Absolute Net Rent, without cost or expense to the Lessor and that any obligations of every kind and nature whatsoever, whether general or special, ordinary or extraordinary, that may be necessary in connection with the use, occupancy, or operation of the Project and the Leased Property, including those relating to taxes, assessments, insurance, repairs, maintenance, use, care and operation shall be paid by Lessee. All provisions of this Lease are to be construed in light of the intent that, except as specifically provided herein, this is to be an Absolute Net Rent Lease. Rent payable under this Lease shall be as follows:

6.1.1. Base Rent. Commencing on the first day of the first month after the Lease Commencement Date, rent payments shall commence. Throughout the Lease Term, Lessee shall pay to Lessor, at the address set forth for notices under this Lease or at such other address as Lessor may from time to time designate by written notice given to Lessee as hereinafter provided, as rental for the Leased Property, in lawful money of the United States of America, an annual base rent of Forty Thousand and 00/100 Dollars (\$40,000.00) paid monthly in advance in the amount of Three Thousand, Three Hundred Thirty Three and 33/100 Dollars (\$3,333.33) plus applicable state sales tax or any other tax as may be hereinafter enacted and applicable to the rental revenue of this Lease ("Base Rent"). The Base Rent is due no later than the first (1st) day of each month and any Base Rent not tendered to the Lessor by 5:00pm on the fifth (5th) day of the month is deemed late. During the Lease Term and on the first day of the second Lease Year and each subsequent Lease Year; the annual Base Rent shall increase by three percent (3%), which annual increases shall be on a cumulative, compounding basis. In the event of a renewal of this Lease, in lieu of the annual three percent (3%) increases in the Base Rent, there shall be a one time increase in the Base Rent of fifteen percent (15%) over the Base Rent then in effect for the last year of the prior Term of the Lease for the first

Lease Year of each such exercised Renewal Term and the Base Rent shall then remain at such increased amount for the remainder of that exercised Renewal Term.

6.1.2. Percentage Rent. Commencing on the first day of the third month after the Lease Commencement Date and each month thereafter, Lessee and any Tenant shall furnish to Lessor a fully executed copy of the monthly Sales and Use Tax Return (DR-15CS), as submitted to the Florida Department of Revenue for the second month prior to such delivery date (by way of example, the return for the month of January in any given Lease Year will be due on the first day of March of such Lease Year). In addition to the Base Rent, Lessee shall be responsible to pay Lessor additional rent equal to four percent (4%) of Lessee's and Lessee's Tenant(s) Gross Sales over Two and a Half Million and no/100 Dollars (\$2,500,000.00) per Lease Year, not including Florida sales and use taxes collected, if any, derived from the Leased Property ("Percentage Rent"). Lessee's obligation to pay Percentage Rent for any Lease Year shall first accrue at the time in which Lessee's and Lessee's Tenant(s) Gross Sales for such Lease Year shall first exceed \$2,500,000.00. Lessee shall pay to Lessor, within thirty (30) days following the end of the Lease Year, four percent (4%) of all Gross Sales made during such Lease Year in excess of \$2,500,000.00. Any Percentage Rent not tendered to the Lessor by 5:00pm by the thirtieth (30th) day following each Lease Year is deemed late.

6.1.3. Partial Opening of Leasehold Improvements. Lessee anticipates that it may be possible to open one or more portions of the Leasehold Improvements (for example, the Tiki Bar) in advance of completion of all of the Leasehold Improvements. Should Lessee open such initial portion of the Leasehold Improvements in advance of the remaining Leasehold Improvements (such opening to be in compliance with all Laws and have obtained a Certificate of Occupancy), then the date of opening of such portion of the Leasehold Improvements shall be considered to be the Lease Commencement Date and Lessee shall commence paying Base Rent in the full amount identified in Section 6.1.1 hereof. If the remaining portions of the Leasehold Improvements are not completed within six (6) months of the date the initial portion of the improvements open for business, then Lessee shall cease doing business from such partial portion of the Leasehold Improvements until the remainder of the Leasehold Improvements are completed unless otherwise approved by the City Manager or their designee.

6.1.4. Late Fees. A late fee of ten percent (10%) of the delinquent monthly Base Rent will be payable as a late fee when rent is paid after 5:00pm on the fifth (5th) day of each month. A late fee of ten percent (10%) of the delinquent annual Percentage Rent will be payable as a late fee when Percentage Rent is paid after 5:00pm on the thirtieth (30th) day following the end of the Lease Year for which it is due.

6.2. **Taxes.** In addition to any "rent" payments, beginning on the Lease Commencement Date, and continuing throughout the Lease Term and all Renewal Terms, Lessee shall pay, before they become delinquent, all taxes. "Taxes" as used herein, means all real property taxes, rates, duties and assessments, local improvement taxes, whether general or special, that are levied, rated, charged or assessed against the Lease Property or any part thereof, and any and all sales or use taxes due on Rent to the Lessor by any lawful taxing authority, whether federal, state, municipal, school or otherwise, and any and all taxes which are imposed in lieu of, or in addition to any such real property taxes whether of the foregoing character or not and whether in existence at the Effective Date.

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6.2.1. **Tax Bill.** The City shall forward the annual Real Estate/Ad Valorem tax bill to the Lessee at the address described in this Lease within thirty (30) days of receipt of same. The Lessee must pay the entire balance associated with the Leased Property by the later of sixty (60) days after receipt of the Tax Notice or March 31. If the Lessee fails to pay the Real Estate/Ad Valorem bill for the Lease Property, the City shall have the right to pay the bill in full and the Lessee shall then owe the City, as Additional Rent, the amount paid by the City. The amount owed to the City shall be due to the City on the day on which the City's payment has been made and the Lessee shall owe interest at ten percent (10%) per annum on the outstanding balance. If the balance isn't paid to the City in full within fourteen (14) days after the date on which the City pays the amount due, it shall be considered a material default under the terms of this Lease. Lessor shall be responsible for requesting a separate tax identification number from the County taxing authority specifically limited to the Leased Property so that the Leased Property is not taxed as part of or together with any other land or property.

6.3. **Additions to Rent.** In addition to the Taxes, Base Rent and Percentage Rent, the Lessee shall be obligated to pay Additional Rent. Lessor shall have the option, after sixty (60) calendar days' prior written notice to Lessee and without waiving or impairing any of Lessor's rights, to pay any sum or perform any act required of the Lessee not timely performed by Lessee under this Lease, which remains outstanding after all notice and cure rights, and the amount of any such payment and the value of any such performance, together with interest, shall be secured by this Lease, and shall be promptly due and payable by the Lessee to the Lessor as Additional Rent.

6.4. **Audit.** Lessor shall have the right, from time to time, but not more frequently than once during each Lease Year, upon ten (10) days prior written notice to Lessee, to cause a complete audit of all statements of Gross Sales and in connection with such audit to examine Lessee's books of account and records of Lessee's Gross Sales from the Leased Property. Lessee shall make all such records available to Lessor for such examination. Any information obtained by Lessor as a result of such audit shall be treated strictly as confidential, except only in the event of litigation or legal or administrative proceedings relating to the Gross Sales or collection of Percentage Rent. In the event the audit discloses that the Gross Sales reports are inaccurate, Lessor and Lessee shall make the appropriate adjustments so that Lessor shall receive the full Percentage Rent to which it is entitled and only such amount, not more or less. Lessor shall pay all costs and expenses of such audit, unless the audit shall disclose actual Gross Sales of more than five (5%) in excess of the Gross Sales reported by Lessee for that particular Lease Year, in which case Lessee shall reimburse Lessor the reasonable out-of-pocket cost and expenses paid by Lessor for said audit, in addition to the deficiency in Percentage Rent.

6.5. **Casualty.** In the event of a casualty to the Leased Property as a result of a hurricane, tropical storm, fire, or other peril such that the Project is unable to operate during any month, or portion thereof during any Lease Year, and Lessee obtains an estimate from its architect, engineer, contractor or other construction professional that the required repairs will take in excess of three (3) months to complete, the Lessee may elect to either (i) make such repairs, in which case this Lease shall remain in full force and effect or (ii) terminate this Lease effective as of the date of the casualty, and upon such termination, this Lease shall be null and void and of no further force or effect. If Lessee elects to make such repairs as provided in subpart (i) above, all Rent, including Base Rent,

Additional Rent and Taxes shall abate during said period that Lessee is rebuilding or repairing the Leasehold Improvements provided that such abatement shall only last until the earlier of (a) the date the Leasehold Improvement reopen for business; or (b) three (3) months after the date of the casualty.

7. CONTINGENCY PERIODS.

7.1. **Inspections Permitted.** During the Contingency Periods, Lessee and its partners, members, agents, officers, employees, and contractors (collectively, the "Lessee Parties") will have the right to enter upon the Leased Property for the purpose of making such tests, analyses and investigations as Lessee may deem necessary or desirable, including but not limited to soil/groundwater tests and environmental assessments and audits. Lessee's investigation of the Leased Property must at all times comply with all applicable Legal Requirements and with any agreements in effect with respect to the Leased Property that have been disclosed to Lessee. At least seventy-two (72) hours prior to each entry upon the Leased Property by Lessee or any Lessee Parties, Lessee shall provide email notice to Lessor at jdavis@cityofpsl.com that Lessee or Lessee's Parties intend to enter the Leased Property on a given day or days for one or more specific purpose. Lessor has retained a contractor to construct The Port District Riverfront Park (the "Port Contractor") and Lessee acknowledges and agrees to coordinate and cooperate with the Port Contractor prior to and during each entry upon the Leased Property. After completing any inspections, Lessee shall restore and repair any damage caused by Lessee's inspections, including the filling in of any excavations or holes, and the removal of all tools and equipment. Lessee's obligation to restore the Leased Property and repair any damage shall survive any termination of this Lease.

7.2. **Diligence Materials.** Lessor agrees to deliver to Lessee, within five (5) business days following the Effective Date, copies of any and all information and/or materials, to the extent the same is in Lessor's possession or control, for Lessee's use in performing the inspections and obtaining Lessee's Permits and Approvals, including (if any): surveys, site plans, topographical studies, plat maps, property descriptions, zoning maps, engineering drawings for the utilities and public services serving the Leased Property, soils, wetlands, wildlife, archeological and environmental studies and reports of the Leased Property, the most recent real estate tax bill and a copy of a prior title insurance policy (or other form of title evidence) of the Leased Property.

7.3. **Title and Survey.** Prior to the Effective Date hereof, Lessee has had the opportunity to review Chicago Title Insurance Company (the "Title Company") Title Insurance Commitment Order No. 10781430 dated 11/04/2022 at 8:00 AM (the "Title Commitment") and a survey of the Leased Property prepared by EDC Inc. under Job No. 22-355 dated November 17, 2022 (the "Survey"). Lessor and Lessee hereby agree that certain encumbrances, such as utility easements, will be required as part of the Lessor Improvements, which are identified on **Exhibit "B"**. The easements and other encumbrances identified on Exhibit B and the matters identified on **Exhibit "E"** shall be referred to herein as the "Permitted Encumbrances". If prior to the Lease Commencement Date any update of the Title Commitment or the Survey identifies any new or additional easements, covenants, agreements, restrictions or other encumbrances that are not Permitted Encumbrances and have not been approved by Lessee in writing (which approval shall not be unreasonably withheld or conditioned), Lessor shall cause such matters to be removed from title to the Leased Property prior to the Lease Commencement Date. Notwithstanding the foregoing or anything contained in this

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Lease, from and after the Lease Commencement Date and during the entire Lease Term, Lessor represents and warrants to Lessee that, and Lessor covenants and agrees with Lessee that, (i) except as otherwise expressly provided in this Lease, Lessor shall not place any easements or agreements (whether recorded or unrecorded) on the Leased Property without Lessee's prior written consent in each instance (which consent Lessee may withhold or condition in Lessee's sole and absolute discretion); and (ii) Lessor shall forward to Lessee complete copies of all notices, correspondences and other documentation received by Lessor with respect to any easements, covenants, agreements, restrictions or other matters within seven (7) days of Lessor's receipt of any such notice, correspondence or other documentation. Lessor agrees to act reasonably and in good faith in order to satisfy all requirements of the Title Company (including requirements shown in the Title Commitment) and to reasonably cooperate with Lessee in Lessee's efforts to obtain a leasehold policy of title insurance, including, but not limited to providing the Title Company evidence of Lessor's organization and proper authority to enter into this Lease, and such affidavits or other documentation as may be reasonably required by and satisfactory to the Title Company to insure the "GAP" period and delete standard title requirements and exceptions.

7.4. **Termination.** If: (i) Lessee determines that the Leased Property is not acceptable for any reason, as determined by Lessee in its sole and absolute discretion, Lessee shall have the option to terminate this Lease by written notice to Lessor, which notice must be delivered on or before the expiration of the Due Diligence Period in accordance with the notice requirements of this Lease; or (ii) if (a) Lessee does not obtain Lessee's Permits and Approvals on terms and conditions acceptable to Lessee in Lessee's sole discretion or (b) if after the expiration of the Due Diligence Period but prior to the expiration of the Permit Period, in Lessee's determination the cost to develop the Leased Property for the Project and intended use will exceed 120% of Lessee's preliminary estimate of the cost of such development, then Lessee shall have the right to terminate this Lease by written notice to Lessor, which notice must be delivered on or before the expiration of the Permit Period and in accordance with the notice requirements of this Lease (a notice under subpart (i) or (ii) hereof being a "Termination Notice"); provided however, if the termination is pursuant to subpart (ii)(b) above, Lessee shall pay to the Lessor the amount of \$40,000.00 as an early termination fee. Upon any such termination, this Lease shall be null and void and of no further force or effect.

7.5. **Hold Harmless.** Lessee agrees to indemnify and hold harmless the City (and their respective officers, officials, employees, contractors and other representatives) from and against any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees and court costs) relating to injury to persons or damage to property, or both, caused by Lessee (and/or its respective officers, officials, employees, contractors and other representatives) in connection with any entry on the Leased Property, evaluation or inspection of the Leased Property, or any other act or omission pertaining to Lessee's inspection of or entry upon the Leased Property during the Contingency Periods. Nothing in this paragraph shall be considered to increase or waive any limits of liability or waive any immunity afforded to the City by the Florida Statutes, case law, or any other law. The provisions of this section shall survive any termination of this Lease.

8. PROPERTY CONDITION.

The Leased Property is subject to certain described public easements for conservation, public access, utilities, or similar situations. The Lessee acknowledges that it has made a thorough and complete inspection of the Leased Property and accepts this Lease and the Leased Property and is fully advised of the extent and condition, subject to Lessee's inspection rights during the Due Diligence Period in accordance with the terms hereof. The Lessee fully accepts the Leased Property in its present "as is, where as" physical state and condition subject to Lessee's inspection rights during the Due Diligence Period and Lessor's Improvement obligations in accordance with terms hereof and all other terms and conditions of this Lease.

9. CONSTRUCTION OF IMPROVEMENTS.

9.1. **Construction of the Lessor Improvements.** Lessor shall, at its sole cost and expense, permit, perform and complete the Lessor Improvements required to put the Leased Property into the Required Condition. Lessor has commenced the construction of the Lessor Improvements and completion of the Lessor Improvements and the Delivery Date will occur on or about July 31, 2023 (the "Anticipated Delivery Date"). Lessor shall use all commercially diligent efforts, as quickly as reasonably practicable, to achieve completion of the Lessor Improvements by the Anticipated Delivery Date. If Lessor does not complete the Lessor Improvements by the Anticipated Delivery Date, the period between the Anticipated Delivery Date and the actual Delivery Date shall be referred to as the "Lessor Improvement Delay Period".

9.2. **Construction of New Restaurant Building(s).** Lessee shall, at its expense, design, obtain all required permits for (including permit fees and impact fees), and construct the Leasehold Improvements on the Leased Property, subject to the terms and conditions of this Lease (the "Lessee Work"). It is mutually understood that the Lessee Work does not include Lessee's equipment, fixtures, or other personal property to be placed on the Leased Property. Lessee shall use all commercially diligent efforts, as quickly as reasonably practicable, to obtain all Permits and Approvals necessary to begin construction of the Leasehold Improvements. Lessee anticipates that commencement of the Lessee Work will occur on or before sixty (60) days after the Delivery Date and completion of the Lessee Work is anticipated to occur on or about December 31, 2024 (the "Anticipated Completion Date"). Lessee shall use all commercially diligent efforts, as quickly as reasonably practicable, to achieve completion of the Lessee Work by the Anticipated Completion Date subject to extension based on the Lessor Improvement Delay Period and any Unavoidable Delays. Prior to the Construction Commencement Date, the Lessee shall furnish an acceptable Performance and Payment Bond in recordable form, complying with the statutory requirements set forth in Section 255.05, Florida Statutes, in the amount of one hundred twenty (120%) percent of the cost of the Lessee Work. A fully authorized surety, licensed by the State of Florida shall execute the Performance and Payment Bond. The Performance and Payment Bond shall remain in full force and effect until the Lessee Work has been completed and final Certificate of Occupancy is issued by the City. The Lessor and Lessee acknowledge that the impact fees to be charged by the City for the Leasehold Improvements will be based on the square footage of the building improvements and outdoor dining areas; provided that any outdoor seating or recreational areas will not be subject to the City's impact fees.

9.3. **Governmental Approvals.** If requested by Lessee, Lessor will join in any application for any Permits and Approvals for the Leasehold Improvements, or, alternatively, recommend to and urge any other governmental authority to which application for any Permit and Approvals has been made, that such Permits and Approvals be issued or approved.

9.4. **Contractor Requirements.** The Lessee shall, or shall cause the Lessee's contractors and subcontractors performing work pursuant to this Lease (such contractors and subcontractors collectively referred to in this Section 9.4, as the "Contractor") to, on a primary basis and at its sole expense, maintain in full force and effect at all times that Contractor is doing work on the Leased Property, insurance coverage, limits, including endorsements, as described herein. The requirements contained herein, as well as Lessor's review or acceptance of insurance maintained by the Contractor, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under the Lease.

9.4.1. Insurance. The parties agree and recognize that it is not the intent of the Lessee or the Lessor that any insurance policy/coverage that Lessor may be required to obtain for the benefit of the Lessor pursuant to any provision of this Lease will provide insurance coverage to any entity, corporation, business, person, or organization, other than the Lessor and Lessor shall not be obligated to provide any insurance coverage other than for the Lessor or extend its sovereign immunity pursuant to Section 768.28, Florida Statutes, under its self-insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any party. This provision does not apply to any obligation imposed on any other party to obtain insurance coverage for this Project, any obligation to name the City of Port St. Lucie as an additional insured under any other insurance policy, or otherwise protect the interests of the City of Port St. Lucie as specified in this Lease.

9.4.2. Workers' Compensation Insurance & Employer's Liability. The Contractor shall procure and maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes. Employers' Liability must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, and \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement must be provided. Should scope of work performed by Lessee qualify its employee for benefits under Federal Workers' Compensation Statute (example, U.S. Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate Federal Act coverage must be provided.

9.4.3. Commercial General Liability Insurance. The Contractor shall maintain Commercial General Liability insurance issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless Lease set forth herein, with limits of not less than:

| | |
|---|----------------------|
| Each occurrence | \$1,000,000 |
| Personal/advertising injury | \$1,000,000 |
| Products/completed operations aggregate | \$2,000,000 |
| General aggregate | \$2,000,000 |
| Fire damage | \$100,000 any 1 fire |
| Medical expense | \$2,000 any 1 person |

9.4.4. Additional Insured. An Additional Insured endorsement for the City of Port St. Lucie must be attached to the certificate of insurance and must include coverage for on-going and Completed Operations without the wording “when required by written contract” or include the appropriate endorsement. Products & Completed Operations coverage to be provided for a minimum of five (5) years from the date of certificate of occupancy. Coverage is to be written on an occurrence form basis. Coverage shall apply on a primary and non-contributory basis. A per project aggregate limit endorsement should be attached. Defense costs are to be in addition to the limit of liability. A waiver of subrogation shall be provided in favor of the City. Coverage for the hazards of explosion, collapse, and underground property damage (XCU) must also be included when applicable to the work performed. No exclusion for bodily injury/property damage arising out of heat, smoke, fumes, or hostile fire shall apply. Coverage shall extend to independent contractors and fellow employees. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

9.4.5. Except as to Workers' Compensation and Employers' Liability, said Certificate(s) and policies shall clearly state that coverage required by this Lease has been endorsed to include the Lessor, a municipality of the State of Florida, its officers, agents, and employees as Additional Insured added to its Commercial General Liability policy and Business Auto policy. The name for the Additional Insured endorsement issued by the insurer shall reference this Lease and read **"the City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents."** The Policies shall be specifically endorsed to provide thirty (30) day written notice to the Lessor prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. Formal written notice shall be sent to City of Port St. Lucie, 121 SW Port St. Lucie Blvd., Port St. Lucie, FL 34984, Attn: Procurement. In the event that the statutory liability of the Lessor is amended during the term of this Lease to exceed the above limits, the Contractor shall be required, upon thirty (30) days written notice by the Lessor, to provide coverage at least equal to the amended statutory limit of liability of the City. Copies of the Additional Insured endorsements including Completed Operations coverage shall be attached to the Certificate of Insurance.

9.4.6. Automobile Liability Insurance. The Contractor shall maintain Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event the Contractor does not own any automobiles; the Business Auto Liability requirement shall be amended allowing the Contractor to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. City must be listed as additional insured. A waiver of subrogation shall be provided in favor of the City. Coverage shall apply on a primary non-contributory basis.

9.4.7. Professional Liability Insurance. The Contractor shall maintain Professional Liability, or equivalent Errors & Omissions Liability at a limit of liability not less than \$2,000,000 Per Occurrence. When a self-insured retention (SIR) or deductible exceeds \$10,000 the City reserves the right, but not the obligation, to review and request a copy of Contractor's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, the Contractor warrants the retroactive date equals or precedes the effective date of this Lease. In the event the policy

is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Contract, the Contractor shall agree to purchase a SERP with a minimum reporting period not less than four (4) years. If the policy contains an exclusion for dishonest or criminal acts, defense coverage for the same shall be provided.

9.4.8. Contractors Pollution Insurance. Contractor shall procure and maintain in full force during all periods that Contractor is doing work on the Leased Property, Contractors Pollution Liability Insurance in limits not less than \$1,000,000 per occurrence, \$2,000,000 aggregate, for any operations relating to the handling, storage, and transportation of hazardous materials and/or waste. The City of Port St. Lucie shall be listed as an additional insured. A waiver of subrogation shall be provided in favor of the City. Coverage shall apply on a primary and non-contributory basis.

9.4.9. Builder's Risk Insurance. Contractor shall purchase and maintain Builder's Risk insurance in an amount equal to 100% of the completed value of the Project including any amendments thereto (without coinsurance). Contractor's policy shall be written on a commercial Builders Risk form that shall cover physical loss or damage to the Work, temporary buildings, construction forms and scaffolding, materials, and equipment in transit or in storage/at temporary locations, and should extend coverage to foundations, excavations, and other underground property. Coverage shall insure against at least the following perils or causes of loss: fire, lightning, windstorm/and hail, theft (including theft of materials whether or not attached to any structure), vandalism and malicious mischief, flood, earthquake (if available at commercially reasonable rates and with commercially available limits and may be provided by separate policy), collapse, and such other perils or causes of loss as may be specifically required. The policy shall include coverage for pollutant cleanup, debris removal, demolition and increased cost of construction, water damage, backup of sewers and drains, testing and startup of building systems (including hot testing), and mold & fungus remediation. The Builders Risk coverage shall include a waiver of subrogation rights endorsement in favor of the City.

9.4.10. The commercial Builder's Risk Insurance must also cover soft costs, including additional advertising/promotional, additional license and permit fees, additional legal/accounting fees, insurance premiums including builder's risk, and architects' and engineers' fees that may be necessary to provide plans and specifications and supervision of work for the repair and/or replacement of property damage caused by a covered peril.

9.4.11. This policy must include insurance for the City of Port St. Lucie, Lessee, Contractor, subcontractors, Architect/Engineer and consultants for their interest in covered property. The City's policy will not provide coverage related to this Project.

9.4.12. The Contractor has the right to purchase coverage or self-insure any exposures not required by these specifications, but shall be held liable for all losses, deductibles, self-insurance for coverages not required.

9.4.13. The Contractor is responsible for all deductibles including those for windstorms.

9.4.14. Waiver of Subrogation. The Contractor shall agree to a Waiver of Subrogation for each required policy. When required by the insurer or should a policy condition not permit an Insured to enter into a pre-loss Contract to waive subrogation without an endorsement, then Contractor shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should the Contractor enter into such a Contract on a pre-loss basis.

9.4.15. Deductibles. All deductible amounts shall be paid for and be the responsibility of the Contractor for any and all claims under this Lease. Where an SIR or deductible exceeds \$10,000, the Lessor reserves the right, but not obligation, to review and request a copy of the bidder's most recent annual report or audited financial statement.

9.4.16. It shall be the responsibility of the Contractor to ensure that all independent contractors and subcontractors comply with the same insurance requirements as listed herein, including Products & Completed Operations coverage to be provided for a minimum of five (5) years from the date of certificate of occupancy. It will be the responsibility of the Contractor to obtain Certificates of Insurance from all contractors and subcontractors listing the City as an Additional Insured, without the language "when required by written contract". If Contractor, independent contractors, or subcontractors maintain higher limits than the minimums shown above, the Lessor requires and shall be entitled to coverage for the higher limits maintained by Contractor/independent contractors/subcontractors.

9.4.17. The Contractor may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, or Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability is written on Non-Follow Form, the City shall be endorsed as an "Additional Insured."

9.4.18. The City, by and through its Risk Management Department, reserves the right, but not obligation, to review, modify, reject, or accept any required policies of insurance including limits, coverages, or endorsements, herein from time to time throughout the term of this Lease. All insurance carriers must have an AM Best rating of at least A-:VII or better. If during the term of this Lease, including any exercised Renewal Terms, market conditions require the modification of any of the insurance coverages required pursuant to this Section 9, the Lessor's City Manager or their designee shall be permitted to grant such modifications.

9.4.19. A failure on the part of the Contractor to punctually deliver the required insurance, and other documentation may be cause for termination of the Lease.

9.5. **Lessee's Right to Contract.** Lessee shall have the right to enter into separate contracts and agreements for the construction, use, and maintenance of the Leasehold Improvements. At least fourteen (14) days prior to any demolition or construction on Leased Property for which a Building Permit is not required, the Lessee shall coordinate directly with the City's Authorized

Representative to ensure there is no negative impact to The Port District Riverfront Park. The Lessor shall not be liable to any contractor or material provider, for any fee or cost incurred by the Lessee.

9.6. **Major Alteration of Leasehold Improvements.** In the event Lessee plans to make any demolition, alteration, addition or change in or to the Leasehold Improvements that constitutes a Major Alteration, the proposed plans and drawings for said proposed Major Alteration shall be submitted to the Lessor for written approval by its Authorized Representative, which will not be unreasonably withheld or delayed by Lessor, prior to Lessee seeking any governmental approvals required for such Major Alteration.

10. OWNERSHIP OF IMPROVEMENTS.

10.1. During the Lease Term and all Renewal Terms, the Leasehold Improvements constructed as part of the Project will be owned and maintained by the Lessee.

10.2. Any trade fixtures or personal property installed, attached to or located on the Leased Property by Lessee, whether or not attached to the freehold, shall be and remain such Lessee's property and may be removed by the Lessee prior to the termination of this Lease, unless otherwise in default under the Lease, provided that the Lessee shall repair, restore and save the Lessor harmless from all damage to any of the Leased Property, including the improvements located thereon and owned or controlled by the Lessee, caused by such removal. While this Lease is in effect, nothing herein is intended to prevent the Lessee or Tenant from being entitled to depreciation on the improvements and fixtures that are now or subsequently erected upon the Leased Property. All personal property not removed by the Lessee or Tenant prior to the termination of the Lease, shall become the sole property of the Lessor.

10.3. Upon the expiration or early termination of this Lease, title to all of the Leasehold Improvements, and any remaining personal property on the Leased Property, shall become the sole property of the Lessor without further act or instrument, and Lessee acknowledges that it shall have no right to remove such fixed and permanent improvements, such as appliances, apparatus, or equipment related to the Leasehold Improvements, including all replacements, accessories and modifications thereof, from the Leased Property. Upon the expiration or early termination of this Lease, Lessee shall deliver the Leasehold Improvements to the Lessor broom clean in their then current condition, subject to ordinary wear and tear.

11. REPRESENTATIONS, WARRANTIES AND COVENANTS.

11.1. **Lessee's Representations.** Lessee represents and warrants to the Lessor that each of the following statements is true and accurate as of the Effective Date, and agrees the Lessor may rely upon each of the following statements:

11.1.1. Lessee is a Florida limited liability company duly organized and validly existing under the laws of the State of Florida, has all requisite power and authority to carry on its business as now conducted, to own or hold its properties and to enter into and perform its obligations hereunder and under each document or instrument contemplated by this Lease to which it is or will be a party, is

qualified to do business in the State of Florida, and has consented to service of process upon a designated agent for service of process in the State of Florida. Lessee shall not later contest this Lease on the basis of a lack of authority or ultra vires act by Lessee.

11.1.2. This Lease and, to the extent such documents presently exist in a form accepted by the Lessor and Lessee, each document contemplated or required by this Lease to which Lessee is or will be a party have been duly authorized by all necessary action on the part of, and have been or will be duly executed and delivered by, Lessee, and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof: (a) requires the approval and consent of any other party, except such as have been duly obtained or as are specifically noted herein; or, (b) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on Lessee.

11.1.3. This Lease and, to the extent such documents presently exist in form accepted by the Lessor and Lessee, each document contemplated or required by this Lease to which Lessee is or will be a party constitutes, or when entered into will constitute, a legal, valid and binding obligation of Lessee enforceable against Lessee in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

11.1.4. There are no pending or, to the knowledge of Lessee, actions threatened in writing or proceedings before any court or administrative agency against Lessee which question the validity of this Lease or any document contemplated hereunder, or which are likely in any case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder or the financial condition of Lessee.

11.1.5. To the best of Lessee's actual knowledge, Lessee has filed or caused to be filed all federal, state, local and foreign tax returns, if any, which were required to be filed by Lessee, and has paid, or caused to be paid, all taxes shown to be due and payable on such returns or on any assessments levied against Lessee.

11.1.6. All financial information and other documentation, including those pertaining to the Project or Lessee, delivered by Lessee to the Lessor, was, on the date of delivery thereof, true and correct to the best of Lessee's actual knowledge.

11.1.7. The principal place of business and principal executive offices of Lessee is located at 1101 Brickell Avenue, South Tower, 8th Floor, Miami, Florida 33131, Florida. Lessee shall have the affirmative duty to notify the Lessor, in writing, of any change of address for its principal offices.

11.1.8. The execution, delivery, consummation, and performance under this Lease will not violate or cause the Lessee to be in default of any provisions of its governing documents or rules and regulations or any other agreement to which Lessee is a party or constitute a default there under or cause acceleration of any obligation of the Lessee there under.

11.2. **Lessor's Representations.** Lessor represents and warrants to the Lessee that each of the following statements is true and accurate as of the Effective Date, and agrees the Lessee may rely upon each of the following statements:

11.2.1. Entering into this Lease and, to the extent such documents presently exist in a form accepted by the Lessor and Lessee, entering into each document contemplated or required by this Lease to which Lessor is or will be a party is a valid, binding, and permissible activity within the power and authority of the Lessor and does not violate any City Code, Charter provision, rule, resolution, ordinance, policy, or agreement of the Lessor or constitute a default by the Lessor of any agreement or contract to which it is a party.

11.2.2. All steps, acts and conditions required to be done as a condition precedent to the execution of this Lease and, to the extent such documents presently exist in a form accepted by the Lessor and Lessee, entering into each document contemplated or required by this Lease to which Lessor is or will be a party have been done, and the Lessor has full authority to enter into this Lease and such other documents. Lessor shall not later contest this Lease or such other documents on the basis of lack of authority or ultra vires act by Lessor.

11.2.3. Lessor owns fee simple title to the Leased Property, except that a certain portion of the Leased Property, as noted on the sketch as shown in **Exhibit "A-1"**, is subject to a non-exclusive perpetual public ingress and egress easement placed upon the Leased Property by the Trust for Public Land.

11.2.4. The individual executing this Lease and related documents on behalf of Lessor is duly authorized to take such action, which action shall be, and is, binding on Lessee and Lessor.

11.2.5. There are no pending or, to the knowledge of Lessor threatened, actions or proceedings before any court or administrative agency against Lessor which question the validity of this Lease or any document contemplated hereunder, or which are likely in any case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder.

11.2.6. Lessor has not received any written notice from any governmental authority of a violation of any governmental requirement on the Leased Property, which have not been remedied prior to the Effective Date hereof.

11.2.7. Lessor has not received written notice from any governmental entity that the Leased Property is not in compliance with all Environmental Laws (as defined below) which remains outstanding as of the Effective Date hereof. Lessor has no reason to believe that any environmental assessment or report delivered to Lessee by Lessor is inaccurate in any material aspect. To Lessor's knowledge, no Hazardous Substances have been generated, treated, stored, transferred from, released or disposed of, or otherwise placed, deposited in or located on, and/or discharged released or threatened to be released from, the Leased Property.

11.2.8. As of the Effective Date hereof, the City's land use designation of the Leased Property, as well as the City's zoning permit the use of the Leased Property for the Project. To Lessor's knowledge, there are no prohibitions, moratoriums, or other governmentally imposed criteria that prohibit the use of the Leased Property for the Project or that would impose materially significant governmentally required fees, costs or expenses on the Lessee in connection with the application for or obtaining the required Building Permits and Certificates of Occupancy for the Leasehold Improvements or the construction and use of the Leasehold Improvements for the Project.

11.3. **Covenants.** Lessor covenants and agrees that, during the Lease Term and any Renewal Term, that:

11.3.1. As of the Lease Commencement Date, the Leased Property shall be in compliance with all federal, state, and local laws, codes, ordinances, rules, and regulations applicable thereto (including without limitation environmental, fire and life safety, and the ADA).

11.3.2. Lessor shall maintain the utilities, access drives and footpaths located in the Park that service the Leased Property in good and sufficient working condition and improved drive lanes and footpaths shall be in a serviceable and safe condition free of potholes and other irregularities in the surface thereof.

11.3.3. Lessor may feature the Project in any marketing brochures and advertisements of the City as a premier recreational destination and shall work with Lessee to identify other avenues of public relations and advertising for the Project and the Park.

11.3.4. Lessor shall provide ample space outside of the Leased Property for persons wishing to exercise free speech in the Park.

12. NON-SUBORDINATION OF REAL PROPERTY INTEREST AND ENCUMBRANCES OF LESSEE'S LEASEHOLD INTEREST.

12.1. **No Subordination.** Nothing contained herein shall be construed to require Lessor to execute any document or instrument, which would create any financial liability upon the Leased Property, or to alter or impair Lessor's rights under this Lease. The Lessor is prohibited by Florida law from burdening any part of or all of the fee interest of the Leased Property, or to grant or agree to any such encumbrance or to any obligation which will burden the Leased Property beyond the Lease Term and all Renewal Terms. Lessor shall not be required to subordinate its fee interest in the Leased Property to the lien of any mortgage, which Lessee may execute.

12.2. **Leasehold Encumbrance.** Lessee shall have the right during the Lease Term, without being required to obtain Lessor's consent or approval, to subject, pledge, mortgage and/or encumber this Lease, the Leasehold Improvements and/or Lessee's interest in the Leased Property to one or more mortgages, deeds of trust, deeds to secure debt, collateral assignments of lease, security agreements or other methods of financing or refinancing (a "Leasehold Mortgage"), for the purpose of securing a loan from a lender or other third party (a "Leasehold Mortgagee") to be used towards the cost of constructing, operating, maintaining or refinancing the Project on the Leased Property.

Lessee shall not encumber or attempt to encumber this Lease, the Leasehold Improvements, or Lessee's interest in the Leased Property or the Project as collateral security for any indebtedness of Lessee intended to be used to purchase, lease, develop or refinance any land other than the Leased Property. Any such attempt shall be null and void and constitute an Event of Lessee's Default. No such Leasehold Mortgage shall encumber Lessor's fee interest in the Leased Property or any other property of Lessor.

12.3. **Notice of Leasehold Mortgage.** Each time Lessee enters a Leasehold Mortgage with a Leasehold Mortgagee, Lessee shall deliver to Lessor, promptly after execution by Lessee, a true and verified copy of the Leasehold Mortgage, together with the name and address of the Leasehold Mortgagee thereof. In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of the Leasehold Mortgagee or of an assignee of such Leasehold Mortgage, Lessee shall provide written notice of the new name and address to the Lessor. Lessee shall thereafter provide Lessor with a copy of any material amendment, modification, or supplement to such Leasehold Mortgage.

12.4. **Notice and Cure of Lessee's Default.** During the continuance of any Leasehold Mortgage, Lessor will promptly give the Leasehold Mortgagee, of which Lessor has been provided notice of in accordance with Section 12.3 above, simultaneously with service on Lessee, a duplicate of any and all notices and demands given by Lessor to Lessee (the "Mortgagee Notice of Default"). The Mortgagee Notice of Default shall be sent (by prepaid certified or registered mail, return receipt requested) to the address that the Lessee provides to the Lessor for the Leasehold Mortgagee. Lessor will not exercise any right, power or remedy with respect to any default hereunder unless the Lessor sends the Mortgagee Notice of Default and the Leasehold Mortgagee shall have failed to remedy such default within the longer of (a) thirty (30) days after receipt of the Mortgagee Notice of Default (the "Mortgagee Grace Period") or (b) the applicable grace period provided in this Lease. In the event such default cannot, with the exercise of due diligence, be cured within the Mortgagee Grace Period, Lessor shall not be entitled to re-enter the Leased Property or serve a notice of termination upon Lessee or Leasehold Mortgagee, nor shall such default be regarded as an Event of Lessee's Default (as defined herein), if Lessee or Leasehold Mortgagee shall have commenced the cure of such default within the Mortgagee Grace Period and so long as Lessee or Leasehold Mortgagee shall thereafter proceed with all due diligence to complete the cure of such default. Should the Lessee or Leasehold Mortgagee proceed with all due diligence to cure the default, then the time to cure the default shall be extended as necessary to complete the cure with all due diligence. Notwithstanding anything contained herein to the contrary, a Leasehold Mortgagee shall not be required to cure or remedy any default and if a Leasehold Mortgagee undertakes such cure or remedy, it will not be required to cure or remedy any default which cannot be cured by the Leasehold Mortgagee (including, but not limited to, Lessee's bankruptcy or wrongful assignment of the Lease or subletting of the Leased Property). If, during the Mortgagee Grace Period, the Leasehold Mortgagee: (i) provides written notice to Lessor of its intention to foreclose upon or otherwise acquire the Lessee's interest in the Lease, (ii) diligently prosecutes such foreclosure or other acquisition, (iii) obtains possession of the Leased Property, and (iv) proceeds to cure all defaults under this Lease with due diligence until completion, then all such defaults under the Lease shall be deemed to have been fully cured as to Leasehold Mortgagee. The foregoing shall not waive or release Lessee with respect to any such default. No liability for the payment of Rent or the performance of any of Lessee's covenants contained herein shall attach to or

be imposed upon the Leasehold Mortgagee unless such Leasehold Mortgagee forecloses or otherwise acquires Lessee's interest and becomes the new Lessee under this Lease.

12.5. **Reinstatement of Lease.** In the event of the termination of the Lease prior to its stated expiration date by reason of a default of Lessee or rejection of the Lease by Lessee in a bankruptcy proceeding or otherwise, notice thereof shall be given by Lessor to the Leasehold Mortgagee, and Lessor shall enter into a reinstatement of the Lease with the Leasehold Mortgagee or, at the request of such Leasehold Mortgagee, with a corporation or other entity formed by or on behalf of such Leasehold Mortgagee, for the remainder of the term, effective as of the date of such termination, at the rent and upon the covenants, agreements, terms, options, provisions and limitations herein contained and with the same priority as the Lease, provided such Leasehold Mortgagee makes written request to Lessor for such reinstatement of this Lease within sixty (60) days from the date it receives notice of such termination and such written request is accompanied by payment to Lessor of all amounts then due to Lessor from Lessee (other than any accelerated rents, penalties or interest on such amounts due Lessor). The execution of a reinstatement of this Lease between Lessor and the Leasehold Mortgagee or its designee pursuant to this subparagraph shall not release or be deemed to release Lessee from any liability for failure to perform such covenant, duty or obligation under the terminated Lease.

12.6. **Nonliability for Covenants.** The provisions of this Section 12 are for the benefit of Leasehold Mortgagee and its designees, successors and assigns and may be relied upon (and shall be enforceable by) Leasehold Mortgagee and its designees, successors and assigns. No Leasehold Mortgagee (or its designee as may have acquired Lessee's leasehold estate) shall become personally liable under the agreements, terms, covenants or conditions of the Lease unless and until it becomes the holder of Lessee's leasehold estate. Upon any assignment done pursuant to the terms of this Lease by a Leasehold Mortgagee, or such designee, the assignor shall be relieved of any further liability which may accrue hereunder from and after the date of such assignment provided that the assignee shall execute and deliver to Lessor a recordable instrument of assumption wherein such assignee shall assume and agree to perform and observe the covenants and conditions in the Lease contained on Lessee's part to be performed and observed, it being the intention of the parties that once the Leasehold Mortgagee (or such designee) shall succeed to Lessee's interest under the Lease, a subsequent assignment by such Leasehold Mortgagee (or such designee) shall effect a release of such Leasehold Mortgagee's liability hereunder.

12.7. **Lessor Subordination.** Subject to Lessor's reversionary interest in the Leasehold Improvements, Lessor unconditionally subordinates any and all right, interest, claim or lien (whether pursuant to any statute, common law or otherwise) which Lessor may now or in the future have with respect to the Leasehold Improvements and any leasehold improvements, fixtures, trade fixtures, machinery, equipment, inventory and all other property which may be contained or located in, on or about the Leased Property during the Lease Term to the lien of any recorded Leasehold Mortgage. From time to time during the Lease Term, Lessor shall execute and deliver to Lessee upon demand such instruments and waivers as reasonably requested by Lessee or Lessee's lender confirming such Lessor subordination.

12.8. **Estoppel Letter.** Lessor shall, within ten (10) days of Lessee requesting, execute, acknowledge and deliver to the Lessee, or such other party as may be directed by Lessee, an estoppel letter in recordable form certifying any fact pertaining to this Lease reasonably requested by Lessee or any mortgagee or prospective mortgagee of the Leasehold Interest. It is intended that any statement delivered pursuant to the provisions of this Section be relied upon by any such mortgagee. Lessee shall prepare such instrument and deliver same to Lessor with the request.

12.9. **Cooperation.** Lessor agrees to review and consider reasonable amendments to this Lease proposed by any Leasehold Mortgagee to facilitate Lessee's financings provided such amendments do not materially alter Lessor's rights and obligations under this Lease and comply with City Codes and state law.

13. **GENERAL OBLIGATIONS OF THE PARTIES.** The following constitute obligations and covenants of the parties, their successors, and assigns:

13.1. **Maintenance and Repairs.** Except as specifically provided herein, Lessor shall not be required or obligated to furnish any maintenance services or facilities or make any changes, alterations, additions, improvements or repairs in, on or about the Leased Property, or any part thereof, during the Lease Term or any Renewal Terms. At all times during the Lease Term and all Renewal Terms, Lessee shall, at its sole cost and expense, keep and maintain the Leased Property, and all Leasehold Improvements, furnishings, fixtures, and personal property located thereon, in a safe and secure manner, in a good state of repair and condition, normal wear and tear excepted, and in compliance with all Legal Requirements. Lessee hereby agrees to assume the full and sole responsibility, including all costs and expenses, for all repairs and for the costs and expense of the maintenance, management, and operation of the Leased Property, which responsibility shall be broadly construed. Lessee shall be responsible for the regular removal of all garbage, trash, and other refuse from the Leased Property and for the maintenance and upkeep of the grounds constituting the Leased Property. Lessee covenants and agrees not to burn trash or garbage in, on or about the Leased Property. Any City code violations which may occur on the Leased Property, following the Construction Commencement Date, shall be the responsibility of the Lessee.

13.2. **Utilities.** All applications and connections for necessary utility services on and to the Leased Property shall be in the name of the Lessee and Lessor, if possible, however, during the Lease Term and all Renewal Terms, Lessee shall be solely responsible to pay all charges, fees and costs for: (a) utility services furnished to the Leased Property, (b) moving, removing, maintaining and improving all necessary connections, and the water, sanitary and storm drain mains and mechanical and electrical conduits and other utilities, whether or not owned by Lessor, and (c) except for the cost of the Lessor's Improvements which shall be paid by Lessor, any additional cost of locating and installing new facilities for sewer, water, electrical, and other utilities as needed to serve the Leased Property, or for any extension, relocation or upgrading of such utilities.

13.3. **Termination of Lease.** The Lessee, at its expense, agrees to deliver the Leased Property to the Lessor upon the termination of this Lease in a good state of repair and condition at the time of surrender, wear and tear excepted, subject to the terms and conditions of this Lease. Any building, structure, fixtures, or other improvements upon the Leased Property shall be delivered to

the Lessor clean, with all equipment in working order and pest free. Any holding over after the expiration of the Lease Term or any Renewal Term, with the Lessor's written consent, shall be construed to be a month-to-month tenancy and shall be subject to the terms of this Lease. If Lessee holds over without the Lessor's written consent, such tenancy shall be construed as a tenancy at sufferance.

13.4. **Quiet Enjoyment.** Lessor agrees that upon paying the Rent and all impositions and other charges herein provided for and performing all the covenants and conditions of this Lease, Lessee, and Lessee's successors and assigns, shall (subject to Lessor's rights specified in this Lease) be entitled to peacefully, lawfully, and quietly occupy the Leased Property during the Lease Term and all Renewal Terms without interference, hindrance, or molestation.

13.5. **Permits.** Lessee acknowledges that the Leased Property and Leasehold Improvements to be constructed thereon are subject to all applicable laws, and to provisions, permits, licenses and restrictions governing land use and zoning, site and structure design, compliance with building, environmental and occupational codes as determined by the applicable governing entity or instrumentality having jurisdiction. Upon obtaining any such permit or permission, the Lessee shall have a continuing obligation to maintain in full force and effect, and in good standing, all of the foregoing approvals, licenses and permits.

13.6. **Mechanics Lien.** Lessee has no authority, expressed or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon or in any manner bind the interest of the Lessor, unless expressly provided for in this Lease. Lessee covenant and agrees that should any lien be filed, Lessee shall discharge the same within thirty (30) days thereafter by paying the same or by filing a bond, or otherwise, as permitted by law. Lessee agrees that it will save, defend and hold Lessor harmless for any and all loss, costs or expense based on or arising out of any asserted claims or liens against the Leasehold Interest or against the right, title or interest of the Lessor in the Leased Property or under the terms of this Lease. Lessee agrees to give Lessor prompt written notice of Lessee's awareness of the placing of any lien or encumbrance against the Leased Property and Lessor agrees to do the same.

13.7. **Compliance.** Lessee shall, at its own expense, obtain all necessary permits, and pay all licenses, fees, and taxes required to comply with all applicable laws relative to development and operation to be conducted on the Leased Property in accordance with this Lease. Upon Lessor's written request, Lessee agrees to provide Lessor with a copy of such permits and payments related to the Leased Property.

13.8. **Discrimination.** Lessee shall not discriminate against contractors, sublessees, or users of the Leasehold Improvements with regard to race, creed, color, handicap, familial status, disability, marital status, religion, national origin, or content of speech. Lessee accepts sole responsibility for ensuring such non-discriminatory access to the Leased Property and the Project.

13.9. **Public Records.** Lessee acknowledges that Lessor is subject to Chapter 119 of the Florida Statutes, commonly known as the Florida Public Records Law. Lessor will retain copies of this Lease and any and all related documents (excluding Lessee's internal communications,

confidential communications between Lessee and its attorneys, accountants and other advisors, documents concerning the entity structure of Lessee and any Tenant, Lessee's financial information (other than the information required in connection with determining Percentage Rent and any Leasehold Mortgage), and documents and communications concerning Lessee's equity investors and lenders), including written correspondence between the Lessor and Lessee and Lessee acknowledges that the same shall become a public record subject to the Florida Public Records Law, as amended, which Lessor shall disclose whenever a public records request is properly made. This provision shall survive the expiration or early termination of this Lease.

13.10. **Attorney's Fees.** In the event of a breach of any of the provisions of this Lease, resulting in an action before a judicial or non-judicial tribunal, the prevailing party shall be entitled to recover from the non-prevailing party all costs, expenses, and reasonable attorneys' fees which may be incurred or sustained by reason of such breach, including but not limited to, all reasonable attorney's fees incurred through all appeals.

13.11. **Memorandum of Lease.** Lessor and Lessee shall, contemporaneously with the execution of this Lease, execute a memorandum of lease in the form attached hereto as **Exhibit "F"** (a "**MOL**"). Lessee may record the MOL at Lessee's cost in the public records of Saint Lucie County, Florida; provided that no MOL shall be recorded prior to the expiration or earlier termination of the Contingency Periods.

13.12. **The Port District Riverfront Park.** At all times during the Lease Term and all Renewal Terms, Lessor shall, at its sole cost and expense, keep and maintain all areas of The Port District Riverfront Park located outside of the Leased Property in a reasonably safe and secure manner, in a good state of repair and condition, normal wear and tear excepted, and in compliance with all Legal Requirements.

14. CONDEMNATION.

14.1. Lessor represents and warrants to Lessee that Lessor has not received any notice, nor is it aware of any pending action to take by condemnation all or any portion of the Leased Property or The Port District Riverfront Park. In the event of a taking of all of the Leased Property or so much of it so as to render the Leased Property unfit for the purposes intended by this Lease, as determined by Lessee in its reasonable discretion, or a taking of all of The Port District Riverfront Park or so much of it so as to render the Leased Property unfit for the purposes intended by this Lease, as determined by Lessee in its reasonable discretion, for any public or quasi-public purpose, under any statute or by right of eminent domain, the Lessee's liability to perform the terms and conditions of this Lease shall cease, but the Lessee shall be entitled to any claim against the condemnor to which the Lessee may be entitled. Lessor shall refund to Lessee any Rent or other sums paid by Lessee for the period after the termination date of this Lease. In the event that Lessee is not a party to such condemnation, Lessee shall receive any portion of an award or compensation to the Lessor which is attributable to the fair market value of Lessee's Leasehold Interest, less the value of the reversionary interest in the Leasehold Improvements, as determined by any court of competent jurisdiction. Notwithstanding anything set forth herein to the contrary, to the full extent under applicable law,

Lessor hereby waives any and all rights to take any portion of the Leased Property by eminent domain or condemnation proceeding.

14.2. In the event of a partial taking by condemnation or eminent domain so that the part not so taken shall be feasible for the continued operation of the Project for the purposes intended by the Lessee, as determined by Lessee in its reasonable discretion, then this Lease shall continue in full force and effect, and Lessee shall receive any portion of an award or compensation to the Lessor which is attributable to the fair market value of Lessee's Leasehold Interest, less the value of the reversionary interest in the Leasehold Improvements, as determined by any court of competent jurisdiction. Lessee shall use the proceeds received by the Lessee, pursuant to this Section 14, for purposes of restoring those portions of the improvements upon the remainder of the Leased Property and impacted by the condemnation to as near their former condition as circumstances will permit, but only to the extent that Lessee receives proceeds sufficient to cover said restoration and in no event shall Lessee be required to pay any amounts in connection with said restoration.

14.3. In determining whether repair or restoration is feasible, the Lessee shall consider, among other factors: (i) the cost of repairing or restoring the improvements affected by the condemnation; (ii) the amount of damage or destruction involved and the condemnation proceeds available to pay for the repair or restoration of the improvements affected by the loss; (iii) the effects of the loss on the Project's ability to operate in a commercially reasonable manner, and whether it is commercially reasonable to attempt to repair or restore; (iv) Lessee's ability to obtain all necessary Permits and other governmental approvals required to repair or restore, and operate the Project in compliance with all applicable City codes and ordinances and all other applicable Legal Requirements and to a reasonably commercial standard or condition; and (v) the length of time remaining in the Lease Term or any Renewal Term at the time of the condemnation.

15. DEFAULTS AND REMEDIES.

15.1. **Lessee's Defaults.** Each of following events shall be events of default by Lessee under this Lease ("Event of Lessee's Default"):

15.2. **Failure to Commence.** Subject to Unavoidable Delay, any Lessor Improvement Delay Period and the terms of Section 15.5 below, should Lessee fail to commence construction of the Leasehold Improvements as provided in this Lease, Lessor shall have the right to elect to terminate this Lease and the Leasehold Interest. Upon such termination, Lessee shall surrender the Leased Property to the Lessor in good condition and repair normal wear and tear excepted. Upon such surrender, neither party shall have any further right or obligation under this Lease.

15.2.1. **Failure to Commence, Remedies.** In the event there shall be a material default by Lessee under this Lease prior to the Construction Commencement Date, and such material default shall continue after the expiration of the applicable grace period set forth in Section 15.5, subject to Unavoidable Delay and any Lessor Improvement Delay Period, Lessor shall have the following rights and remedies:

15.2.1.1. The Lessor, by notice in writing transmitted to the Lessee, as provided in the paragraph entitled “NOTICES”, may at its option declare the Lessee’s interest under this Lease ended and without further force and effect. The Lessor is then authorized to re-enter and repossess the Leased Property and the improvements and personal property on the Leased Property and the Lessee does in such event waive any demand for possession of the Leased Property and agrees to surrender and deliver up the Leased Property peaceably to Lessor. The Lessee covenants that no surrender or abandonment of the Leased Property or of the remainder of the Lease Term or any Renewal Term shall be valid unless accepted by the Lessor in writing. The Lessor shall be under no duty to re-let the Leased Property in the event of an abandonment or surrender or attempted surrender or attempted abandonment of the Leased Property by the Lessee. Upon the Lessee’s abandonment or surrender or attempted abandonment or attempted surrender of the Leased Property, the Lessor shall have the right to retake possession of the Leased Property or any portion thereof, and such retaking of possession shall not constitute an acceptance of the Lessee’s abandonment or surrender.

15.3. **Failure to Complete.** In the event there shall be a material default by Lessee under this Lease after the Construction Commencement Date but prior to the issuance of a Certificate of Occupancy, and such material default shall continue after the expiration of the applicable grace period set forth in Section 15.5, subject to Unavoidable Delay, Lessor shall have the right to all legal and equitable remedies under applicable law, including but not limited to the Lessor shall be authorized to call in any bond or surety, and to re-enter and repossess the Leased Property and the improvements and personal property thereon. The Lessee covenants that no surrender or abandonment of the Leased Property or of the remainder of the term shall be valid unless accepted by the Lessor in writing. The Lessor shall be under no duty to re-let the Leased Property in the event of an abandonment or surrender or attempted surrender or attempted abandonment of the Leased Property by the Lessee prior to the issuance of a Certificate of Occupancy. Upon the Lessee’s abandonment or surrender or attempted abandonment or attempted surrender of the Leased Property, the Lessor shall have the right to retake possession of the Leased Property or any part of them, and such retaking of possession shall not constitute an acceptance of the Lessee’s abandonment or surrender. In addition, the Lessor may use the surety to demolish or complete the Leasehold Improvements, and to then seek to re-let the Leasehold Improvements.

15.3.1. **Failure to Complete, Remedies.** In the event there shall be a material default by Lessee under this Lease after the issuance of the Certificate of Occupancy for the Leasehold Improvements, and such material default shall continue after the expiration of the applicable grace period set forth in Section 15.5, Lessor shall have the right to all legal and equitable remedies under applicable law including the remedies set forth herein regarding the Lessee’s failure to repair and maintain the Leased Property, excepting, however, Lessor shall expressly not have the right to terminate this Lease or obtain the right of re-entry or repossession of the Leased Property, except upon the failure to pay Rent which continues beyond any applicable notice and cure period. Lessor shall use commercially reasonable efforts to re-let the Leased Property.

15.4. **Lessor’s Damages for Abandonment.** If, after issuance of the Certificate of Occupancy, the Leasehold Improvements are effectively “abandoned” for more than thirty (30) consecutive days after written notice to the Lessee and an opportunity to cure said default in accordance with Section 15.5, subject to Unavoidable Delay, Lessor may declare an Event of

Lessee's Default, terminate the Lease, collect any past due Rent through the end of the current quarter of the Lease Year, call-in any surety available, and take control of the Leased Property. Lessor's right to terminate the Lease, collect any past due Rent, call-in any surety, and take control of the Leased Property shall be the sole and exclusive remedy of Lessor in the event that Lessee abandons the Lease Property. For purposes of this Lease, the term "abandoned" shall mean any period of time following the Lease Commencement Date during which the Leasehold Improvements are not being continuously operated or open for business or the Leased Property remains unoccupied subject to Unavoidable Delays, periods when the access to the Leased Property is closed by Lessor and for periods during which the Leasehold Improvements are undergoing repair or renovation, but any such period for repairs and renovations shall not exceed three (3) contiguous months in total. The Lessor's City Manager or their designee shall be permitted to grant short term extensions of the time periods in this section.

15.5. **Notice and Cure.** If any of the Events of Lessee's Default, as set forth in this Section 15, occur, or if Lessee shall fail in the performance of any term of this Lease, then the Lessor shall send to the Lessee a written notice of default, specifying the nature of the default, and Lessee shall, within sixty (60) days after the date of the notice, cure and remedy the default, and this Lease shall then continue as before; provided, however, in the event such breach cannot with due diligence be cured within a period of sixty (60) days, and if written notice of the default shall have been given to Lessee, and if Lessee, prior to the expiration of sixty (60) days from and after the giving of such notice commences to eliminate the cause of such default and proceeds to cure and uses commercially reasonable efforts to cure such default and does so cure such default within a reasonable period of time, then Lessee shall not be in default under this Lease. Failure of the Lessor to insist upon the strict performance of any of the covenants, conditions, and agreements of this Lease in any one or more instances, shall not be construed as a waiver or relinquishment in the future of any such covenants, conditions, and agreements. Notwithstanding anything set forth in this Lease to the contrary, in no event shall Lessee be responsible for any consequential, indirect, or punitive damages; provided this shall not limit the damages otherwise specifically identified in this Section 15 or elsewhere in this Lease.

15.6. **Lessor's Defaults.** Each of the following events shall be events of default by Lessor under this Lease ("Event of Lessor's Default"):

15.7. **Failure to Perform, Notice and Cure.** If Lessor shall fail in the performance of any material term of this Lease, then the Lessee may send to the Lessor a written notice of default, specifying the nature of the default, and Lessor shall, within sixty (60) days after the date of the notice, cure and remedy the default, and this Lease shall then continue as before; provided, however, in the event such breach cannot with due diligence be cured within a period of sixty (60) days, and if written notice of the default shall have been given to Lessor, and if Lessor, prior to the expiration of sixty (60) days from and after the giving of such notice commences to eliminate the cause of such default and proceeds to cure and uses commercially reasonable efforts to cure such default and does so cure such default within a reasonable period of time, then Lessor shall not be in default under this Lease. Failure of the Lessee to insist upon the strict performance of any of the covenants, conditions, and agreements of this Lease in any one or more instances, shall not be construed as a waiver or relinquishment in the future of any such covenants, conditions, and agreements.

15.8. **Lessee's Rights for Lessor's Default.** In the event there shall be an Event of Lessor's Default and such Event of Lessor's Default shall continue after any applicable grace period, Lessee shall have the right to terminate this Lease and all legal and equitable remedies under applicable law or may incur any expense reasonably necessary to perform the obligation of Lessor specified in a written notice from Lessee to Lessor, if Lessor fails to perform such obligation within thirty (30) days of receipt of the written notice from Lessee. In the event Lessee performs the obligation of the Lessor, then, within thirty (30) days following billing from Lessee to Lessor, Lessee may deduct such expense from Rent next becoming due. Notwithstanding anything set forth in this Lease to the contrary, in no event shall Lessor be responsible for any consequential, indirect, or punitive damages.

15.9. **Time and Performance are the Essence of the Lease.** Lessor and Lessee each covenant and agree promptly to perform, comply with, and abide by this Lease, and each agree that time of payment and of performance of material obligations are of the very nature and essence of this Lease. Should any due date hereunder fall on a Saturday, Sunday or legal holiday, then such due date shall be deemed timely if given on the first business day following such Saturday, Sunday or legal holiday.

16. RIGHT TO CONTEST.

Subject to the conditions set forth in Section 16.1 below, the Lessor or Lessee each may, at its sole discretion and expense, after prior written notice to the other party hereto, contest by appropriate action or proceeding conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any lien, any payment of any taxes, assessments, impact fees or other public charges of a similar nature that may from time to time be levied upon or assessed by any appropriate governmental authority against Lessee, the Project (or any part thereof), the Leased Property, furniture, fixtures, equipment or other personal property thereon, and the revenues generated from the use or operation of any or all of the above, any other payment specifically identified in this Lease, or compliance with any law, rule, regulation, or other such legal requirement.

16.1. The right to contest any charge, payment, or requirement pursuant to this Section 16 is subject to the following:

16.1.1. Such proceeding shall not toll or suspend the execution or enforcement of such charge, payment, or requirement.

16.1.2. Such proceeding will not create any risk of impairment of the Leased Property, the construction, completion, operation or use of the Project, the Leasehold Improvements, the Leased Property, or any part thereof, in any material respect, and neither the Project or Leased Property, nor any part of the Project or the Leased Property, would be subject to any risk of being involuntarily sold, forfeited or lost or the construction, equipping, or completion of the Leasehold Improvements or any part thereof be delayed or prohibited.

16.1.3. Such proceeding will not subject any other party to criminal liability or risk of material civil liability for failure to comply therewith or involve risk of any material claim against such party.

16.1.4. The party seeking the benefit of this Section 16 shall have furnished to the other party such security, if any, as may be required in such proceeding or as may be reasonably requested by the other party, to protect the Project, the Leasehold Improvements, and the Leased Property, or any part thereof, and any interest of such parties hereunder.

16.1.5. The Lessee shall have the right to review or protest, or cause to be reviewed or protested, by legal proceedings, any such taxes, assessments, or other charges imposed upon or against the Leased Property and the improvements built and placed on the Leased Property, and in case any such real property taxes, assessments, or other charges shall, as a result of such proceedings or otherwise, be reduced, cancelled, set aside or to any extent discharged, the Lessee shall pay the amount that shall be finally assessed or imposed against the Leased Property and the improvements built and placed on them by the Lessee, which are finally determined to be due and payable on any such disputed or contested items. All expenses of such litigation, including court costs, shall be paid by Lessee free of all expenses to Lessor. The term "legal proceeding", as used above, shall be construed as including appropriate appeals from any administrative actions, judgments, decrees or orders and certiorari proceedings and appeals from orders entered in them. If required by law, Lessor agrees to join in any such legal proceeding or empower Lessee to act in the name of Lessor.

16.1.6. Lessor will cooperate with Lessee in any filing or appeal to the St. Lucie County Property Appraiser pertaining to the Lessee's use of the Leased Property for purposes of determining ad valorem real property taxes. In connection therewith, the Lessor and Lessee understand and agree that the development contemplated by this Lease is being undertaken by Lessee as a community redevelopment project.

17. INDEMNITY AND LIABILITY INSURANCE.

17.1. The Lessee agrees to indemnify, defend, and hold harmless the City, its officers and employees, from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligent act or omission, recklessness, or intentional wrongful misconduct of the Lessee or persons employed or utilized, including any independent contractors or sub-contractors, by the Lessee in the performance of this Lease. As consideration for this indemnity provision, the Lessee shall be paid the sum of ten dollars (\$10.00). Nothing contained herein shall be construed as a waiver of any immunity from or limitation of liability the Lessor is entitled to under the doctrine of sovereign immunity, state law, or Section 768.28, Florida Statutes.

17.2. The Lessee shall, on a primary basis and at its sole expense, maintain in full force and effect at all times during the life of this Lease, insurance coverage, limits, including endorsements, as described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Lessee are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Lessee under the Lease. Notwithstanding the above, (i) prior to the Lease Commencement Date, either Lessee or its contractors performing any due diligence on the Leased Property will obtain and maintain the insurance required pursuant to Section 17.3.2 hereof, (ii) prior to the Construction Commencement Date, Lessee's Contractor shall obtain and maintain the insurance required pursuant to Section 9.4 hereof and (iii) prior to the Lease

The Port District Riverfront Restaurant Lease
(Absolute Net Non-Subordinated Lease)

Commencement Date, Lessee shall obtain and maintain all of the insurance required pursuant to this Section 17.

17.3. The parties agree and recognize that it is not the intent of the City that any insurance policy/coverage that it may obtain pursuant to any provision of this Lease will provide insurance coverage to any entity, corporation, business, person, or organization, other than the City of Port St. Lucie and the City shall not be obligated to provide any insurance coverage other than for the City of Port St. Lucie or extend its immunity, pursuant to Section 768.28, Florida Statutes, under its self-insured program. Any provision contained herein to the contrary shall be considered void and unenforceable. This provision does not apply to any obligation imposed on any other party to obtain insurance coverage for this project, any obligation to name the City as an additional insured under any other insurance policy, or otherwise protect the interests of the City as specified in this Lease.

17.3.1. Workers' Compensation Insurance & Employer's Liability. The Lessee shall maintain, or shall cause the entity that operates the Project, if different from Lessee, to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes. Employers' Liability must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, and \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement must be provided. Should scope of work performed by Lessee qualify its employee for benefits under Federal Workers' Compensation Statute (example, U.S. Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate Federal Act coverage must be provided.

17.3.2. Commercial General Liability Insurance. The Lessee shall maintain, or shall cause the entity that operates the Project, if different from Lessee, to maintain Commercial General Liability insurance, inclusive of coverage for food contamination and food borne illnesses, issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

| | |
|---|----------------------|
| Each occurrence | \$1,000,000 |
| Personal/advertising injury | \$1,000,000 |
| Products/completed operations aggregate | \$2,000,000 |
| General aggregate | \$2,000,000 |
| Fire damage | \$100,000 any 1 fire |
| Medical expense | \$2,000 any 1 person |

17.3.3. Additional Insured. An Additional Insured endorsement must be attached to the certificate of insurance (should be CG2011) under the General Liability policy. Coverage is to be written on an occurrence form basis and shall apply as primary and non-contributory. Defense costs are to be in addition to the limit of liability. A waiver of subrogation is to be provided in favor of the City. Coverage shall extend to independent contractors and fellow employees. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

17.3.4. Automobile Liability Insurance. The Lessee shall maintain, or shall cause the entity that operates the Project, if different from Lessee, to maintain Business Automobile Liability at a

limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event the Lessee does not own any automobiles, the Business Auto Liability requirement shall be amended allowing Lessee to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. The City must be listed as additional insured. A waiver of subrogation must be provided in favor of the City. Coverage shall apply on a primary and non-contributory basis.

17.3.5. Liquor Liability. The Lessee shall maintain, or shall cause the entity that operates the Project, if different from Lessee, to maintain, and prior to the Lease Commencement Date, provide the City with evidence of Liquor Liability Insurance for the serving and selling of intoxicating beverages, with limits of not less than \$1,000,000 per occurrence. Coverage shall apply on a primary and non-contributory basis. The City shall be listed as an additional insured. A waiver of subrogation must be provided in favor of the City.

17.3.6. Property Insurance/Flood Insurance. The Lessee shall procure and agree to maintain, or shall cause the entity that operates the Project, if different from Lessee, to procure and maintain Commercial Property insurance covering the Leasehold Improvements, including Building Ordinance & Law coverage, fixtures, equipment, and the Lessee's improvements and betterments. Lessee is responsible for insuring their own personal property. Flood Insurance is required for building/improvements and betterments if property lies within a Special Flood Hazard Area. Perils insured should be equivalent to ISO special causes of loss form and the valuation of covered property shall be replacement cost. Coverage is to be written in an amount of not less than the full replacement cost without deduction for depreciation, special form including perils of fire, windstorm/hail, earth movement, theft, vandalism, and malicious mischief. Business Income including Loss of Rent is to be included. Legal Liability Coverage Form (ISO CP0040) and Leasehold Interest Coverage Form (ISO CP0060) are to be included. Equipment Breakdown/Boiler & Machinery is to be included. Coverage shall apply as primary and non-contributory. The City of Port St. Lucie shall be listed as an additional insured. A waiver of subrogation is to be provided in favor of the City.

17.3.7. Pollution Insurance. The Lessee shall maintain, or shall cause the entity that operates the Project, if different from Lessee, to maintain in full force during the term of this Lease, Pollution Liability Insurance in limits not less than \$1,000,000 per occurrence, \$2,000,000 aggregate, for business operations. This insurance shall cover any environmental loss to the premises for adjoining properties and shall include coverage for mold, fungus, and related bacteria. The defense costs for environmental claims shall be provided outside of the limits of liability and should include a waiver of subrogation by insurer as to the Lessor. The City shall be listed as an additional insured. A waiver of subrogation shall be provided in favor of the City. Coverage shall apply on a primary and non-contributory basis.

17.3.8. Garage Keepers' Liability Insurance (if operating a valet parking service): Lessee, or Lessee's valet operator, shall maintain Garage Keepers' Liability Insurance, at a limit of liability not less than \$1,000,000 per location. The City of Port St. Lucie must be listed as an additional insured. A waiver of subrogation shall be provided in favor of the City. Coverage shall apply on a primary and non-contributory basis.

17.3.8.1. Except as to Workers' Compensation, Employers' Liability Insurance, Certificates of Insurance and policies shall clearly state that coverage required by the Lease has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents and employees as Additional Insured for Commercial General Liability, Business Auto Liability, Pollution Liability, Liquor Liability, Garage Keeper Liability, and Property/Flood insurance policies. The name for the Additional Insured and Loss Payee endorsement issued by the insurer shall read "**City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents, shall reference this Lease, and the City as an Additional Insured or Loss Payee to said policy(ies).**" Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance. The policies shall be specifically endorsed to provide thirty (30) day written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. Formal written notice shall be sent to City of Port St. Lucie, 121 SW Port St. Lucie Blvd., Port St. Lucie, FL 34984, Attn: Procurement. In the event that the statutory liability of the City is amended during the term of this Lease to exceed the above limits, the Lessee shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City.

17.3.9. Waiver of Subrogation. The Lessee shall agree, by entering into this Lease, to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an Insured to enter into a pre-loss Lease to waive subrogation without an endorsement, then Lessee shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent.

17.3.10. Deductibles. All deductible amounts shall be paid for and be the responsibility of the Lessee or the entity that operates the Project, if different from Lessee, for any and all claims under this Lease. Where an SIR or deductible exceeds \$10,000, the City reserves the right, but not obligation, to review and request a copy of the Lessee most recent annual report or audited financial statement.

17.4. It shall be the responsibility of the Lessee to ensure that all Tenants, independent contractors and subcontractors comply with the same insurance requirements referenced herein. It will be the responsibility of the Lessee to obtain Certificates of Insurance from all Tenants, independent contractors and subcontractors listing the City as an Additional Insured without the language, when required by written contract. If Lessee, Tenant, independent contractor or subcontractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by Lessee, Tenant, independent contractor, or subcontractor. A fully completed satisfactory Certificate of Insurance evidencing all coverage required herein shall be provided Lessor. Also, a copy of the actual additional insured endorsement as issued on the Commercial General Liability policy, signed by an authorized representative of the insurer(s) verifying inclusion of Lessor and Lessor's members, officials, officers and employees as additional insureds in the Commercial General Liability coverage shall be provided to Lessor.

17.5. The Lessee or the entity that operates the Project, if different from Lessee, may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability,

and Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability is written on Non-Follow Form, the City shall be endorsed as an "Additional Insured".

17.6. All insurance carriers must have an AM Best rating of at least A-:VII or better. When a self-insured retention or deductible exceeds \$10,000, the City reserves the right, but not the obligation, to review and request a copy of Lessee most recent annual report or audited financial statement.

17.7. A failure on the part of the Lessee to punctually deliver the required insurance certificates and other documentation may be cause for termination of this Lease. If during the term of this Lease, including any exercised Renewal Terms, market conditions require the modification of any of the insurance coverages required pursuant to this Section 17, the Lessor's City Manager or their designee shall be permitted to grant such modifications.

17.8. Lessor and Lessee agree that Lessor shall be responsible for the maintenance, repair, replacement and security of all areas of The Port District Riverfront Park outside of the Leased Property and Lessee shall be responsible for the maintenance, repair, replacement and security of all areas located within the Leased Property. The Lessee shall not be responsible for liabilities, damages, losses and costs, to the extent caused by the negligent act or omission, recklessness, or intentional wrongful misconduct of the Lessor or persons employed or utilized, including any independent contractors or sub-contractors, by the Lessor in the performance of this Lease or that may be incurred in The Port District Riverfront Park outside of the Leased Property unless caused by the negligent act or omission, recklessness, or intentional wrongful misconduct of the Lessee or persons employed or utilized, including any independent contractors or sub-contractors, by the Lessee in the performance of this Lease.

18. CASUALTY.

18.1. If a casualty loss affecting all or that part of the Leasehold Improvements located on the Leased Property should occur for all or any part of the Leasehold Improvements, the Lessee shall promptly notify the Lessor about the loss ("Notice of Loss"). The Notice of Loss shall include the date on which the loss occurred and the determination of the Lessee, in its reasonable opinion, as to whether the repair or restoration of the improvements affected by the loss is feasible. If repair or restoration is feasible, as determined by Lessee and agreed upon by the Lessor, the proposed construction schedule and budget for implementing such repair or restoration shall be sent to Lessor within ninety (90) days after delivery of the Notice of Loss, subject to Unavoidable Delay. The Lessee recognizes and agrees that this Lease is a "non-subordinated land lease" and that Lessee is solely responsible for repairs to any and all Leasehold Improvements on the Leased Property. Such repairs shall be pursued in a timely and workmanlike manner, and without delay, subject to Unavoidable Delay.

18.2. If the parties determine that repair or restoration is feasible, the casualty insurance proceeds ("Proceeds") if any, shall be used, collected, and disbursed to pay for the repair or restoration in accordance with the proposed construction schedule and budget for implementing such repair or restoration. If any Proceeds remain after paying for the repair or restoration, they shall be disbursed to the Lessee.

18.3. If the parties determine that repair and restoration is not feasible, Lessee will not be obligated to make such repair or restoration. In that event, the Proceeds shall be used to clear that portion of damaged or destroyed improvements affected by the loss, and the cleared lands shall be surrendered to the Lessor. Upon such surrender, this Lease shall terminate as to that surrendered portion. If Proceeds remain after paying for the cost of clearing that portion of the damaged or destroyed improvements affected by the loss, the Proceeds shall be then used to pay any additional costs incurred by the Project as a result of such loss and severance. Thereafter, any remaining Proceeds shall be disbursed to the Lessee. The time between the date of the casualty and the date on which Notice of Loss is given shall be considered an Unavoidable Delay under this Lease. Lessee will not be obligated to make any repair or restoration that is feasible, unless and until Lessee's time for performance has been extended by a period of time sufficient to repair or restore such loss and complete the balance of the Project.

18.4. The Lessee's obligation to continue paying Rent after a casualty shall be controlled by Sections 6.5 and 26 hereof.

19. ASSIGNMENT AND SUB-LEASE.

19.1. Except as expressly permitted herein, Lessee shall not assign or in any manner transfer, in whole or in part, this Lease or any estate or interest therein, nor sublet the Leased Property or any part thereof, without the prior written consent of Lessor's Authorized Representative, which may be withheld by Lessor for any reason. Any attempted assignment, subletting or transfer of any kind or character or other transfer herein without Lessor's prior written consent shall be void and confer no rights upon any third party. Consent by Lessor to one or more assignments of this Lease or to one or more subletting of the Leased Property shall not operate to exhaust Lessor's rights under this Section 19. In the event that Lessee, with or without the previous consent of Lessor, does assign or in any manner transfer this Lease or any estate or interest therein or sublet the Leased Property or any part thereof, then, except as specifically provided in Section 12.6 and Section 19.3 hereof, Lessee shall not be released from any of its obligations under this Lease unless a release is given, in writing, by Lessor.

19.2. Notwithstanding anything contained in this Lease to the contrary, none of the following (including the right to assign or sublet) shall require Lessor's consent (written or otherwise) or the payment by Lessee of any fees or charges of any kind:

19.2.1. Subleases, license agreements or operating agreements between Lessee (or Lessee's designated party pursuant to Section 19.2.4 hereof) and third parties that will operate one or more portions (but not the whole) of the Leasehold Improvements and/or the Leased Property for the Project's intended use.

19.2.2. A transfer of any ownership interest pursuant to a public offering by Lessee.

19.2.3. The merger or consolidation of Lessee with a third party who shall assume Lessee's obligations under this Lease.

19.2.4. A sublease, license or operating agreement between Lessee and a third party that will operate the Leasehold Improvements and/or the Leased Property for the Project's intended use provided that Lessee shall not be released from any of its obligations under this Lease.

19.2.5. A transfer or assignment to a parent, subsidiary, or Affiliate of Lessee. "Affiliate" shall mean any corporation, company, partnership, or other entity: (A) which owns or "controls" the majority of ownership interests of Lessee, either directly or indirectly through other entities; or (B) the majority of ownership interests is owned or "controlled" by Lessee; or (C) the majority of whose ownership interests is owned or "controlled" by an entity described in (A); or (D) which owns or "controls" a majority of the ownership interests of Lessee.

As used herein, the phrase "ownership interest" shall mean capital stock if Lessee is a corporation, or membership interests if the Lessee is a limited liability company and the words "controlled", or "controls" shall mean the right or power to direct or cause the direction of the management and policies of the entity in question. No such subletting or assignment shall be effective until Lessee has furnished Lessor with a fully executed copy of such sublease or assignment and, in the case of an assignment, an assumption of the Lessee's Lease obligations in a form reasonably satisfactory to Lessor. No such sublease or assignment shall release Lessee or any guarantor of Lessee's obligations hereunder from its obligations under this Lease unless a release is given, in writing, by Lessor.

19.3. Lessor's consent will not be unreasonably withheld, delayed or conditioned for an assignment of this Lease, and Lessee shall be released from all continuing liability under this Lease, if Lessee assigns this Lease to an entity (i) with a net worth of at least \$10,000,000.00 and (ii) whose owners and or operators have at least five (5) years experience in the operation of restaurants exceeding 7,000 square feet (or restaurants whose combined square footage exceeds of 20,000 square feet in size) so long as the proposed use is reasonably comparable to the Project and such assignee assumes the obligations under this Lease in writing delivered to the Lessor.

20. SUCCESSORS IN INTEREST.

20.1. The covenants and agreements contained in this Lease shall be binding on and inure to the benefit of the respective permitted successors and assigns of the parties whether by merger or otherwise. Wherever used, the singular number shall include the plural, and the use of any gender shall be applicable to all genders.

21. NOTICES.

All notices required by law and by this Lease to be given by one party to the other shall be in writing, and the same may be served as follows:

21.1. All notices, demands, requests for approvals or other communications given by either party to another shall be in writing signed by the party or its counsel identified below, and shall be sent by (a) registered or certified mail, postage prepaid, return receipt requested, (b) courier service, (c) electronic mail, or (d) hand delivery to the office for each party indicated below and addressed as follows:

To Lessee:

PIII Investments, LLC
1101 Brickell Avenue, South Tower, 8th Floor
Miami, Florida 33131
Email: gbutani@p3investments.com

Copy to:

Akerman, LLP
98 Southeast Seventh Street, Suite 1100
Miami, Florida 33131
Attn: Richard M. Bezold, Esq
Email: richard.bezold@akerman.com

To the Lessor:

City Manager
City of Port St. Lucie
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984
Attn : Jennifer Davis
Email: jdavis@cityofpsl.com

Copy to:

City Attorney
City of Port St. Lucie
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984
Email: jstokes@cityofpsl.com

21.2. Any such notice shall be considered delivered: (a) on the date of hand delivery, (b) on the first business day after the date of deposit with an overnight courier, (c) on the date upon which

the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as non-deliverable, as the case may be, if mailed by certified mail, or (d) on the date of transmission of electronic mail provided such is transmitted by 5:00pm Eastern Time of any business day and if after 5:00pm, the same shall be deemed delivered on the next business day. Refusal by any person to accept delivery of any notice delivered to the office at the address indicated above (or as later changed), shall be deemed to have been an effective delivery as provided in this Section 21. The addresses to which notices are to be sent may be changed from time to time by written notice delivered to the other party, and such notices shall be effective upon receipt. Until a written notice of change of address is received as to any particular party hereto, all other parties may rely upon the last address given. Notices given by counsel to Lessor shall be deemed given by Lessor and notices given by counsel to Lessee shall be deemed given by Lessee.

22. SEVERABILITY.

If any paragraph, subparagraph, sentence, clause, provision, or part of this Lease shall be held invalid for any reason, the remainder of this Lease shall not be affected.

23. COMPLETE AGREEMENT AND AMENDMENTS.

The parties mutually represent and warrant to each other that this Lease constitutes the final and complete agreement of the parties on its subject matter and may not be changed, modified, discharged, or extended except by written instrument duly executed by the parties. The parties agree that no previous representations or warranties shall be binding upon either party nor has the execution of this Lease been induced on the part of any party except as expressed in writing in this Lease. The parties further agree that this Lease may be amended or modified by mutual consent, provided that any and all such amendments or modifications shall be in writing and signed by Authorized Representatives of both parties.

24. RADON GAS.

Section 404.056, Florida Statutes requires that the following notification be given for real estate transactions of this type:

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

25. NO MERGER.

There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Leased Property, or any part thereof, by reason of the fact that the same person may acquire or hold, directly or indirectly, this Lease or the leasehold estate hereby created or any interest in this

Lease or in such leasehold estate as well as the fee estate in the Leased Property or any interest in such fee estate.

26. UNAVOIDABLE DELAY.

In the event either party hereto is delayed in the performance of any act required hereunder by reason of an Unavoidable Delay, performance of such act shall be excused for the period of the Unavoidable Delay and the period for the performance of such act shall be extended for a period equivalent to the period of the Unavoidable Delay and all dates, time periods, deadlines as contained in this Lease shall be extended by the time period caused by any and all Unavoidable Delay. "Unavoidable Delays" mean any of the following events or conditions or any combination thereof: acts of God, acts of the public enemy, riot, insurrection, war, terrorism, pestilence, archaeological excavations required by law, unavailability and/or delayed delivery of materials after timely ordering of same, unavailability of appropriate labor, epidemics, quarantine restrictions, freight embargoes, fire, lightning, hurricanes, named windstorms, earthquakes, tornadoes, floods, extremely abnormal and excessively inclement weather (as indicated by the records of the local weather bureau for a five-year period preceding the event claimed to be an Unavoidable Delay), strikes or labor disturbances, delays due to proceedings under Chapters 73 and 74, Florida Statutes, restoration in connection with any of the foregoing, the City's or any other governmental agency's failure to timely respond to or approve the application for any permit or governmental or quasi-governmental approval related to the Project, or any other cause beyond the reasonable control of the party performing the obligation in question, including, without limitation, such causes as may arise from the act of the other party to this Lease, or acts of any governmental authority. If the City or any other governmental agency closes public access to the Leased Property or The Port District Riverfront Park, or closes the shared parking facilities that serve the Project, such shall be considered an Unavoidable Delay and if such closure shall continue in excess of fifteen (15) days, then all Rent shall be abated during the period after such initial fifteen (15) days that access or parking is prohibited by the Lessor or other governmental agency. In the event of a temporary or short term event that is outside of the control of the Lessee and that results in the closure of the Project, such as a temporary flooding of portions of the Leased Property, damage to the surrounding lands, interruption of municipal services, park closures, etc., the City's Authorized Representative shall be empowered to waive all Rent obligations of the Lessee during such periods when the Project cannot safely be operated or is prevented from being operated.

27. GOOD FAITH AND FAIR DEALING.

Lessor and Lessee hereby agree to interpret the terms, conditions, and provisions of this Lease in good faith exercising reasonable business judgment, and to attempt to resolve any and all issues, disputes or conflicts that may arise hereunder in a reasonable and fair manner.

28. RELATIONSHIP OF THE PARTIES / NO JOINT VENTURE.

The parties hereby agree that it is their intention to create only the relationship of Lessor and Lessee, and neither this Lease, nor any term, provision, payment or right hereunder shall in any way or for any purpose, constitute or cause Lessor to become or be deemed a partner of Lessee in the conduct of its business, or otherwise, or to cause Lessor to become or be deemed a joint adventurer

or a member of a joint enterprise with Lessee, nor shall this Lease, or any term or payment required herein, confer or be deemed to confer any interest upon Lessor in the conduct of Lessee's business.

29. EXCULPATION.

29.1. Notwithstanding anything to the contrary provided in this Lease, no elected official, officer, director, trustee, employee, agent, advisor, or affiliate of Lessor, nor any holder of a superior interest in the Leased Property, whether direct or indirect, shall have any personal liability with respect to any of the provisions of this Lease if Lessor is in breach or default with respect to its obligations or otherwise.

29.2. Notwithstanding anything to the contrary provided in this Lease, no officer, director, member, trustee, employee, agent, advisor, or affiliate of Lessee, nor any holder of a superior interest in the Leased Property, whether direct or indirect, shall have any personal liability with respect to any of the provisions of this Lease if Lessee is in breach or default with respect to its obligations or otherwise.

30. LEASE FOR BENEFIT OF PARTIES HERETO.

Nothing in this Lease, whether express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the Lessor, Lessee or their officers, directors or incorporators, any right, remedy or claim under or by reason of this Lease or any covenant, condition or stipulation thereof; and the covenants, stipulations or agreements contained in this Lease are and shall be for the sole and exclusive benefit of the aforementioned parties, and their permitted successors and assigns.

31. UNDERSTANDINGS AND AGREEMENTS.

All understandings and agreements between the parties are merged into this Lease, which fully and completely expresses the parties' agreement, and the same is entered into after full investigation; neither party is relying on any statement or representation made by the other not embodied in this Lease.

32. COVENANTS RUN WITH THE LAND.

All provisions of this Lease and all exhibits attached hereto, and any amendments thereof, shall be construed as covenants running with the Leased Property, and of every part thereof and interest therein.

33. CAPTIONS.

The captions used in this Lease and upon the exhibits annexed hereto are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of this Lease or exhibits hereto.

34. GOVERNING LAW AND VENUE.

This Lease shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida, without regard to principles of conflicts of law. Venue of all proceedings in connection herewith shall be in St. Lucie County, Florida, and each party hereto hereby waives whatever their respective rights may have been in the selection of venue.

35. AUTHORITY OF LESSEE AND LESSOR.

35.1. Lessee is a Florida limited liability company, and each individual executing this Lease on behalf of the company is duly authorized to execute and deliver this Lease on behalf of the company in accordance with a duly adopted resolution of the Managing Member(s) of the company, and that this Lease shall, as of the Effective Date, be binding upon the company in accordance with its terms. Lessee shall, within ten (10) days after the execution of this Lease, deliver to Lessor a certified copy of a resolution of the Managing Member(s) of the company authorizing or ratifying the execution of this Lease.

35.2. Lessor is a Florida municipal corporation, and the individual executing this Lease on behalf of the Lessor is duly authorized to execute and deliver this Lease on behalf of the Lessor in accordance with a duly adopted ordinance of the Port St. Lucie City Council, and that this Lease shall, as of the Effective Date, be binding upon the Lessor in accordance with its terms. Lessor shall, within ten (10) days after the execution of this Lease, deliver to Lessee a certified copy of an ordinance of the City Council authorizing the execution of this Lease.

36. INDEPENDENT COUNSEL AND CONSTRUCTION.

Lessor and Lessee each acknowledge and warrant that each has been represented or has had an opportunity to be represented by independent counsel and has executed this Lease after being fully advised as to its legal effect and significance. This Lease is the result of negotiations between the parties and their respective attorneys and shall be construed in an even and fair manner, regardless of the party who drafted this Lease or any provision thereof.

38. SOVEREIGN IMMUNITY.

Nothing contained herein shall be construed or interpreted as a waiver of the sovereign immunity liability limits granted to the Lessor as established under chapter 768.20 Florida Statutes, as amended from time to time.

39. BROKER COMMISSIONS.

Lessor shall, at no cost or expense to Lessee, pay all commissions and fees due or payable to Colliers International Florida, LLC (the "**Broker**") with respect to this Lease, and Lessor shall indemnify, defend and hold harmless Lessee from and against all losses in connection with any claim by Broker or any other broker engaged by Lessor. Lessee agrees to indemnify Lessor against any

The Port District Riverfront Restaurant Lease
(Absolue Net Non-Subordinated Lease)

claims for brokerage commissions in connection with this Lease, but only with respect to any broker engaged by Lessee.

40. WAIVER OF JURY TRIAL.

NEITHER LESSOR NOR LESSEE SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION BASED UPON, OR ARISING OUT OF THIS LEASE, ANY RELATED INSTRUMENT, ANY COLLATERAL OR THE DEALINGS OR THE RELATIONSHIP BETWEEN OR AMONG THE PARTIES, OR ANY OF THEM. NO PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION, IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS SECTION HAVE BEEN FULLY DISCUSSED BY THE PARTIES HERETO. NO PARTY HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES. THIS WAIVER SURVIVES THE EXPIRATION OR TERMINATION OF THIS LEASE.

[ALL SIGNATURES ON THE FOLLOWING PAGES]

The Port District Riverfront Restaurant Lease
(Absolue Net Non-Subordinated Lease)

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals on this _ day
of _____, 2023.

Witnesses:

LESSOR:

CITY OF PORT ST. LUCIE
a Florida municipal corporation

Printed Name: _____

By: _____
Printed Name: Shannon M. Martin
Title: Mayor

Printed Name: _____

STATE OF FLORIDA)
) ss
COUNTY OF ST. LUCIE)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online
notarization this ____ day of _____ 2023, by Shannon M. Martin as Mayor of the City of
Port St. Lucie, and on behalf of the City of Port St. Lucie, who is [X] personally known to me, or
who has [] produced the following identification _____.

Signature of Notary Public

Name: _____

NOTARY SEAL/STAMP

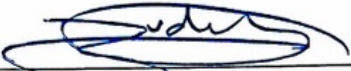
Notary Public, State of Florida
My Commission expires _____

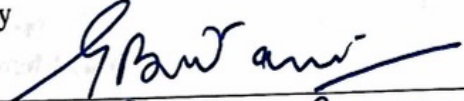
The Port District Riverfront Restaurant Lease
(Absolute Net Non-Subordinated Lease)


Witnesses:

LESSEE:

PIII INVESTMENTS, LLC, a Florida limited liability company

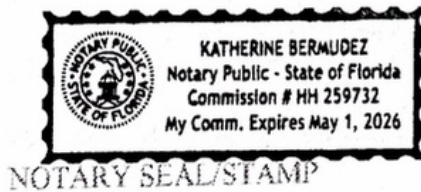

Printed Name: JUDITH MARIN

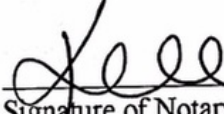
By: 
Printed Name: GAURAV BUTANI
Title: PRINCIPAL


Printed Name: CHRISTINA AURORA MARINO

STATE OF FL)
COUNTY OF Miami Dade) ss

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 12 day of December 2022, by Gaurav Butani as Principal of PIII INVESTMENTS, LLC, a Florida limited liability company, and on behalf of PIII INVESTMENTS, LLC, a Florida limited liability company, who is [] personally known to me, or who has ☒ produced the following identification FLDL.




Signature of Notary Public

Name: Katherine Bermudez

Notary Public, State of Florida
My Commission expires 05/01/2026

EXHIBIT A

LEGAL DESCRIPTION OF THE LEASED PROPERTY

A PARCEL OF LAND LYING IN SECTION 10, TOWNSHIP 37 SOUTH, RANGE 40 EAST, ST. LUCIE COUNTY, FLORIDA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE NORTHEAST CORNER OF THE SOUTH 452.00 FEET OF THE NORTH ONE-HALF OF GOVERNMENT LOT 8 WITH THE WEST RIGHT-OF-WAY LINE OF WESTMORELAND BOULEVARD, A 100 FOOT RIGHT-OF-WAY AS LAID OUT AND IN USE; THENCE NORTH 89°44'12" WEST, ALONG THE NORTH LINE OF THE SOUTH 452.00 FEET OF THE NORTH ONE-HALF OF SAID GOVERNMENT LOT 8, A DISTANCE OF 689.04 FEET TO A NON-TANGENT CURVE AND THE POINT OF BEGINNING OF HEREIN DESCRIBED PARCEL:

THENCE ALONG SAID CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 386.24 FEET; THE CHORD OF WHICH BEARS SOUTH 14°15'40" WEST, A DISTANCE OF 84.43 FEET; THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 12°32'57", A DISTANCE OF 84.60 FEET TO A NON-TANGENT LINE; THENCE SOUTH 0°09'44" WEST, A DISTANCE OF 179.34 FEET; THENCE NORTH 89°50'01" WEST, A DISTANCE OF 72.01 FEET TO A NON-TANGENT CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 72.83 FEET, THE CHORD OF WHICH BEARS SOUTH 34°27'49" WEST, A DISTANCE OF 67.73 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 55°25'04", A DISTANCE OF 70.45 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A" AND THE INTERSECTION WITH A NON-TANGENT CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 48.47 FEET, THE CHORD OF WHICH BEARS SOUTH 80°16'51" WEST, A DISTANCE OF 20.89 FEET; THENCE WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 24°53'14", A DISTANCE OF 21.05 FEET TO A POINT OF REVERSE CURVE; THENCE ALONG SAID CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 18.43 FEET, THE CHORD OF WHICH BEARS NORTH 69°59'58" WEST, A DISTANCE OF 24.44 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 26.72 FEET THROUGH A CENTRAL ANGLE OF 83°03'43" TO A NON-TANGENT LINE; THENCE NORTH 33°29'34" WEST, A DISTANCE OF 10.42 FEET TO THE INTERSECTION WITH A NON-TANGENT CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 43.40 FEET, THE CHORD OF WHICH BEARS NORTH 57°10'36" WEST, A DISTANCE OF 17.40 FEET; THENCE WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 23°07'40", A DISTANCE OF 17.52 FEET TO A NON-TANGENT LINE; THENCE NORTH 47°38'21" WEST, A DISTANCE OF 10.96 FEET; THENCE NORTH 17°04'50" EAST, A DISTANCE OF 87.29 FEET; THENCE NORTH 9°32'23" WEST, A DISTANCE OF 63.11 FEET; THENCE NORTH 15°03'45" EAST, A DISTANCE OF 26.47 FEET; THENCE NORTH 13°47'36" WEST, A DISTANCE OF 30.23 FEET; THENCE NORTH 15°58'26" EAST, A DISTANCE OF 24.78 FEET; THENCE NORTH 17°16'45" WEST, A DISTANCE OF 33.44 FEET; THENCE NORTH 54°25'01" EAST, A DISTANCE OF 25.62 FEET; THENCE NORTH 59°49'10" EAST, A

The Port District Riverfront Restaurant Lease
(Absolue Net Non-Subordinated Lease)

DISTANCE OF 13.38 FEET; THENCE NORTH 63°33'38" EAST, A DISTANCE OF 20.49 FEET TO THE INTERSECTION WITH THE NORTH LINE OF THE SOUTH 452.00 FEET; THENCE SOUTH 89°44'12" EAST, ALONG SAID NORTH LINE, A DISTANCE OF 141.18 FEET TO THE POINT OF BEGINNING.

(CONTAINING 47,338± SQ.FT.)

TOGETHER WITH:

COMMENCING AT AFORESAID POINT "A"; THENCE SOUTH 00°01'55" WEST, A DISTANCE OF 46.10 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 45°00'00" EAST, A DISTANCE OF 39.87 FEET; THENCE SOUTH 45°00'00" WEST, A DISTANCE OF 29.60 FEET; THENCE NORTH 45°00'00" WEST, A DISTANCE OF 39.87 FEET; THENCE NORTH 45°00'00" EAST, A DISTANCE OF 29.60 FEET TO THE POINT OF BEGINNING.

(CONTAINING 1,180± SQ.FT.)

TOTAL (48,518± SQ.FT.) 1.11± ACRES

The Port District Riverfront Restaurant Lease
(Absolue Net Non-Subordinated Lease)

EXHIBIT A-1

SKETCH OF THE LEASED PROPERTY

LEGAL DESCRIPTION

THIS IS NOT A SURVEY

A PARCEL OF LAND LYING IN SECTION 10, TOWNSHIP 37 SOUTH, RANGE 40 EAST, ST. LUCIE COUNTY, FLORIDA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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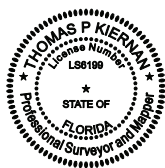
(CONTAINING 47,338± SQ.FT.)

TOGETHER WITH:

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(CONTAINING 1,180± SQ.FT.)

TOTAL (48,518± SQ.FT.) 1.11± ACRES



Digitally signed

by Thomas P

Kiernan

Date:

2023.01.06

11:27:50 -05'00'

DATE

THOMAS P. KIERNAN
PROFESSIONAL SURVEYOR & MAPPER
FLORIDA CERTIFICATE NO. 6199

NOTE: THIS SHEET IS NOT VALID WITHOUT ALL PAGES OF THIS DOCUMENT
NOTE: THIS IS NOT A SKETCH OF SURVEY, BUT ONLY A GRAPHIC DEPICTION OF THE LEGAL DESCRIPTION SHOWN HEREON. THERE HAS BEEN NO FIELD MONUMENTS SET IN CONNECTION WITH THE PREPARATION OF THE INFORMATION SHOWN HEREON.

NOTE: LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY AND/OR EASEMENTS OF RECORD.

REVISE BOUNDARY - JDJ - 1/6/23
REVISE BOUNDARY - JDJ - 9/9/22

Sheet 1 of 2



**CULPEPPER &
TERPENING INC**

2980 SOUTH 25th STREET • FORT PIERCE, FLORIDA 34981
PHONE 772-464-3537 • FAX 772-464-9497 • www.ct-eng.com
STATE OF FLORIDA BOARD OF PROFESSIONAL
ENGINEERS AUTHORIZATION NO. 4286

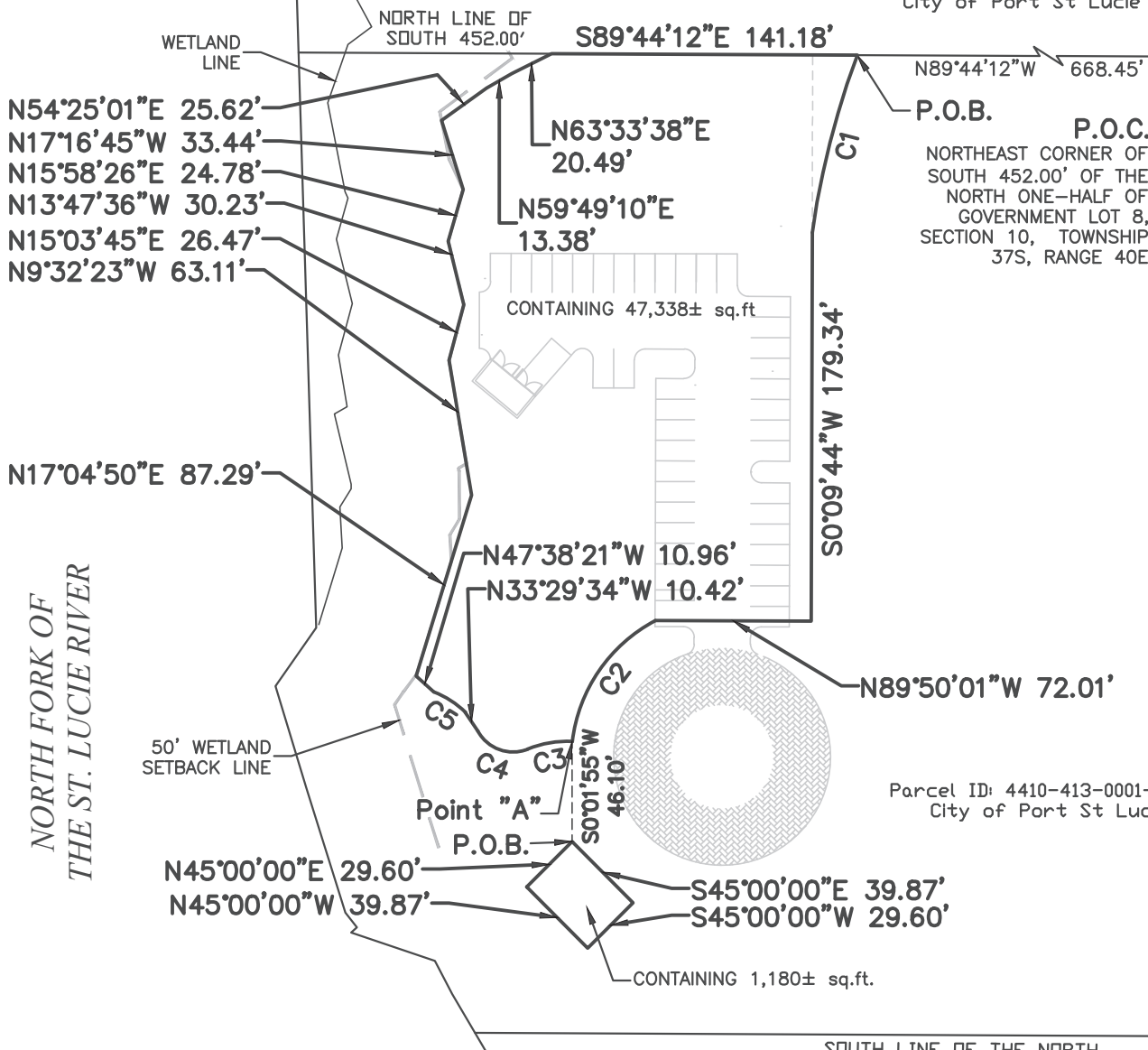
LEGAL DESCRIPTION

Westmoreland - Riverwalk Park

| | |
|----------------|----------------|
| DATE: 9/9/2022 | DRAWN JDJ |
| SCALE: N/A | JOB No. 16-031 |

**SKETCH TO ACCOMPANY LEGAL DESCRIPTION
THIS IS NOT A SURVEY**

Parcel ID: 4410-411-0003-000-4
City of Port St Lucie



| Curve | Length | Radius | Delta | Chord |
|-----------|--------|--------|-----------|--------------------|
| C1 | 84.60' | 386.24 | 12°32'57" | S14°15'40"W 84.43' |
| C2 | 70.45' | 72.83 | 55°25'04" | S34°27'49"W 67.73' |
| C3 | 21.05' | 48.47 | 24°53'14" | S80°16'51"W 20.89' |
| C4 | 26.72' | 18.43 | 83°03'43" | N69°59'58"W 24.44' |
| C5 | 17.52' | 43.40 | 23°07'40" | N57°10'36"W 17.40' |

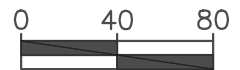
SOUTH LINE OF THE NORTH ONE-HALF OF GOVERNMENT LOT 8

Parcel ID: 4410-411-0001-000-3
City of Port St Lucie

LEGEND

(BB) = BASIS OF BEARINGS
(C) = CALCULATED DATA
ORB = OFFICIAL RECORDS BOOK
P.B. = PLAT BOOK
PG. = PAGE
P.O.B. = POINT OF BEGINNING
P.O.C. = POINT OF COMMENCEMENT
R/W = RIGHT-OF-WAY
✕ = SECTION CORNER

GRAPHIC SCALE



SCALE: 1" = 80'



REVISE BOUNDARY - JDJ - 1/6/23
REVISE BOUNDARY - JDJ - 9/9/22

Sheet 2 of 2



**CULPEPPER &
TERPENING INC**

2980 SOUTH 25th STREET • FORT PIERCE, FLORIDA 34981
PHONE 772-464-3537 • FAX 772-464-9497 • www.ct-eng.com
STATE OF FLORIDA BOARD OF PROFESSIONAL
ENGINEERS AUTHORIZATION NO. 4286

SKETCH OF DESCRIPTION

Westmoreland - Riverwalk Park

DATE: 9/9/2022

DRAWN JDJ

SCALE: 1"=80'

JOB No. 16-031

EXHIBIT A-2

LEGAL DESCRIPTION OF THE PORT DISTRICT RIVERFRONT PARK

The South 452.00 feet of the North One-Half (N 1/2) of Government Lot 8 of Section 10, Township 37 South, Range 40 East, lying East of the North Fork of the St. Lucie River and West of the West Right-of-Way line of Westmoreland Boulevard, lying and being in St. Lucie County, Florida.

PID: 4410-413-0001-000-6

EXHIBIT B

LESSOR IMPROVEMENTS

1. Lessor shall have completed and obtained a Certificate of Occupancy or other appropriate evidence of completion according to Code of the work identified on i) the plans titled "Construction Plans for Westmoreland Park" prepared by Culpepper & Terpening, Inc., PSLUSD Project No. 5001-31, City PSL Project No. 17-004-A2, C&T Project No. 16-031.006 dated 8/11/2022, and any revisions or modifications and ii) the City of Port St. Lucie Contract #20220032, dated June 27, 2022 between the City of Port St. Lucie and Ferreira Construction Company, Inc. (including by reference the work identified in Bid Specifications #20220032, The Port District – Park and Playground Infrastructure & Improvement Project) and any change orders thereto. **With respect to infrastructure, the following improvements shall be included in the Lessor Improvements:**

Potable Water:

The lease area will be provided with a potable water service via a 6-inch connection to the existing 8-inch water main running along the north boundary of the park. A fire hydrant will be provided within the lease area for fire protection. The 6-inch water main stub will also include a 6-inch x 2-inch tee with a 2-inch gate valve for future connection and extension for use by the restaurant.

Sanitary Sewer:

The lease area will be provided with sanitary sewer service via the gravity system shown on the approved construction plans. Manholes SS-05 and SS-04 will be installed within the lease area and will be available to serve the lease area with sanitary sewer service. Grease interceptors will need to be sized and installed by the Lessee based on the proposed restaurant space and kitchen equipment that will be utilized. Service cleanouts for the ultimate sanitary connections will be the requirement of the Lessee.

Stormwater Drainage:

Per the approved construction plans storm inlets SD-01 and SD-02 will be installed within the lease area to provide stormwater conveyance for the lease area. The lease area stormwater will be conveyed to the Westmoreland Park drainage system where water quality treatment and attenuation will be provided. No additional stormwater pre-treatment will be required by the lease area.

Parking Infrastructure:

Lessor shall not be responsible for improving any parking spaces on the Leased Property but will grade and blacktop the area shown as "Loading" and "Trash" on the Conceptual Site Plan. Other than the two handicap parking spaces shown on the attached Exhibit C, all other parking spaces for the Leased Property shall be provided as set forth in Section 4.4 of the Lease.

Building Pad Fill:

The Port District Riverfront Restaurant Lease
(Absolute Net Non-Subordinated Lease)

The building pad area on the approved plans will be filled to a pad height elevation of 11.50 NAVD minimum. The designed finished floor elevation per the current South Florida Water Management Permit is 12.25 NAVD. The density requirements for the building pad area shall meet the approved construction plans, testing reports shall be provided upon completion. Note: A terraced slope from the building pad area to the boundary sidewalk along the western side shall be provided via the use of gravity walls as shown on the approved plans. Should an alternate method be desired by the Lessee, such request shall be submitted to the Lessor for review and approval and, if approved, said modifications can be made by the developer at no additional cost to the Lessor.

If prior to the Delivery Date any Hazardous Substances are identified as being in, on or under the Leased Property, Lessor may terminate this Lease or remove and or remediate all such Hazardous Substances in compliance with all Legal Requirements. If after the Delivery Date any Hazardous Substances are first identified as having been located in, on or under the Leased Property prior to the Delivery Date, then Lessor may terminate this Lease, if Lessee has not commenced construction of the Leasehold Improvements, or remove and or remediate all Hazardous Substances in compliance with all Legal Requirements after consultation with Lessee so as not to interfere with or delay Lessee's construction of the Leasehold Improvements.

Lessor shall enter into and grant such easements and licenses through The Port District Riverfront Park as may be required by the applicable utility companies to provide the required levels of service to the Leased Property. Lessor will cooperate with Lessee to grant easements to utility providers to service the Leased Property.

Lessee shall obtain a 365-day warranty(ies) from the Lessor's contractor(s) for the Lessor Improvements to commence from the date of the Lessee's acceptance or final payment for such work. Should Lessee identify any repairs or improvements required for the Lessor Improvements during such warranty period, Lessor and Lessee will work in good faith to have the contractor make such repairs or improvements as required under such warranty(ies).

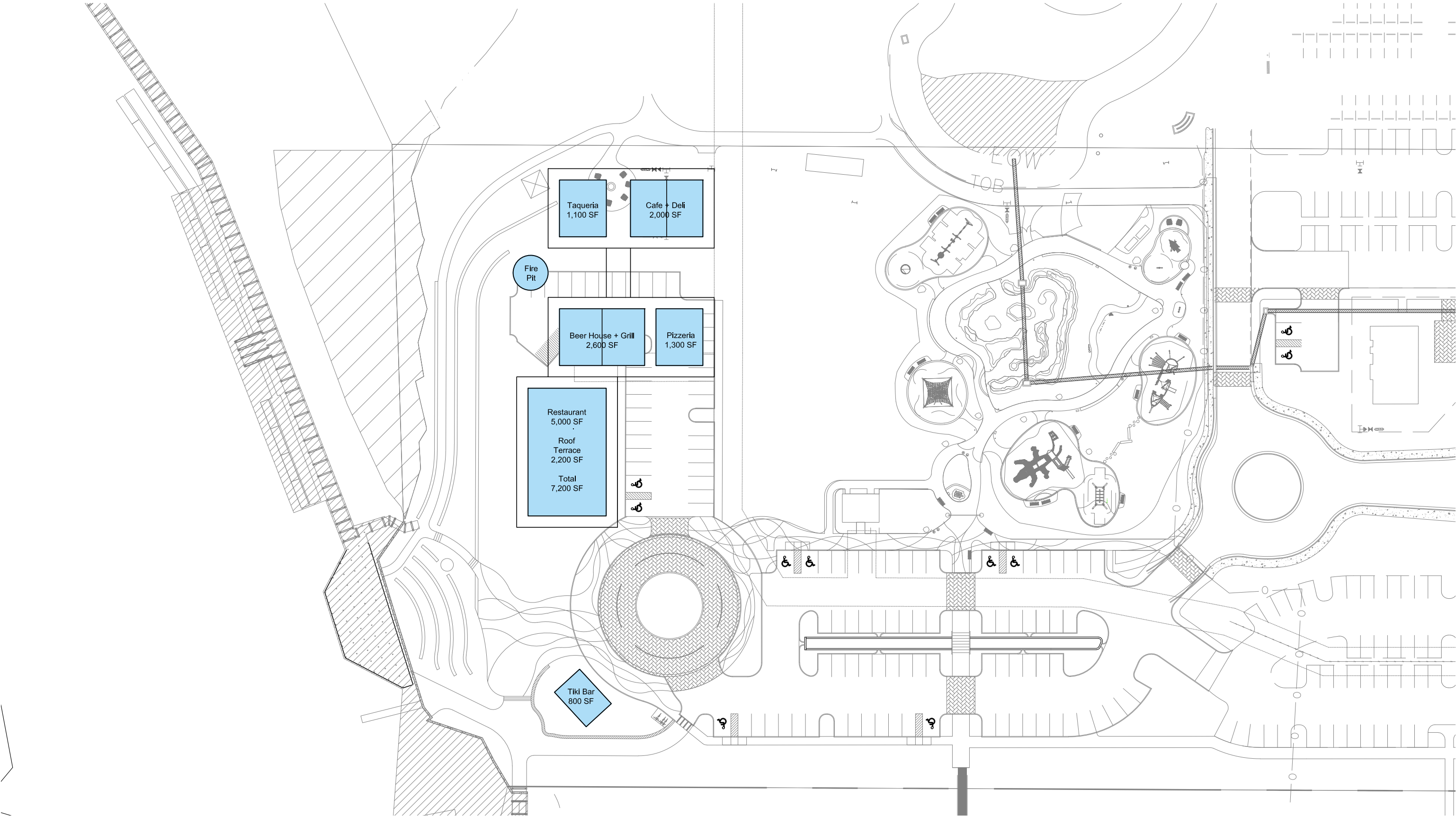
EXHIBIT C

CONCEPTUAL SITE PLAN

Note, the uses and descriptions of the various improvements identified on the Conceptual Site Plan are for example purposes only and the actual uses may change from time to time from those shown on the Conceptual Site Plan. Also, the building locations as currently shown on the attached Conceptual Site Plan may need to be shifted to avoid the recently installed site drainage, sanitary, and potable water lines and other property conditions.

The River Food Garden Conceptual Site Plan

Site Plan: Westmoreland Park



Site Plan: Program Layout



Site Plan: Program Layout (Ground Level)



EXHIBIT D

COMMENCEMENT DATE AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 202__, between **The City of Port St. Lucie, Florida** (hereinafter "Lessor") and **PIII Investments, LLC**, (hereinafter "Lessee").

WITNESSETH:

WHEREAS, Lessor and Lessee have entered into that certain Absolute Net Non-Subordinated Land Lease dated _____, 2023 ("Lease") for the Leased Property located within The Port District Riverfront Park; and

WHEREAS, Lessor and Lessee wish to set forth their agreements as to the commencement of the term of the Lease.

NOW, THEREFORE, in consideration of the Leased Property as described in the Lease and the covenants set forth therein Lessor and Lessee agree as follows:

1. The Delivery Date occurred on _____, 202__.
2. The Lease Commencement Date of the Lease occurred on _____, 202__.
3. The Initial Term of the Lease shall expire on _____, 20__.
4. To the best of Lessor's and Lessee's knowledge, there are currently no uncured defaults on the part of either party.

The Port District Riverfront Restaurant Lease
(Absolue Net Non-Subordinated Lease)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

LESSOR:
CITY OF PORT ST. LUCIE
a Florida municipal corporation

By: _____
Printed Name: _____
Title: City Manager

LESSEE:

PIII INVESTMENTS, LLC,
a Florida limited liability company

By: _____
Print Name: _____
Its: _____

EXHIBIT E

PERMITTED ENCUMBRANCES

1. Taxes and assessments for the year 2023 and subsequent years, which are not yet due and payable. (Affects the Leased Property and the area of the Easements identified in Sections 4.7 and 4.8 of the Lease)
2. Restrictive Covenants (Project Peacock Home Relocation and Preservation Grant Number SC725), dated June 9, 2019 by and between City of Port St. Lucie, Florida as owner, recorded on June 7, 2019 in Official Records Book 4280, Page 1020, of the Public Records of St. Lucie County, Florida. (Affects only the area of the Easements identified in Sections 4.7 and 4.8 of the Lease).
3. Terms and conditions of the Utility Service Agreement by and between the City of Port St. Lucie, a Florida municipal corporation and the City of Port St. Lucie Utility Systems Department dated March 15, 2019 and recorded on June 3, 2019 in Official Records Book 4277, Page 611, as amended by First Amendment to the Utility Agreement on May 12, 2022 and recorded on July 18, 2022 in Official Records Book 4859, Page 1643, as further amended by Second Amendment to the Utility Service Agreement, date October 17, 2022 and as recorded on October 21, 2022 in Official Records Book 4905, Page 1265, in all of the Public Records of St. Lucie County, Florida. (Affects the Leased Property and the area of the Easements identified in Sections 4.7 and 4.8 of the Lease).
4. Sovereignty Submerged Lands Fee Waived Lease, given by Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (TIIF), in favor of the City of Port St. Lucie, Florida, effective date January 8, 2019 and expiration date of January 8, 2024, as recorded in Official Records Book 4315, Page 1771, of the Public Records of St. Lucie County, Florida. (Affects only the area of the Easements identified in Sections 4.7 and 4.8 of the Lease).
5. All right, title and interest of City of Port St. Lucie a body corporate under the laws of the State of Florida, in an undivided three-fourths interest in all the phosphate, minerals and metals that are or may be in, on, or under the said land and an undivided one-half interest in all the petroleum that is or may be in, on, or under said land with the privilege to mine and develop the same, which interest having been reserved under Section 270.11, Florida statute, by virtue of the LEASE to be recorded. (Affects only the area of the Easements identified in Sections 4.7 and 4.8 of the Lease).

EXHIBIT F

FORM OF MEMORANDUM OF LEASE

EXHIBIT F
FORM MEMORANDUM OF LEASE

**Recording Requested By And When
Recorded Mail To:**

SPACE ABOVE FOR RECORDER'S USE ONLY

MEMORANDUM OF LEASE

This Memorandum of Lease (“**Memorandum**”) is made and entered into by and between The City of Port St. Lucie, Florida, a Florida municipal corporation (“**Lessor**”), and PIII Investments, LLC, a Florida limited liability company (“**Lessee**”).

1. Lease Agreement. Lessor and Lessee are parties to an agreement titled “Absolute Net Non-Subordinated Land Lease” dated on or about the date hereof (the “**Lease**”), pursuant to which Lessor leased to Lessee certain space located in The Port District Riverfront Park as legally described on Exhibit A attached hereto and as generally depicted on the sketch attached hereto as Exhibit A-1 (the “**Leased Property**”), together with all easements, rights and privileges appurtenant thereto. The area of The Port District Riverfront Park is legally described on **Exhibit "A-2"**.
2. Primary Lease Term. The primary term of the Lease is 30 Lease Years, beginning on the Lease Commencement Date (as defined in the Lease).
3. Options Terms. The Lease provides Lessee the option to extend the term of the Lease for four (4) additional successive option periods of 5 Lease Years each.
4. Access to the Project. Section 4.6 of the Lease provides: During the Lease Term, including any exercised Renewal Terms, Lessor shall maintain open paved access for Lessee's employees, customers and invitees from adjacent public rights of way to the Leased Property. Such access shall remain open during all hours of Lessee's operation of the Leased Property. All such access shall meet all Legal Requirements and City Codes. The access rights provided for in this Section shall be included in the memorandum of lease to be recorded pursuant to Section 13.11 hereof.

5. Access and Parking Easement. Section 4.7 of the Lease provides: Lessor hereby grants Lessee and Lessee's Tenants, subtenants, licensees, invitees, agents, contractors, employees, successors and assigns (the "Benefitted Parties") during the Lease Term, including any exercised Renewal Term, (i) a non-exclusive easement over and through The Port District Riverfront Park for vehicular and pedestrian ingress and egress over and upon the existing and any future driveways, access ways, sidewalks, paths, parking areas and other portions of The Port District Riverfront Park as are necessary to access any portions of the Leased Property and as reasonably designated by Lessor from time to time, and (ii) a non-exclusive right and license to use, benefit from and enjoy the parking areas located within The Port District Riverfront Park for their intended purpose, all in such manner as may be reasonably regulated from time to time by Lessor.

6. Temporary Construction Easement. Section 4.8 of the Lease provides: Lessor hereby grants Lessee and Lessee's Tenants, subtenants, licensees, invitees, agents, contractors, employees, successors and assigns (the "Benefitted Parties") a temporary non-exclusive easement over and upon the existing and any future driveways, access ways, sidewalks, and other portions of The Port District Riverfront Park, as reasonably necessary for vehicular and pedestrian ingress and egress for sole purpose of Lessee's and the Benefitted Parties' construction of the Leasehold Improvements on the Leased Property (collectively, the "Temporary Construction Easement"). The Temporary Construction Easement shall terminate thirty (30) days after the issuance of a final Certificate of Occupancy for all of the Leasehold Improvements. The easement provided for in this Section, along with the Exhibits, shall be included in the memorandum of lease to be recorded pursuant to Section 13.11 hereof. The Lessor's City Manager or their designee shall be permitted to grant short term extensions of the Temporary Construction Easement and allow for the temporary use of space outside of the Leased Property for staging of construction materials and equipment if needed by Lessee or the Benefitted Parties.

7. Exclusive Use and Right of First Refusal. Section 4.14 of the Lease provides: Lessor hereby agrees that, except as specifically provided below in this Section 4.14, during the Lease Term, including any exercised Renewal Terms, the Leasehold Improvements constructed in the Leased Property shall be the only improvements in The Port District Riverfront Park that operate as a restaurant, bar, or for the sale of food and or beverages, including any permanent or temporary kiosks, food trucks or similar facilities that sell food or beverages ("Protected Use"). Notwithstanding the above, Lessor shall be permitted to enter into short term leases or licenses to Competing Businesses (as defined below) for the sale of food and or beverages within The Port District Riverfront Park during special events held by the Lessor provided that: (i) each such lease or license does not exceed the duration of the special event hosted by Lessor, but in no event to exceed three (3) consecutive days and no more often than one time per calendar month; (ii) such Competing Business cannot be located within a permanent structure currently existing or constructed / installed in the future within The Port District Riverfront Park, (iii) such Competing Business cannot be located within the Leased Property and (iv) that before the Lessor leases or licenses any portion of The Port District Riverfront Park to a Competing Business, Lessor shall first offer such lease or license to Lessee on the same terms and conditions as are offered to a Competing Business. Lessee shall have ten (10) days during which to accept said offer, in writing. If Lessee does not accept said offer within the ten (10) day period, Lessor shall be free to accept the Competing Business's offer. Notwithstanding anything contained herein to the contrary, Lessee acknowledges that in no event shall Lessee's Protected Use

prevent Lessor from permitting catered events in the Botanical Gardens or prevent Lessor from maintaining vending machines for food and beverages inside of the improvements located in the Botanical Gardens. "Competing Business" shall mean a business not affiliated with Lessee that uses any portion of The Port District Riverfront Park for the Protected Use. If Lessor violates this Section 4.14, Lessor shall pay Lessee or Lessee may deduct from Base Rent and or Percentage Rent becoming due hereunder (at Lessee's election) the greater of One Thousand Dollars (\$1,000.00) per event or four percent (4%) of the Gross Sales made by such Competing Business during the period of such violation. This section 4.14 shall not apply to any events that are held or sponsored in The Port District Riverfront Park by any party other than the City (a "Non-City Sponsored Event"), provided that Non-City Sponsored Events occur no more often than one (1) time in any ninety (90) day period and last for no more than two (2) consecutive days in total.

8. Additional Amenities and Concessions. Section 4.15 of the Lease provides: If Lessor determines that any additional revenue producing amenities or concessions will be granted in The Port District Riverfront Park for public use or entertainment, prior to offering such amenities or concessions to any third parties (excluding however any short term fairs, concerts and similar special events hosted by Lessor), Lessor shall first offer them to Lessee and provide Lessee sufficient time to review and negotiate such amenities or concessions with Lessor prior to offering them to third parties. Notwithstanding the above, this Section shall not apply to any concessions awarded by the City of Port Saint Lucie prior to the Effective Date of this Lease that are applicable to The Port District Riverfront Park and/or the Botanical Gardens. This section 4.15 shall not apply to any Non-City Sponsored Events, provided that Non-City Sponsored Events occur no more often than one (1) time in any ninety (90) day period and last for no more than two (2) consecutive days in total.

9. Mechanics Lien. Section 13.6 of the Lease provides: Lessee has no authority, expressed or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon or in any manner bind the interest of the Lessor, unless expressly provided for in this Lease. Lessee covenant and agrees that should any lien be filed, Lessee shall discharge the same within thirty (30) days thereafter by paying the same or by filing a bond, or otherwise, as permitted by law. Lessee agrees that it will save, defend and hold Lessor harmless for any and all loss, costs or expense based on or arising out of any asserted claims or liens against the Leasehold Interest or against the right, title or interest of the Lessor in the Leased Property or under the terms of this Lease. Lessee agrees to give Lessor prompt written notice of Lessee's awareness of the placing of any lien or encumbrance against the Leased Property and Lessor agrees to do the same.

10. Termination, Release, and Conflicts. This Memorandum shall automatically terminate without any further action upon the expiration or earlier termination of the Lease. Lessee acknowledges that Lessor shall have the right and authority to execute and record a release of this Memorandum upon the expiration or termination of the Lease. In the event of any conflict between the terms and conditions of this Memorandum and the terms and conditions of the Lease, the terms and conditions of the Lease shall supersede and control.

[The remainder of this page is intentionally blank.]

The Port District Riverfront Restaurant Lease
(Absolue Net Non-Subordinated Lease)

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Agreement to be duly executed as of the day and year first above written.

LESSOR:

The City of Port St. Lucie, Florida,
a Florida municipal corporation

By: _____
Printed Name: Shannon M. Martin
Title: Mayor
Date Signed: _____

STATE OF FLORIDA)
)
COUNTY OF ST. LUCIE)

**LESSOR
ACKNOWLEDGMENT**

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____ 2023, by Shannon M. Martin as Mayor of the City of Port St. Lucie, and on behalf of the City of Port St. Lucie, who is [X] personally known to me, or who has [] produced the following identification _____.

Notary Public for _____

My Commission expires: _____

The Port District Riverfront Restaurant Lease
(Absolue Net Non-Subordinated Lease)

LESSEE:

PIII INVESTMENTS, LLC,
a Florida limited liability company

By: _____
Printed Name: _____
Title: _____
Date Signed: _____, 2023

| | | |
|------------------|---|-----------------------|
| STATE OF FLORIDA |) | LESSEE |
| |) | ACKNOWLEDGMENT |
| COUNTY OF _____ |) | |

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____ 2023, by _____ as _____ of PIII INVESTMENTS, LLC, a Florida limited liability company, and on behalf of PIII INVESTMENTS, LLC, a Florida limited liability company, who is [] personally known to me, or who has [] produced the following identification _____.

Notary Public for _____

My Commission expires: _____

[Insert Exhibits A, A-1 and A-2]