

Filing # 65430449 E-Filed 12/14/2017 05:33:48 PM

**IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN AND
FOR DUVAL COUNTY, FLORIDA**

**CASE NO.:
DIVISION:**

**JACKSONVILLE LANDING INVESTMENTS,
LLC, a Florida limited liability company,**

Plaintiff,

vs.

**MAVERICKS AT THE LANDING, LLC,
a Florida limited liability company,**

Defendant.

_____ /

COMPLAINT

Plaintiff, **JACKSONVILLE LANDING INVESTMENTS, LLC**, a Florida limited liability company, files this its Complaint against Defendant, **MAVERICKS AT THE LANDING, LLC**, a Florida limited liability company, and in support thereof would state as follows:

GENERAL ALLEGATIONS, PARTIES AND JURISDICTION

1. This is an action for Eviction and Damages in excess of \$15,000.00, exclusive of attorney's fees, costs and interest, and is therefore within the jurisdiction of this Court.

2. At all times material hereto, Plaintiff, **JACKSONVILLE LANDING INVESTMENTS, LLC** ("JLI") was a Florida limited liability company organized under the laws of the State of Florida, with its principal place of business in Duval County, Florida.

3. At all times material hereto, Defendant, **MAVERICKS AT THE LANDING, LLC** ("MAVERICKS") was a Florida limited liability company organized under the laws of the State of Florida, with its principal place of business in Duval County, Florida.

4. At all times material hereto, Defendant leased real property from Plaintiff to operate a commercial business upon Plaintiff's property pursuant to a Commercial Lease Agreement between the parties, which is attached hereto and incorporated herein as Plaintiff's Exhibit "A."

5. Defendant's commercial lease expired on or about December 31st, 2014 and same was not renewed or extended, thereby converting the lease term into a "month-to-month" tenancy.

6. Plaintiff served a Notice of Termination of Month-to-Month Tenancy upon Defendant on or about November 2nd, 2017, effective November 30th, 2017 (*See* Exhibit "B").

7. Plaintiff has performed all duties and conditions required of it under the terms of the Lease Agreement, and all conditions precedent to the bringing of this Action.

8. All actions complained of in this Complaint occurred in Duval County, Florida.

COUNT I - ACTION FOR POSSESSION
(Expired Lease)

9. Plaintiff readopts and realleges paragraphs one (1) through eight (8) above as if fully set forth herein.

10. This is an Action to Evict Defendant as a commercial tenant from real property located in Duval County, Florida.

11. Plaintiff owns the following described real property in Duval County:

**2 Independent Drive, Suite 208
Jacksonville, Florida 32202**

12. Defendant has possession of the property under an expired written Commercial Lease Agreement to pay rent on or about the first day of each month and payable in U. S. funds. (*See* Exhibit "A").

13. The Lease further provides a security deposit was to be paid to Plaintiff upon execution of the Lease.

14. Florida Statutes §83.01 *et al.* provides a month-to-month tenancy may be terminated by either party by giving not less than fifteen (15) days' notice prior to the end of any monthly period.

15. On or about November 2nd, 2017, Plaintiff notified Defendant that it had elected to terminate the month-to-month tenancy effective ending on November 30th, 2017 (Exhibit "B").

16. Finally, the expired Lease Agreement provides Defendant will pay all Plaintiff's costs and reasonable attorney's fees for the bringing of this Action.

WHEREFORE, Plaintiff, **JACKSONVILLE LANDING INVESTMENTS, LLC**, a Florida limited liability company, demands Judgment for Possession against Defendant, **MAVERICKS AT THE LANDING, LLC**, a Florida limited liability company, or others in possession, and also for the costs of this action, attorney's fees and for such other relief as this Court deems necessary and proper.

COUNT II - DAMAGES

17. Plaintiff readopts and realleges paragraphs one (1) through eight (8) above as if fully set forth herein.

18. Defendant entered into a Commercial Lease Agreement (Exhibit "A") with Plaintiff, which is attached hereto and incorporated herein, and pursuant to said Agreement Plaintiff leased to Defendant the premises located at 2 Independent Drive, Suite 208, Jacksonville, Florida 32202.

19. The above Lease Agreement has expired and Plaintiff served a demand for Double Rent pursuant to Chapter 83, Florida Statutes, because Defendant refused to vacate the property.

20. Further, Defendant has failed to pay numerous charges, including base and percentage rent despite Plaintiff's demand for same.

21. The exact amount of unpaid rent is currently undetermined such that an accounting is necessary. However, the past-due unpaid rent is believed to be far in excess of \$40,000.00.

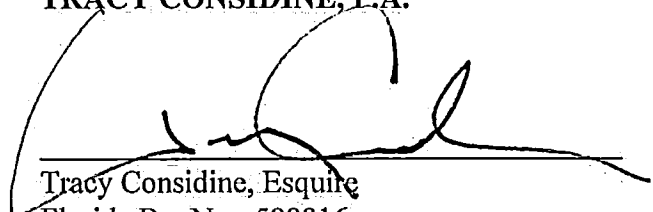
22. Despite having direct knowledge of past-due arrearages and actual amounts of percentage rent owed, upon information and belief Defendant, by and through its management, fraudulently transferred funds or assets to its members or third-parties with actual intent to hinder, delay or defraud Plaintiff.

23. The expired Lease Agreement further provides Defendant will pay Plaintiff's costs and attorney's fees for the bringing of this Action.

WHEREFORE, Plaintiff, **JACKSONVILLE LANDING INVESTMENTS, LLC**, a Florida limited liability company, demands a full accounting be undertaken and a Judgment against Defendant, **MAVERICKS AT THE LANDING, LLC**, a Florida limited liability company, for Damages, costs, interest, attorney's fees and for such other relief this Court deems necessary and proper, including proceedings supplementary against members or third-parties who received fraudulent transfers.

Respectfully submitted,

TRACY CONSIDINE, P.A.



Tracy Considine, Esquire
Florida Bar No.: 599816
1 Sleiman Parkway, Suite 210
Jacksonville, Florida 32216
(904) 636-9777 Telephone
(904) 636-5665 Facsimile
tconsidine@tcjaxlaw.com
jcolucci@tcjaxlaw.com
Attorney for Plaintiff

First Amendment of Lease

THIS FIRST AMENDMENT OF LEASE (this "Amendment") is made by the parties hereto as of the 4th day of April, 2014 (the "Effective Date"), in consideration of Ten Dollars (\$10.00), the premises, promises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

WITNESSETH:

I. Definitions. The following terms shall have the meaning set forth below. Any capitalized terms not defined herein shall have the meaning ascribed to them in the "Lease".

- A. "Landlord" shall mean Jacksonville Landing Investments, LLC, a Florida limited liability company.
- B. "Tenant" shall mean Mavericks at the Landing, LLC, a Florida limited liability company.
- C. "Lease" shall mean that Lease dated October 18, 2007, by and between Landlord and Tenant for the Premises.
- F. "Premises" shall mean those certain premises containing approximately 21,000 square feet located at 2 Independent Drive, Unit # 208, Jacksonville, Florida, in The Jacksonville Landing ("Shopping Center").

II. Amendment.

1. TERM. The parties agree that the term of the Lease which expired on January 31, 2013 is hereby extended for an additional period of twelve (12) months, commencing on January 1, 2014 and expiring on December 31, 2014 (the "Extension Term"). Tenant has no further right or option to extend the term of the Lease following the expiration of the Extension Term. Notwithstanding the foregoing, upon expiration of the Extension Term, Tenant shall be allowed to remain in possession of the Premises upon the same terms and conditions as stated herein, and either party may terminate this Lease upon thirty (30) days written notice to the other.
2. As of the Effective Date, Paragraph 1(e) and Paragraph 6 of the Lease are deleted in their entirety and replaced with the following:

PERCENTAGE RENT. (a) Tenant shall pay to Landlord, as "Percentage Rent" during the Extension Term, an amount equal to: ten percent (10%) of the amount by which Tenant's monthly Gross Sales (as hereinafter defined) exceeds One Hundred Thousand and no/100 Dollars (\$100,000.00) for each calendar month or partial calendar month; provided, however, in the event Tenant's monthly Gross Sales for any calendar month or partial calendar month equal or exceed One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00), then Tenant shall pay to Landlord an amount equal to twelve and one-half percent (12.5%) of the amount by which Tenant's monthly Gross Sales equals or exceeds One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00). Percentage Rent is due and payable in advance by the seventh (7th) day of each & every calendar month of the Term.

(b) Gross Sales. The term "Gross Sales" for the purposes of this Lease shall mean the sum of the sales price of all goods, wares, and merchandise sold and the charges for all services performed by Tenant, its subtenants, assigns, concessionaires, or otherwise, from all business conducted on, in, at, or from the Premises, whether made for cash, check, on credit, or otherwise; provided, however, that Gross Sales shall not include (i) cash or credit refunds made upon transactions included within Gross Sales not exceeding the selling price of merchandise returned by the purchaser and accepted by Tenant, or (ii) the amount of any city, county, state, or federal sales, luxury, or excise tax on such sales, which is either added to the selling price or absorbed therein, and is paid to the taxing authority by Tenant.

(c) Report; Payment. Tenant shall submit to Landlord on or before the fifth (5th) day of each and every month a written statement, signed by Tenant and certified by it to be true and correct, of the amount of Gross Sales derived from the Premises during Tenant's immediately preceding month (the "Report"). This Report shall be in such form and contain such details as Landlord may reasonably require. The acceptance by Landlord of payments of Percentage Rent or reports thereof shall be without prejudice and shall in no case constitute a waiver of Landlord's right to the examination of Tenant's books as described below. Any monthly report not received as required shall be estimated as being one hundred fifty percent (150%) of the amount of Gross Sales for the previous month.

(d) Records, etc. Tenant shall retain, for a period of twelve (12) months following the end of each calendar year, such records as would normally be examined by an independent accountant pursuant to accepted auditing standards in performing an audit of Tenant's Gross Sales reports. Landlord shall have the right to cause, upon ten (10) days' notice to Tenant, a complete audit to be made of the sales records of Tenant described above. Tenant shall pay any deficiency in Percentage Rent discovered and, if the results of such audit show that Tenant's report of Gross

Sales for that year has been understated by five percent (5%) or more, then Tenant also shall pay Landlord the cost of such audit.

Landlord shall not become or be deemed a partner or a joint venture with Tenant by reason of the provisions of this Paragraph 2.

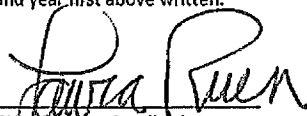
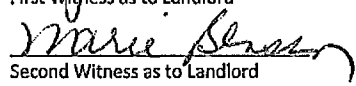
3. BASE RENT. Effective retroactively to January 1, 2014, the monthly installments of Base Rent due for the Extension Term shall be Ten Thousand and no/100 Dollars (\$10,000.00,) per month, plus all applicable sales, rent, use and/or other taxes thereon, payable in advance by the first day of each and every calendar month of the Term.
4. INITIAL PAYMENT/REPORTS. Upon Tenant's execution of this Amendment, Tenant shall pay to Landlord the sum of Thirty Five Thousand Two Hundred Forty-Four and 67/100 Dollars (\$35,244.67), which is past due rent that is owed for (i) sales tax on Base Rent for January 2014; (ii) Base Rent, Percentage Rent and sales tax for February 2014, (iii) Base Rent and sales tax for March 2014; and (iv) Base Rent and sales tax for April 2014. Percentage Rent (and any sales tax thereon) for March 2014 is due by April 7, 2014.
5. CONSTRUCTION OBLIGATIONS. Tenant shall refresh the interior of the Premises and renovate the main stage (collectively, "Tenant's Construction Obligations"). Tenant shall comply with all obligations under the Lease with regard to Tenant's Construction Obligations and any other improvements it desires to make to the Premises, including, but not limited to Paragraph 9 and Exhibit D. Furthermore, any removal of steel from the Premises will remain the property of Landlord and Tenant shall coordinate the removal with Landlord.
6. DELINQUENT RENT. As of the Effective Date, the sum of Sixty Three Thousand, Five Hundred Ninety One and 60/100 Dollars (\$63,591.60) remains unpaid by Tenant and is due to Landlord (the "Past Due Rent"). The Past Due Rent represents percentage rent due for August, 2013; September, 2013; October, 2013; November, 2013; and December, 2013. Landlord will waive the Past Due Rent (as defined above in this Paragraph 6) owed by Tenant upon Tenant's completion of Tenant's Construction Obligations stated herein. Should Tenant fail to perform Tenant's Construction Obligations to the Premises within ninety (90) days after the Effective Date, the Past Due Rent will remain owed to Landlord and shall become immediately due and payable and Tenant shall pay same to Landlord upon demand.
7. RECAPTURE. Should Tenant fail to pay Base Rent or Percentage Rent when due, Landlord may immediately recapture the space upon written notice to Tenant. Upon termination, Tenant agrees to surrender the Premises in the manner required by the Lease.
8. PREMISES ACCEPTED BY TENANT "AS IS", ETC. Tenant acknowledges and agrees: (a) that Tenant has been in occupancy of the Premises for an extended period of time; (b) that Tenant is fully familiar with the Premises and the Shopping Center and accepts the same now, and at the commencement of the Extension Term, in their "AS IS" condition, with all faults; (c) that Landlord has not made and does not make any representations or warranties (express or implied) regarding the condition of the Premises or the Shopping Center (including, but not limited to any express or implied warranties of MERCHANTABILITY, HABITABILITY, SUITABILITY, FITNESS FOR ANY PURPOSE OR ANY OTHER WARRANTY IN RESPECT OF THE PREMISES OR THE SHOPPING CENTER – each and all of which are hereby explicitly disclaimed by the Landlord); (d) that Landlord has no responsibility or liability for making any renovations, alterations or improvements in or to the Premises; (e) that all further renovations, alterations or improvements in or to the Premises are the sole responsibility of Tenant and shall be undertaken and completed at Tenant's expense and strictly in accordance with the provisions of the Lease; and (f) that any rent free periods, rental concessions, inducements, allowances and other similar items applicable prior to the commencement of the Extension Term will not apply during the Extension Term.
9. CONFIDENTIALITY. Tenant agrees not to disclose any of the terms or provisions of this Amendment to other present or future tenants, prospective tenants, occupants, visitors, invitees, customers, agents, or other parties, excepting professionals (i.e., Tenant's officers, directors, employees, attorneys, accountants, banks or other financial institutions) who require knowledge thereof in furtherance of Tenant's bona fide interests. Because of the difficulty or impossibility of determining Landlord's damages resulting from Tenant's breach of confidentiality, Landlord shall have, in addition to all other remedies available to Landlord, the right to charge Tenant liquidated damages in the amount of \$10,000.00. Said liquidated damages shall not prevent Landlord from also treating such breach of confidentiality by Tenant as a default under this Lease.

III. Effect.

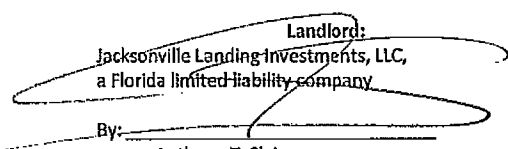
1. Except as expressly modified in this Amendment, the Lease shall remain in full force and effect as originally executed. The terms of this Amendment shall bind and inure to the benefit of the parties hereto, their respective successors and assigns.

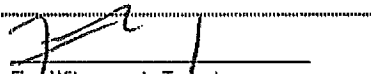
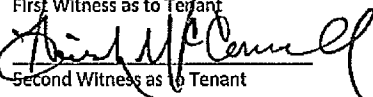
Remainder of page intentionally left blank; signature page follows.

IN WITNESS WHEREOF, the parties have executed and delivered this First Amendment of Lease as of the day and year first above written.

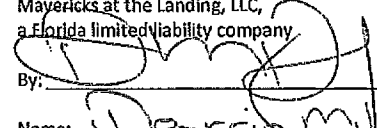

First Witness as to Landlord

Second Witness as to Landlord

Landlord:
Jacksonville Landing Investments, LLC,
a Florida limited liability company

By: 
Anthony T. Snelman
Managing Member


First Witness as to Tenant

Second Witness as to Tenant

Tenant:
Mayericks at the Landing, LLC,
a Florida limited liability company

By: 
Name: Darrin M. Kurtz
Title: Managing Member

ORIGINAL

Shopping Center: The Jacksonville Landing
Two Independent Drive, Suite No. 208, Jacksonville, Florida 32202

Lease Date 02-06-182007

LEASE

THIS LEASE is made as of the date set forth above (the "Effective Date"), between:

JACKSONVILLE LANDING INVESTMENTS, LLC,
a Florida limited liability company
1 Sielman Parkway, Suite 220
Jacksonville, Florida 32216
Telephone (904) 731-8806, Fax (904) 731-1252
("Landlord"), and

Mavericks at the Landing, LLC, a Florida limited liability company
Attn: Mr. Darrin Kurtz
1440 Kipling Lane
St. Augustine, Florida 32095
Telephone: 904-827-9976; fax number: 305-675-2880
Taxpayer I.D. No. 26-0830667
("Tenant")

IN CONSIDERATION of the rents, covenants and agreements hereinafter reserved and contained, Landlord demises and leases to Tenant, and Tenant rents from Landlord, those certain Premises identified below.

1. **Components of Lease; Definitions.** The "Lease" shall consist of this instrument and its attached exhibits and addenda (if any) identified in the Attachment Schedule at the end hereof, together with any applicable rules and regulations as described herein, all of which must be construed together. As used in this Lease, the following terms shall have the meanings indicated:

(a) "Premises" means that certain store space hereafter to be erected as part of the Landing (as defined below), which Premises shall be located and configured substantially as shown on the demising plan at Exhibit A, and shall contain approximately 21,000 square feet of interior floor area, measured to the outside finished surface of all exterior walls and to the centerline of all interior demising walls.

(b) "Projected Delivery Date" means September 12, 2007, "Actual Delivery Date" means September 12, 2007, the date Landlord substantially completes "Landlord's Work" as described in this Lease and tenders possession of the Premises to Tenant, although some non-critical parts of Landlord's Work which do not prevent Tenant's Work from proceeding may still remain to be completed.

(c) The "Term" of this Lease consists of the following "Primary Term" and each "Extension Period," if any, which is properly exercised in accordance with this Lease:

(1) "Primary Term" means five (5) Lease Years and four months (plus the partial calendar month at the end of that term, if applicable), beginning September 12, 2007 (the "Commencement Date") and expiring on January 31, 2013; however, the terms and conditions of this Lease shall become effective on the Effective Date noted above.

(2) "Extension Period" means two (2) successive option(s) to extend the Term of this Lease for a period of five (5) Lease Years each, if exercised as described below.

(d) "Base Rent". Tenant's annual Base Rent at the beginning of the Primary Term shall be Three Hundred Fifty-Seven Thousand Dollars (\$357,000), payable in monthly installments of Twenty-Nine Thousand Seven Hundred Fifty Dollars (\$29,750.00) and shall increase as set forth in the Addendum.

(e) "Percentage Rent" means an amount calculated as described below, using a "Percentage Rent Factor" of seven percent (7%) of Tenant's gross sales and a "Breakpoint" of Three Million Nine Hundred Sixty-Six Thousand Dollars (\$3,966,000.00).

(f) "Permitted Use" means Tenant's use of the Premises for an upscale night club with live and recorded entertainment and the sale and serving of alcoholic beverages, and for no other purpose. "Permitted Name" means the trade name or the "doing business as" (d/b/a) name "Mavericks" or "Mavericks Rock N' Honky Tonk and Miss Ellie's Bar & Parlor" used by Tenant in its operation of the Premises.

(g) "Prepays" mean the installments to be paid monthly to Landlord by Tenant, along with each payment of Base Rent, to be held by Landlord without interest, commingled with Landlord's other funds, and applied to Tenant's share of Common Operating Costs, Taxes and Insurance as explained below; "First Year Prepays" mean the following annualized amounts per square foot of the Premises, on which the initial Prepays shall be based:

(1) Common Operating Costs:	<u>\$ 5.00</u>
(2) Taxes:	<u>\$ 2.00</u>
(3) Insurance:	<u>\$1.00</u>

(h) "Security Deposit" means the sum of See Addendum Dollars (\$See Addendum), to be paid by Tenant to Landlord upon the execution of this Lease, and to be held by Landlord without interest, commingled with other funds of Landlord throughout the Term, and applied at Landlord's discretion to the satisfaction of any delinquent obligations of Tenant

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hereunder, with the remainder of the Deposit, if any, to be returned to Tenant once the Term has ended and all of Tenant's obligations hereunder have been satisfied.

(i) "Landing" means the Premises and all of the remaining land and buildings owned, leased or otherwise controlled by Landlord and operated as an integral part of the project known as The Jacksonville Landing, which is a combination of a leasehold estate in certain land and a fee simple estate in the improvements located thereon in Jacksonville, Duval County, Florida as more particularly described in the Assignment and Assumption of City Lease dated August 29, 2003 recorded in Official Records Book 11326, page 2118, and that Special Warranty Deed to Improvements dated August 28, 2003 which is recorded in Official Records Book 11326, page 2139, both of the public records of Duval County, Florida, including all improvements now or hereafter constructed thereon. Landlord may from time to time convey portions of the Landing to third parties and retain the balance of the Landing in Landlord's own name. In addition, Landlord may from time to time, by written notice to Tenant, add other contiguous or neighboring land, submerged land, buildings and other improvements to the Landing, whether such additions are to be owned by Landlord or by others. The demising plan at Exhibit A is conceptual only, and may be changed by Landlord at any time to reflect changes in the land, buildings, parking lots, parking garages, and other common areas and facilities of the Landing.

(j) "Lease Year" means a period of twelve (12) months beginning on the first day of the first full calendar month that occurs during the Term of this Lease, or on an anniversary thereof; provided, however, that the partial calendar month, if any, that occurs at the beginning of the Primary Term shall be added to the first Lease Year for the calculation of rent and other charges due hereunder

(k) "Landlord's Work" means that work described in Exhibit B; "Tenant's Work" means everything else that must be done to open the Premises to the public for the Permitted Use, other than the Landlord's Work.

2. Delivery of Premises. Tenant acknowledges it has fully inspected and accepts the Premises in its present "as is" condition or, in the event Landlord is to construct the Premises or add further improvements thereto, Tenant has reviewed and approved the attached Exhibit B, and all of the provisions set forth therein. Landlord shall use all reasonable efforts to deliver the Premises to Tenant ready for Tenant's Work not later than the Projected Delivery Date. Once the Actual Delivery Date has occurred, Tenant shall (i) take possession of the Premises and assume responsibility for all utilities service thereafter furnished to the Premises, (ii) diligently perform Tenant's Work, (iii) open the Premises to the public as soon as practicable, and (iv) thereafter continuously use and operate the Premises in full compliance with the terms and conditions of this Lease for the Permitted Use throughout the Term of this Lease, under the Permitted Name.

3. Length of Term.

(a) Length. The Term of this Lease shall begin on the Rent Commencement Date and shall end at midnight on the last day of the calendar month in which the Primary Term expires, unless this Lease is sooner terminated or properly extended (if applicable) as hereinafter provided.

(b) Recapture. If Tenant fails to open for business, fully fixtured, stocked and staffed within thirty (30) days following the Rent Commencement Date or at any time after the Rent Commencement Date Tenant ceases its operation of the Permitted Use within the Premises for a period of thirty (30) consecutive days, Landlord may at any time thereafter, but prior to Tenant recommencing its operation of the Permitted Use within the Premises, terminate this Lease at Landlord's option by notice thereof to Tenant, in which event Tenant and Landlord shall, unless otherwise expressly provided herein and excepting Tenant's obligations that have accrued prior to such date, have no further rights or obligations hereunder. The cessation of Tenant's operation of the Permitted Use shall in no event release Tenant from any of Tenant's obligations or liabilities hereunder, including but not limited to the obligation to pay all rent and other charges due under this Lease, unless Landlord terminates this Lease as described in the preceding sentence.

(c) Option to Extend. So long as Tenant is not then in default of its obligations under this Lease, Tenant shall have the option to extend the Term of this Lease for the Extension Period(s), if any, upon the same covenants and conditions as provided herein, subject to the adjustments of the Base Rent described above. Tenant shall give Landlord written notice of its election whether to extend the Term at least ninety (90) days prior to the end of the Primary Term or then current Extension Period. If Tenant fails to give Landlord written notice of its election by that deadline, the Term shall automatically be terminated at the end of the Primary Term or then current Extension Period.

4. Use of Premises and the Landing. Tenant (which for the purposes of this Section shall include Tenant's employees, agents, invitees and contractors) shall use the Premises only for the Permitted Use, under the Permitted Name, and for no other purpose without Landlord's prior written consent.

(a) Compliance with Law. Tenant agrees to use the Premises and the Landing strictly in accordance with the law (which term shall include all statutes, ordinances, public or quasi-public rules, private land use restrictions, court rulings and the like), including but not limited to all present and future environmental and accessibility laws.

(b) Costs; Indemnity. Tenant shall be responsible for all costs of such compliance, including but not limited to any cleanup or remediation of environmental contamination and any accommodations for public or employee accessibility that may be required as a result of Tenant's use or occupancy of the Premises or the Landing. Tenant hereby indemnifies Landlord and Landlord's shareholders, partners, lenders, officers, directors, agents and employees against any liability or expense that may result from Tenant's use or occupancy of the Premises or the Landing, including that which may result from Tenant's violation of any such environmental or accessibility laws.

(c) Waste. Tenant agrees not to permit or commit any waste or nuisance within the Premises or the Landing. Without limiting the generality of the foregoing statement, Tenant agrees (i) not to allow any offensive noises, odors, vibrations or lights to emanate from the Premises, (ii) to maintain a regular, professional program of pest control within the Premises (including without limitation termite prevention for any applicable portion of the Premises or Tenant's personality, furniture, fixtures or equipment), and (iii) to keep the area immediately in front of the Premises relatively free of litter.

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(i) Tenant acknowledges and agrees that the nature of Tenant's Permitted Use could pose particular potential danger to the environment, the sewage disposal and drainage system serving the Landing, and the surrounding community, the Landing itself, the health and safety of patrons, shoppers, other tenants and other persons using the Landing. Tenant further acknowledges that the Permitted Use creates special needs for garbage and refuse removal. As a material inducement for Landlord to enter into this Lease, Tenant agrees that the elimination of all of these dangers shall be solely Tenant's responsibility.

(ii) If the existing soil pipe is overloaded by Tenant's discharge, then Tenant shall be required to immediately commence and diligently proceed to install another drain line at Landlord's request. Said drain line shall be installed at Tenant's sole cost and expense (including the cost to tie in to the sewer line by Landlord's plumber), and in conformity with plans and specifications, approved in writing in advance by Landlord.

(iii) Without limiting any other provision contained in this Lease, Tenant shall also, at its sole cost and expense, employ such other devices and installations (including without limitation grease traps, ventilation systems and proper fire extinguishing equipment including the installation of an Ansul system or approved comparable system) which, in Landlord's sole judgment, are necessary to (i) protect the Landing, its occupants and customers and its systems; and, (ii) comply with the requirements of all governing bodies and agencies having jurisdiction (including the local health and fire departments) and Landlord's Insurance companies.

(iv) If Tenant installs a grease trap or traps (or ties into existing grease trap or traps, whether in-ground or above) or any "through-the-roof" ventilating equipment, and does not conscientiously clean same using Landlord's designated contractor, so that (i) grease accumulates, causing a potential health or fire hazard, or (ii) is discharged into the sanitary drains, the roof or the air, Landlord after notice may contract with an outside service to clean the grease trap and the cost of said outside service shall be additional rent under this Lease.

Any breach of the foregoing by Tenant shall be a material default hereunder, in respect of which Landlord may exercise any or all rights and remedies provided in this Lease including, without limitation, the right to terminate this Lease.

(d) Common Areas. Tenant, its employees, invitees, and the general public shall have the nonexclusive right to use the parking lots and/or garages (on a first come, first served basis, subject to all applicable parking charges and regulations) and the other common areas of the Landing, as constituted from time to time, for their intended purposes throughout the Term of this Lease. Tenant and its employees shall park their cars only in those portions of the parking area designated for that purpose by Landlord. Upon request, Tenant shall provide Landlord with the license tag numbers of Tenant's cars and the cars of its employees, and shall thereafter promptly notify Landlord of any change in those tag numbers. In the event Tenant or its employees park their cars in areas other than the designated parking areas, Landlord (after giving notice to Tenant of such violation) shall have the right to charge Tenant \$125.00 per day per car parked in any areas other than those designated.

(e) Access. Landlord shall have the right to enter the Premises at all reasonable times to inspect or to exhibit same to prospective purchasers, mortgagees and tenants and to make such repairs as are required of Landlord under this Lease, provided Landlord does so in a manner reasonably calculated to minimize the disruption of Tenant's business.

(f) Relocation. Landlord reserves the right at any time during the Term to move Tenant from the Premises to a comparable new location within the Landing having substantially the same area as the Premises, whereupon Landlord shall resume possession of the Premises. In that event, this Lease shall continue on the same terms, conditions and rents as provided herein, except that the term "Premises" shall be deemed to refer to that new location instead. Landlord may exercise this right upon sixty (60) days' notice to Tenant, and shall pay all reasonable costs and expenses incurred by Tenant as a result of the relocation.

(g) Roof. To avoid damaging the Landing roof and to protect Landlord's roof warranty, Tenant shall not cause or permit (i) anyone to enter upon or place anything on the roof of the Premises or the roof of any other part of the Landing, (ii) any penetrations or openings to be made in that roof, or (iii) any repairs or other work to be performed thereon, without Landlord's prior written approval and the participation of Landlord's designated roofing contractor (at Tenant's expense).

5. Base Rent.

(a) Tenant agrees to pay to Landlord the Base Rent and all sales or use taxes imposed thereon at the address of Landlord specified above, or at such other place hereafter designated by Landlord, without notice or demand, in advance upon the first day of each calendar month (with a *pro rata* payment on the first day of any partial month) throughout the Term. ~~The first month's Base Rent, together with the first month's Prepaids described below, shall be due upon the complete execution of this lease.~~ *9.12.2007*

(b) Payments of Base Rent and Prepaids not received by the fifth (5th) day of the month shall be subject to an administrative charge equal to the greater of \$250 or five percent (5%) of the unpaid amount due. Tenant acknowledges and agrees that the charges described in the preceding sentence represent a fair and reasonable estimate of Landlord's expense in the management of the Landing resulting from such incidents and that said expense is not contemplated nor included in any other rental or charge to be paid by Tenant.

(c) Landlord shall apply payments from Tenant in the following order: First, toward interest charges accrued against Tenant's account; Second, toward administrative fees, late fees, service charges or legal expenses assessed against Tenant's account; Third, toward Landlord's reimbursable expenses; and then Fourth, toward Base Rent.

6. Percentage Rent. In addition to the Base Rent and all other sums specified herein, Tenant shall pay to Landlord, as Percentage Rent for each calendar year or part thereof during the Term, the product obtained by multiplying the Percentage Rent Factor by the amount, if any, by which (i) Tenant's gross sales for that calendar year or partial calendar year exceed (ii) the Breakpoint (or in the case of a partial calendar year at the beginning or end of the Term, a *pro rata* Breakpoint calculated on a *per diem* basis). Landlord shall have the election of collecting a monthly estimate of Percentage Rent, together with Tenant's monthly Base Rent payments, in an amount equal to one-tenth of Tenant's actual Percentage Rent paid for the previous year, provided; however, such collection of estimated Percentage Rent shall not relieve Tenant of its obligation to

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pay additional Percentage Rent if such becomes payable to Landlord. Any overpayment of estimated Percentage Rent by Tenant shall, at Landlord's election, be credited toward Base Rent or paid to Tenant within thirty (30) days following final Percentage Rent calculation.

(a) **Separate Years.** Each calendar year shall be an independent accounting period for the purpose of computing the Percentage Rent, if any, and the gross sales of any calendar year shall not be carried over into any other calendar year.

(b) **Gross Sales.** The term "gross sales" for the purposes of this Lease shall mean the sum of the sales price of all goods, wares and merchandise sold and the charges for all services performed by Tenant, its subtenants, assigns, concessionaires or otherwise, from all business conducted on, in, at, or from the Premises, whether made for cash, check, on credit or otherwise; provided, however, that "gross sales" shall not include (i) cash or credit refunds made upon transactions included within gross sales not exceeding the selling price of merchandise returned by the purchaser and accepted by Tenant, or (ii) the amount of any city, county, state or federal sales, luxury or excise tax on such sales, which is either added to the selling price or absorbed therein, and is paid to the taxing authority by Tenant.

(c) **Report; Payment.** Tenant shall submit to Landlord on a monthly basis a written statement, signed by Tenant and certified by it to be true and correct, of the amount of gross sales during the preceding month (or the part thereof which was included within the Term). Such report is to be submitted to Landlord on or before the tenth (10th) day of each month. This report shall be in such form and contain such details as Landlord may reasonably require, and shall be accompanied by Tenant's payment of the amount of Percentage Rent, if any, indicated by the report. The acceptance by Landlord of payments of Percentage Rent or reports thereof shall be without prejudice and shall in no case constitute a waiver of Landlord's right to the examination of Tenant's books as described below.

(d) **Records, etc.** Tenant shall retain, for a period of twelve (12) months following the end of each calendar year, such records as would normally be examined by an independent accountant pursuant to accepted auditing standards in performing an audit of Tenant's gross sales reports. Landlord shall have the right to cause, upon ten (10) days' notice to Tenant, a complete audit to be made of the sales records of Tenant described above. If the results of such audit show that Tenant's report of gross sales for that year has been understated by five percent (5%) or more, then Tenant shall pay Landlord the cost of such audit in addition to the deficiency in Percentage Rent discovered.

7. **Reimbursements.** Except for those costs which are to be borne by Landlord as specified in this Lease, it is the intent of the parties that this shall be a "net lease," and that all expenses of Tenant's use or occupancy of the Premises, including Tenant's allocable share of the costs of owning and operating the Landing as a whole, shall be paid by Tenant in addition to the rents specified herein.

(a) **Allocable Share.** For this purpose, Tenant's allocable share of such shared costs (i.e., the Common Operating Costs, Taxes and Insurance described below) shall be determined annually by multiplying (i) the actual amounts of such costs by (ii) the percentage of the area of the Premises in comparison to the gross leasable area of the entire Landing, calculated as described in this Lease; provided, however, that the Common Operating Costs for certain utilities or other services that benefit Tenant or the Premises may instead be allocated in a manner that, in Landlord's sole but reasonable discretion, more equitably apportions the costs among those benefitting from such utilities or services.

(b) **Common Operating Costs.** As its contribution to the common operating costs applicable to the Premises which are more fully described below, Tenant shall pay an amount (the "Common Operating Costs") equal to the greater of:

(1) The product obtained by multiplying (i) the area of the Premises by (ii) an amount equal to the "First Year Prepaid Common Operating Costs" for the period from the Rent Commencement Date through the ensuing November 30, increased by a factor of five percent (5%) per year each December 1 thereafter throughout the Term and Extension Period(s); or

(2) Tenant's allocable share of the actual Common Operating Costs, which shall consist of all of Landlord's costs and expenses incurred in operating, maintaining, repairing, lighting, irrigating and managing the Landing common areas, including but not limited to the maintenance of the Landing's parking lots and/or garages (to the extent not covered by any applicable parking fees), the costs of all landscaping, painting, roofing, common area utilities, repair and maintenance expenses, expenditures for repaving, sealing and striping the parking and other vehicle use areas, the normal replacement of personal property and equipment serving or constituting a part of the common areas, the cost of licenses and permits, costs of personnel employed in the operation, management, and security of the common areas and their related benefits, and reasonable management fees, the cost associated with marketing and promoting the Landing and its Tenants, including common area entertainment, plus the costs of providing those shared utilities and services that benefit Tenant or the Premises in common with other similarly-situated occupants of the Landing. Such Common Operating Costs shall not include depreciation, the costs incurred by Landlord for repairs or replacements caused by casualty or condemnation to the extent reimbursed by insurance or condemnation awards, and interest or principal payments on mortgages.

(c) **Taxes.** The term "Taxes" for this purpose shall mean all ad valorem taxes (real and personal) and general and special assessments levied against the Landing or any part thereof, as well as all assessments of any special taxing authority, development district or property owner's association having jurisdiction over the Landing.

(d) **Insurance.** The term "Insurance" for this purpose shall mean the premiums for Landlord's insurance of the Landing described below.

(e) **Prepays.** Each year, Landlord shall establish the amount of the Prepays to be remitted monthly by Tenant along with the Base Rent during the upcoming year, as an estimate of Tenant's allocable share of the Common Operating Costs, Taxes and Insurance for that next year, based generally on the prior years' experience and on any estimates or projections received by Landlord for the upcoming year's costs, all divided into twelve (12) equal monthly installments (except that the Initial Prepays to be charged Tenant at the outset of the Term shall be calculated by Landlord using the First Year Prepays specified above). Unless unusual circumstances dictate otherwise, the amount of Tenant's Prepays for the upcoming year shall be set annually at the time Landlord advises Tenant of Tenant's allocable share of the Common Operating Costs, Taxes and Insurance for the year then ended, as described below.

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(f) Annual Billing and Payment. Landlord shall present Tenant with an invoice each year for Tenant's allocable share of the Common Operating Costs, Taxes and Insurance. Not later than November 20 (or such other date as Landlord may establish), (i) Tenant shall pay Landlord Tenant's allocable share of such costs in excess of the sum of the Prepaids received by Landlord from Tenant during the year in question, or (ii) Landlord shall give Tenant a credit against the Prepaids next becoming due under this Lease for the amount, if any, by which the sum of such Prepaids exceeds Tenant's allocable share of the Common Operating Costs, Taxes and Insurance for the year in question.

8. Utilities, etc. Landlord shall not be liable in the event of any interruption in the supply of any utilities unless due to the negligence or misconduct of Landlord, its agents or employees. Tenant shall be solely responsible for and shall promptly pay all charges for use or consumption of water, sewer, gas, garbage (dumpster) removal, electricity, telephone and any other utility services at the Premises, beginning on the Actual Delivery Date. Tenant shall be responsible for promptly and properly disposing of all garbage, trash, rubbish and refuse from the Premises, at Tenant's sole cost.

9. Construction Obligations. Landlord shall, at no expense to Tenant, perform Landlord's Work as specified in Exhibit B. Tenant shall at its expense perform Tenant's Work in a good and workmanlike manner, in accordance with all applicable laws and the plans and specifications to be prepared by Tenant, subject to Landlord's approval which shall not be unreasonably withheld. It shall not be necessary that Landlord's Work be finally complete on the Actual Delivery Date, but merely that Landlord's Work be substantially complete so that Tenant can proceed with Tenant's Work in the Premises, and Landlord shall use all reasonable efforts and shall be permitted reasonable access to the Premises after the Actual Delivery Date in order to finally complete Landlord's Work as soon as practicable. As part of Tenant's Work, Tenant shall pay all permit fees for the performance of Tenant's Work, as well as any "impact fees" or similar charges related to the Premises, which for this purpose shall include those fees charged by governmental or quasi-governmental entities, public or private utilities, development agencies, property owners associations, and the like which must be paid for the purpose of obtaining a building permit or an occupational or business license. Tenant shall also pay its allocable share of any impact fees assessed against the Landing as a whole.

10. Assignment and Subletting.

(a) Except as provided in this Section, Tenant shall not assign this Lease in whole or in part or sublet all or any part of the Premises without the prior written consent of Landlord. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. For this purpose, the term "assignment" shall include not only a direct assignment of this Lease, but also any indirect assignment by virtue of the transfer of a controlling interest in Tenant or Tenant's business, whether voluntarily or otherwise.

(b) In order to obtain Landlord's consent to a proposed assignment or subletting, the following conditions must be fulfilled, as well as any other reasonable requirements of Landlord:

(1) Landlord shall be provided with at least thirty (30) days' written notice prior to any proposed assignment or subletting, plus such information about the proposed assignment or subletting as Landlord may request;

(2) Tenant and any Guarantor(s) shall remain liable under this Lease;

(3) Any proposed assignee or sublessee shall assume, in a written instrument acceptable to Landlord, all of the obligations of Tenant hereunder;

(4) Landlord shall have the right to review and approve the financial condition and business experience of the proposed assignee;

(5) The proposed assignee's use of the Premises shall comply with this Lease and shall not conflict with (i) any other uses then operating within the Landing, (ii) any exclusive rights granted to any other tenant, or (iii) any prohibitions by which Landlord or the Premises are bound;

(6) At Landlord's sole discretion, Landlord shall collect an assignment fee from Tenant, due upon Tenant's execution of the document, for each proposed assignment or sublease instrument provided by Landlord; and

(7) With each proposed assignment or sublease instrument submitted by Tenant to Landlord for its approval or disapproval, Tenant shall pay to Landlord, in advance, but no later than submittal of its request for Landlord's approval, a non-refundable administrative review fee of One Thousand Dollars (\$1,000.00), plus any assignment fee to be charged by Landlord.

11. Alterations; Signs. Tenant shall not make any structural changes in the Premises without the prior written consent of Landlord. Tenant shall have the right to make non-structural alterations to the Premises, provided Tenant (i) first obtains Landlord's written consent to such alterations, which consent shall not be unreasonably withheld, and (ii) constructs such alterations in a good and workmanlike manner, in accordance with law. Tenant shall install, at its expense, permanent signs on the canopy or sign band of the Premises, which signs must be of a size, material and quality of construction that comply with the signage and graphics standards established by Landlord for the Landing and attached to this Lease as Exhibit C, and must be completely installed and operational within two (2) weeks after the Rent Commencement Date. No other signs, displays, banners, posters, lettering or window covers may be installed upon or within the Premises in such a way that they are substantially visible from the exterior of the Premises without Landlord's prior written consent. All electrical signs installed on the Premises at the instance of Tenant must be mounted on external raceways. The design of all Tenant's electrical signs is subject to Landlord's prior approval and may be installed only by a sign company approved by Landlord. Upon the full execution of this Lease, Tenant shall tender a signage deposit in the amount of Five Hundred Dollars (\$500.00) to ensure that the signage contemplated in this Section shall be properly installed. Upon the complete installation of such signage, Landlord shall inspect its installation and, if installed properly, shall refund the signage deposit, less Landlord's Seventy Five Dollar (\$75.00) inspection fee.

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IMPORTANT NOTICE TO ALL TENANTS REGARDING IMPROVEMENTS AND SIGNAGE:

Not all contractors and subcontractors, including but not limited to sign companies, are authorized to work on the Landing premises. Therefore, you must contact the property management department of the Landing for prior WRITTEN approval BEFORE you contract with or hire any contractor, subcontractor or sign company for work to be done within the Premises or at the Landing. Your failure to do so may result in the rejection of such work, which in turn may cause added delay and expense to Tenant due to the removal of such nonconforming improvements or sign and their replacement by an approved contractor, subcontractor or sign company.

Initials:

L: _____

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12. Repairs.

(a) **By Tenant.** Tenant shall maintain all non-structural portions of the interior of the Premises, together with the plate glass, the exterior doors, hardware and storefront, all of Tenant's exterior signs (including without limitation the signs on the canopy or sign band, if any as described herein), the Premises' heating, ventilation and air conditioning equipment (including replacement of compressors, fans and ventilation ducts), and the electrical, plumbing (including fire protection and backflow preventers) and sanitary sewer systems within or serving only the Premises, in good operating condition and appearance, subject to normal wear and tear. Any warranty if or when granted or assigned to Tenant from Landlord for any portion or component of the Premises shall not include coverage of those costs (i) for routine maintenance items (including but not limited to filters, belts, contactors and fan motors), or (ii) costs attributable to the negligence or intentional acts of Tenant, its officers, employees or agents. Tenant shall also be liable for any labor expense associated with the foregoing. Tenant agrees that it shall promptly pay any such costs with its next payment of Base Rent. Following the termination of this Lease, and prior to return of Tenant's Security Deposit, Tenant shall furnish Landlord with an inspection report from an HVAC maintenance company acceptable to Landlord that states the Premise's heating, ventilation and air conditioning equipment and systems are operating properly and have not suffered from neglect. Failure by Tenant to provide Landlord with an HVAC inspection report, or for the report to state that the Premise's heating, ventilation and air conditioning systems have been damaged as a result of neglect, shall result in Landlord applying part or all of Tenant's security deposit to obtain the inspection report or repair or replace any damaged equipment.

(b) **By Landlord.** Landlord shall maintain the structural and exterior portions of the Landing and the Premises in good operating condition and appearance (subject to normal wear and tear) at Landlord's expense, except for damage caused by Tenant, its agents, employees or invitees.

13. Insurance.

(a) **Tenant.** Tenant shall maintain at its own cost and expense (i) fire and extended coverage insurance in an amount adequate to cover the cost of replacement of all personal property, merchandise, fixtures, decorations and improvements in the Premises in the event of a loss, and (ii) liability insurance coverages in such forms and amounts as are reasonable or customary for the insurance of similar businesses in the vicinity of the Landing, but in no event less than \$1,000,000.00.

(b) **Landlord.** Landlord shall maintain (i) insurance on the entire Landing in the amount of its full replacement value for fire and, in Landlord's discretion, for such other risks (e.g., flood, hurricane, sinkhole, etc.) as are from time to time insured by prudent lessors of comparable properties in the vicinity of the Landing, (ii) public liability insurance on the entire Landing in the same or greater amount as required of Tenant in (a) above, and (iii) rental or business interruption insurance.

(c) **Evidence, etc.** Tenant shall furnish duplicate policies or certificates evidencing the insurance coverages required by this Section, naming Landlord and, if required, Landlord's lender as additional insureds.

(d) **Insured's Waiver.** In the event of loss or damage to the property of Landlord or Tenant, each party will look first to its own insurance before making any claim against the other. To the extent possible, each party shall obtain, for all policies of casualty insurance required by this Lease, provisions permitting waiver of subrogation against the other party, and each party, for itself and its insurers, hereby waives the right to make any claim against the other (or its agents, employees or insurers) for loss or damage covered by the insurance requirements of this Lease.

14. Destruction. Subject to the provisions of (a) and (b) below, if the Premises or any other part of the Landing shall be damaged by any casualty and the insurance proceeds have been made available to Landlord, Landlord shall promptly restore same as nearly as practicable to its condition immediately prior to the occurrence of the damage to the extent of such insurance proceeds remain available. If the casualty or rebuilding renders the Premises untenantable in whole or in part, and if the damage was not the fault of Tenant, the Base Rent and other charges under this Lease will abate in proportion to the time and extent (on a square-foot basis) Tenant is denied the use of the Premises.

(a) **Damage to the Premises.** If the Premises are damaged by fire or other casualty to the extent that the cost of repair or replacement exceeds twenty-five percent (25%) of the replacement value of the Premises, Landlord may elect to terminate this Lease within ninety (90) days of such casualty. In the event the Premises are damaged by fire or other casualty during the Term and the cost of repair or replacement is less than twenty-five percent (25%) of the full replacement cost of the Premises, then Landlord shall promptly repair the Premises to substantially the condition that existed when the Premises were originally turned over to Tenant. Notwithstanding anything to the contrary in this Section, Landlord shall not be required to repair or replace the Premises after casualty if the casualty occurs during the last twelve (12) months of the Primary Term or the then current Extension Period.

(b) **Repair.** Unless Landlord has the right under the preceding paragraph to terminate this Lease following a casualty, and unless Landlord properly and timely elects to do so, then once Landlord has repaired the damage caused by that casualty, (i) Tenant shall refixture the Premises in a manner and to a condition equal, as nearly as practicable, to that existing prior to its destruction or casualty, and (ii) the proceeds of all insurance carried by Tenant on its property and improvements shall be held in trust by Tenant for the purpose of said repair and replacement. Any abatement of rent shall end upon the earlier of (i) the


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date Tenant re-opens the entire Premises for business, or (ii) thirty (30) days after notice by Landlord to Tenant that the Premises have been repaired and are ready for the completion of Tenant's restoration and refixturing.

15. Condemnation.

(a) **Total.** If the whole of the Premises shall be acquired or taken pursuant to the power of eminent domain for any public or quasi-public use or purpose, then this Lease shall terminate as of the date of title vesting in the public authority in such proceeding.

(b) **Partial.** If any part of the Premises shall be taken as aforesaid, and such partial taking shall render the portion not taken unsuitable in Tenant's reasonable judgment for the conduct of business, then this Lease shall terminate as described in (a) above. If such partial taking does not so render the Premises unsuitable for the business of Tenant, then this Lease shall continue in effect except that the Base Rent shall be reduced in the same proportion that the floor area of the Premises taken bears to the original floor area, and Landlord shall make all necessary repairs or alterations to the building in which the Premises are located so as to restore the portion of the building not taken to a complete architectural unit, but such work shall not exceed the scope of the work to be done by Landlord in originally constructing the Premises, nor shall Landlord in any event be required to spend for such work an amount in excess of the amount awarded by the taking authority for the part of the Premises so taken. No condemnation or taking of any part of the parking or other common areas of the Landing shall affect this Lease or Tenant's obligations hereunder, provided Landlord maintains sufficient parking spaces in the Landing to meet all applicable legal requirements.

(c) **Awards.** All compensation awarded or paid upon such a total or partial taking of the Premises or the Landing shall be the sole property of Landlord; provided, however, that so long as Landlord's award is not thereby reduced, Tenant shall also be entitled to claim, prove and receive in any condemnation proceedings such separate award as may be allowed for Tenant's loss of business, relocation costs, fixtures and other unamortized leasehold improvements installed by it.

16. Default.

(a) **By Tenant.** In the event that (i) Tenant does not pay the rent or any other sum due from Tenant at the time and in the amount stated in this Lease or within five (5) days thereafter, without notice or demand except as otherwise herein required, or (ii) Tenant fails to keep and perform any other condition, stipulation or agreement (except the payment of any sum of money due under this lease) herein contained and such default shall continue for thirty (30) days after written notice thereof (or, if such default cannot be cured within thirty (30) days, if Tenant does not begin curing the default within thirty (30) days after notice and diligently proceed in good faith to cure the default), or (iii) Tenant is served with three (3) or more Default Notices by Landlord within a twelve (12) month period, or (iv) Tenant's interest hereunder or all of its property on the Premises is sequestered or taken under execution or other legal process, or (v) Tenant files or has filed against it pursuant to any statute of the United States or of any state a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property, or makes an assignment for the benefit of its creditors, then and in any of such events, Landlord may, at Landlord's option, in addition to any and all other remedies available by law or in equity:

(1) terminate this Lease and re-enter the Premises, in which event the parties shall have no further rights or obligations hereunder; or

(2) perform such obligation (other than payment of rent) on Tenant's behalf and charge the cost thereof to Tenant as additional rent; or

(3) take possession of the Premises (including all personal property and fixtures located therein), without terminating this Lease; or

(4) declare the Base Rent and all other sums due hereunder for the remainder of the Term to be immediately due and payable.

In the event Landlord elects to retake possession of the Premises from Tenant, Landlord shall use all reasonable efforts to re-let the Premises on Tenant's behalf, for a use compatible with the then existing tenants of the Landing, and shall, at Landlord's election, apply the net fair market value of any of Tenant's personal property and fixtures retained by Landlord (or the proceeds thereof) to the obligations of Tenant under this Lease. In the event such a lease is entered into for the account of Tenant, Tenant agrees to pay any deficiency after crediting it with the rent thereby obtained, less all repairs and expenses, including the reasonable costs of remodeling and brokerage fees, and Tenant waives any claim it may have to any rent obtained on such re-letting which may be in excess of the rent required to be paid herein by Tenant.

(b) **By Landlord.** In the event Landlord shall fail to keep and perform any of the conditions, stipulations or agreements herein contained and such default shall continue for thirty (30) days after written notice thereof (or, if such default cannot be cured within thirty (30) days, if Landlord does not begin curing the default within thirty (30) days after notice and diligently proceed in good faith to cure the default), then Tenant shall have such rights and remedies as may then be provided by law or equity.

(c) **Costs, etc.** In the event of a dispute under this Lease, the prevailing party shall be entitled to recover its costs, including reasonable attorney's fees (whether or not suit be brought), in order to enforce its rights hereunder.

(d) **Late Charges, etc.** In addition to the remedies provided above, (i) all sums due under this Lease will bear interest at the highest rate allowed by law beginning ten (10) days after they are due, and (ii) a late charge will be imposed if any payment under this Lease is not made within five (5) days after it is due, in an amount equal to the greater of \$250.00 or five percent (5%) of the delinquent payment.

17. Attornment; Subordination. This Lease is subordinate to all present and future mortgages, ground leases and financing leases encumbering the Premises or any other part of the Landing. If requested, Tenant shall execute a subordination, non-disturbance and attornment agreement ("SNDA") with the holder(s) of such instrument(s), under which Tenant shall in the event of the sale or assignment of Landlord's interest in the Landing, or in the event of any foreclosure or


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exercise of the power of sale under any mortgage made by Landlord covering the Premises, attorn to the purchaser and recognize such purchaser as Landlord under this Lease, on the terms contained in the SNDA. The SNDA shall specifically affirm the subordination of Tenant's rights under this Lease to the lien of any mortgage, ground lease or financing lease now or hereafter encumbering the Premises, and Tenant's agreement not to take any action to enforce its rights against Landlord for an alleged default under this Lease without first giving the holder of such financing written notice of that default and a reasonable opportunity to cure same pursuant to the SNDA.

18. **Quiet Enjoyment.** Tenant, upon paying the rents and performing all of the terms on its part to be performed, shall peaceably and quietly enjoy the Premises subject, nevertheless, to the terms of this Lease.

19. **End of Term.** At the expiration of this Lease, Tenant shall surrender the Premises to Landlord in the same condition as they were received by Tenant, reasonable wear and tear excepted, and shall deliver all keys and combinations of locks or safes to Landlord. Before surrendering the Premises, Tenant shall remove all of its personal property, trade fixtures, signs and decorations (provided Tenant is not then in default hereunder), and shall repair any damage caused thereby. If Tenant fails to remove any of its property at the expiration of this Lease, said property shall be deemed abandoned and shall, at Landlord's option, become the property of Landlord. Any holding over after the expiration of the Term without the written consent of Landlord shall be construed to be a tenancy at sufferance on a month-to-month basis and shall otherwise be on the terms herein specified so far as applicable, except that the Base Rent payable during such holdover period shall be 200% of the Base Rent payable immediately prior to the expiration of the Term.

20. **Limitation of Liability.** Tenant agrees that it shall look solely to the estate and property of Landlord in the Premises, subject to rights of any mortgagee or ground lessee of the Premises not affiliated with Landlord which shall have priority, for the collection of any judgment or other judicial process requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms, covenants and conditions of this Lease to be observed or performed by Landlord; and no other property or assets of Landlord, its lenders, successors or assigns shall be subject to levy, execution or other process for the satisfaction of Tenant's remedies. Neither Landlord nor Tenant shall be responsible for indirect or consequential damages suffered by it due to the breach or alleged breach of this Lease by the other party. Both parties hereby waive any rights to such damages or to punitive damages in the event of such a breach, even if any of such damages be allowed by law.

21. **Rules and Regulations.** Landlord shall have the right from time to time to adopt nondiscriminatory rules and regulations applicable to the Premises and the Landing. Notice of such rules and regulations, and amendments and supplements, if any, shall be given to Tenant, and Tenant agrees thereupon to comply with and observe all such rules and regulations, provided they shall apply uniformly to all lessees of the Landing and provided further that any such rules or regulations adopted after the Effective Date of this Lease shall not conflict with any of the terms of this Lease without Tenant's consent.

22. **Estoppel Statements, etc.** Each party shall, upon the request of the other, execute and deliver such ratifications, certifications, warranties or information, addressed to the requesting party, its lenders, or others, concerning the status of the Lease and the parties' performance hereunder as may from time to time be reasonably requested. If the recipient of such a request fails to respond thereto within ten (10) days after receipt, the information sought to be confirmed shall be conclusively deemed correct and complete in all respects.

23. **Commissions.** Neither party has dealt with any broker or other person who has or may have any claim against Landlord or Tenant for a brokerage commission, finder's fee or like payment arising out of or in connection with this Lease or the tenancy created hereby, and each party hereby indemnifies the other against any such brokerage claims arising by, through or under the indemnifying party.

24. **Rental Taxes.** With each payment of rent and other charges due under this Lease, Tenant shall also pay any rental, sales or similar taxes imposed on those amounts.

25. **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. Additional information regarding radon and radon testing may be obtained from your county public health unit.

26. **Construction Liens.** Landlord's interest in the Landing shall not be subject to liens for improvements made or ordered by Tenant, whether or not such work is permitted by this Lease or approved by Landlord, and Tenant shall notify the contractor or other party making any such improvements of this exclusion.

27. **Notices.** Any notice, demand, request or other instrument which may be or is required to be given under this Lease shall be in writing, and shall be sent to the address of the recipient indicated above or to such other address as that party may hereafter designate in writing, either by personal delivery, by fax transmission, by recognized overnight courier, or by U.S. certified mail, return receipt requested. In the event the Tenant is an out-of-state or foreign corporation, Tenant agrees that its local store manager or supervisor at the leasehold premises is authorized and will accept service of process on Tenant's behalf. If said Tenant has designated a registered agent in the State of Florida, that designate will also be copied with any such service of process, complaint, petition, etc.

28. **Miscellaneous.**

(a) **No Waiver.** Failure of either party to insist upon the strict performance of any provision of this Lease or enforce any rules and regulations shall not be construed as a waiver in the future of any such provision, rule or regulation. Landlord may, at its option, accept partial payments of Base Rent or any other sums due from Tenant without waiving any rights in connection with the existence of any monetary or non-monetary Default under this Lease, which Default shall continue unaffected by the receipt of any such partial payment. No payment by Tenant or receipt by Landlord of a lesser amount than any amount due under this Lease shall be deemed to be other than on account of the earliest amount due Landlord from Tenant, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Landlord shall accept such check or payment without prejudice to Landlord's right to recover the balance of such amount due or pursue any other remedy.

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(b) **Recording.** Neither party will file this Lease or any memorandum, notice or mention hereof in the public records without the written consent of the other.

(c) **Partial Invalidity.** If any provision of this Lease or application thereof to any person or circumstance shall to any extent be invalid, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

(d) **Provisions Binding, etc.** Except as otherwise expressly provided, all provisions herein shall be binding upon and shall inure to the benefit of the parties, their legal representatives, permitted successors and assigns, and any sale by Landlord of the Landing or of the Premises shall be subject to this Lease.

(e) **Entire Agreement.** This Lease sets forth the entire agreement between the parties. Any prior representations or understandings, whether oral or written, are merged herein and extinguished. No subsequent amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by the party sought to be charged. The captions and numbers appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe or describe the scope or intent of any Section, nor in any way affect the interpretation of this Lease.

(f) **Time.** Time is of the essence of this agreement.

(g) **Security Deposit.** Notwithstanding the foregoing, Tenant agrees that Landlord may deposit into its bank account any Security Deposit and any prepayment of rent Tenant may make to Landlord prior to Landlord's execution of the Lease (and Landlord shall not be required to keep any such deposit separate from its general funds and Tenant shall not be entitled to interest on such deposit). However, if the Lease is not subsequently executed by Landlord, Landlord agrees to return the Security Deposit and prepaid rent, if any, to Tenant and Tenant shall not be entitled to any other remedy or claim of action against Landlord on account of Landlord's having deposited said sums into its bank account, or having not executed the Lease, or otherwise.

(h) **Mutual Execution.** The parties hereto agree and understand that this Lease shall not be construed as legally binding until it has been fully executed by all parties hereto. Any expense or adverse change in financial condition incurred by either party in reliance on the terms of this Lease prior to the time it is fully executed shall be at such party's peril, with no right of reimbursement or recovery from the other party.

(i) **Personal Property Taxes.** Prompt payment of all taxes imposed on fixtures, equipment, and other personalty located in or about the Premises or imposed on Tenant's business conducted therein shall be the sole responsibility of Tenant.

(j) **Venue; Jury Trial; etc.** Venue for any dispute arising under or related to this Lease shall be exclusively in the state court in Duval County, Florida. If, and to the extent, allowed by applicable law, Landlord and Tenant hereby mutually, voluntarily, and intentionally waive the right either may have to a trial by jury in respect to any and all civil action commenced by either party in connection with this Lease, the relationship of Landlord and Tenant and/or Tenants use or occupancy of the Premises. If there are any facts or allegations that need to be tried in a court of law, every position of said trial will be before a court without a jury.

(k) **Security.** Any security measures that Landlord may undertake are for protection of the building(s) and other improvements at the Landing only and shall not be relied upon by Tenant to protect Tenant, Tenant's property, employees, invitees or their property. In the event that Tenant elects to operate its business within the Premises beyond the normal operating hours of the Landing, Tenant, at its sole cost and expense, shall (a) install and operate appropriate security lights at the exterior of the Premises, and (b) employ such appropriate security personnel and security measures as may be necessary to protect Tenant, Tenant's employees, invitees and their property.

(l) **Quality Assurance.** Landlord has designated Josephine Sleiman and her children (the "Sleiman Family") to monitor the quality of service at the Premises. To do so, the Sleiman Family may, for themselves and their guests, charge food and beverages at Tenant's restaurant and have their charges invoiced to Landlord for payment each month. All charges made by the Sleiman Family shall receive a fifty percent (50%) discount off the regular prices charged to the public by Tenant.

29. **Guaranty.** To induce Landlord to enter into this Lease, each of the undersigned Guarantors (jointly and severally, if more than one), by joining in the execution of this Lease, hereby:

(a) Unconditionally guarantees to Landlord the timely performance of all of the obligations and duties of, and the timely payment of all sums owed by, Tenant under the Lease, including but not limited to all expenses incurred in the enforcement or interpretation of this Guaranty or of the Lease, and the enforcement of Landlord's rights thereunder or in any collateral given by Tenant or others as security for Tenant's obligations under the Lease;

(b) Agrees (i) that the undersigned is bound by and subject to all of the provisions of the Lease, (ii) that the discharge of Tenant, whether by operation of law, voluntary release by Landlord, or otherwise, will not operate to release the undersigned from the obligations of this Guaranty, and (iii) that this Guaranty constitutes a guarantee of payment and performance when due, and not a guarantee of collection;

(c) Waives promptness, diligence, presentment, demand of payment, protest, order and notice of any kind in connection with the Lease and this Guaranty, and agrees to the exercise by Landlord of each and every right set forth in the Lease or permitted by law, all without notice to the undersigned Guarantor(s) and without first or contemporaneously proceeding against any other person who may be liable under the Lease, or otherwise seeking performance from such person; and

(d) Agrees (i) that the obligations of the undersigned Guarantor(s) pursuant to this Guaranty shall be unconditional, irrespective of the validity, regularity or enforceability of the Lease against Tenant, the absence of any action to enforce Tenant's obligations under the Lease, any waiver or consent by with respect to any provisions thereof, the entry by Landlord

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and Tenant into any amendment or modification of the Lease (with or without the consent of or notice to the undersigned (Guarantor(s)), any acquisition of, exercise of rights with respect to, or release of, any collateral or other credit support for (including any other guarantor of) the obligations of Tenant under the Lease, or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety, and (ii) that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any obligation guaranteed hereby is rescinded or must otherwise be restored by Landlord.

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

Signed, sealed and delivered
In the presence of:

Angel T. Paez
Witness

Richard A. Lee
Witness

Rochelle Vattenbach
Witness

Pat Newman
Witness

Witness

Witness

Landlord:
Jacksonville Landing Investments, LLC, a Florida limited liability company

By: _____
Name: Anthony T. Snelman
Its: Managing Member

Tenant:
Mavericks at the Landing, LLC, a Florida limited liability company

By: _____
Its: _____

Guarantor(s):
Mavericks at the Landing, LLC, a Florida limited liability company

By: _____
Its: _____

FEIN: 26-0830667
Notice Address: 1440 Kipling Lane
St. Augustine, Florida 32095

ATTACHMENT SCHEDULE

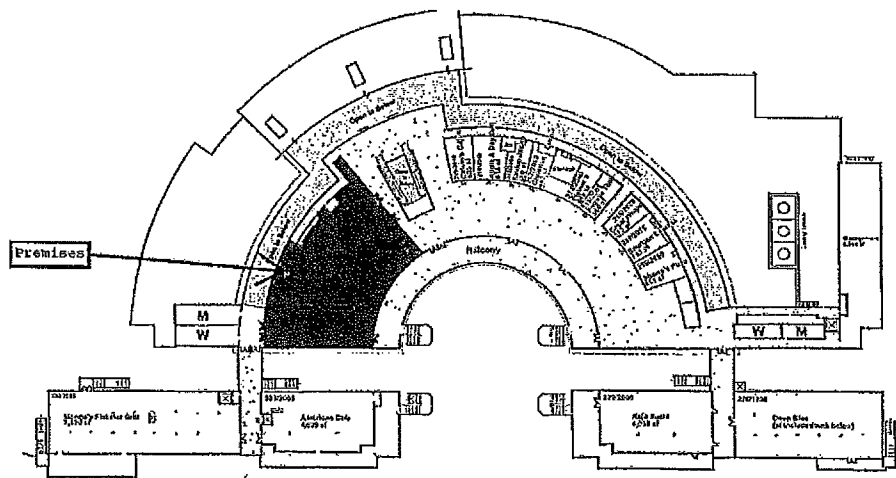
Exhibit A	Demising Plan
Exhibit B	Landlord's Work
Exhibit C	Graphics and Sign Standards
Exhibit D	Tenant Information
Exhibit E	The Jacksonville Landing Rules and Regulations as of the Effective Date
<u>Addendum</u>	<u>Modifications to Lease</u>
_____	_____
_____	_____

EXHIBIT A

Demising Plan

THE JACKSONVILLE LANDING

That real property consisting of a combination of a leasehold estate in certain land and a fee simple estate in the improvements located thereon in Jacksonville, Duval County, Florida which is more particularly described in the Assignment and Assumption of City Lease dated August 29, 2003 recorded in Official Records Book 11326, page 2118, and that Special Warranty Deed to Improvements dated August 28, 2003 which is recorded in Official Records Book 11326, page 2139, both of the public records of Duval County, Florida.



SECOND FLOOR PLAN

[Handwritten signature]

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EXHIBIT C **GRAPHICS AND SIGN STANDARDS** **EXAMPLE OF CHANNEL LETTERS ON A RACEWAY**

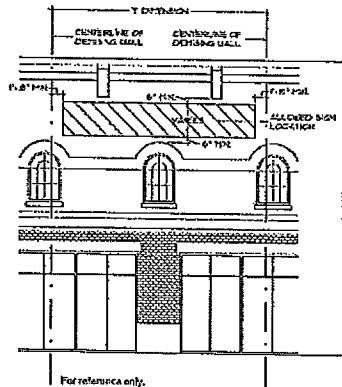
Tenant signs at all Steinman owned shopping centers must:

- be illuminated channel letters mounted on a raceway; raceway must be painted to match the color of the building
- meet all codes and ordinances, both public and private including but not limited to any architectural review guidelines
- be centered on the facade of each individual tenant

Detailed specifications of each proposed sign must be submitted for Landlord's review and approval in accordance with the Lease. If applicable, a photo of the proposed sign superimposed on the building should be included in the submittal. The submittal shall include contact information for the sign fabricator and installer. Authorization letters and site plans will be available upon request.

Sign contractors may contact the Landlord for a list of approved electrical contractors. The Sign contractor must use the Landlord approved electrical contractors to perform all electrical connections for the removal or installation of the Tenant's sign. These are the only contractors authorized by the Landlord to connect or disconnect electrical power to facade signs in Steinman owned shopping centers. The use of other contractors is a violation of this lease, and will result of reinstallation of the sign at the sole cost of the Tenant by one of the approved contractors.

Example:



EXAMPLE BUILDING ELEVATION

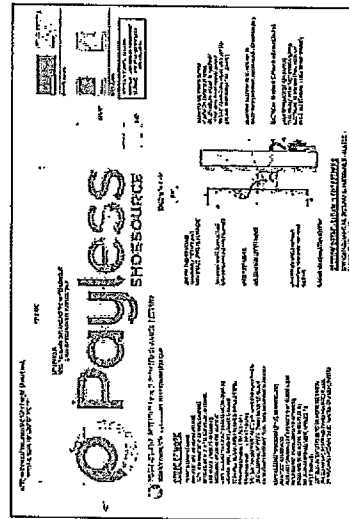
NOTES

ALLOWABLE SQUARE FOOT CALCULATION:

$(X \text{ DIMENSION}) \times (Y \text{ DIMENSION}) = XY$
 $XY @ 10\% = \text{ALLOWABLE SQUARE FOOTAGE}$

EXAMPLE SQUARE FOOT CALCULATION:

$(X = 20'-0") \times (Y = 20'-0") = 520 \text{ SQUARE FEET}$
 $520 \text{ SQUARE FEET} @ 10\% = 52 \text{ ALLOWABLE SQUARE FEET}$



EXAMPLE SIGN SUBMITTAL

COURTESY OF FEDERAL HEALTH SIGN COMPANY AND PAYLESS SHOESOURCE

Notice To All Tenants Regarding Signage

Not all contractors, subcontractors, sign companies, fabricators and vendors are authorized to work on the Landing premises. Therefore, you must contact the property management department of the Landing for prior **WRITTEN** approval **BEFORE** you contract with or hire any contractor, subcontractor or sign company for work to be done within the leasehold premises or at the Landing.

EXHIBIT D
TENANT INFORMATION

1. Tenant must have a permissible set of construction documents signed & sealed by a Florida Registered Architect for Tenant's work.
2. Tenants without permissible construction documents:
 - A. TCI Construction ("TCI") can provide Tenant with a price for permissible drawings.
 - B. Tenant must provide TCI with floor plan, a list of all equipment, and specifications for Tenant-supplied equipment.
 - C. TCI can provide Tenant with a price for Architectural Services & Construction of the Improvements to Tenant's space.
3. All food service establishments are responsible for the following:
 - A. Pre-approval floor plan (signed and dated) from the Division of Hotels and Restaurants.
 - B. All grease traps required by the local regulatory agencies are the sole responsibility of the tenant (cost and design).
 - C. Tenant is responsible for a new grease trap (if necessary) at a cost of \$7 per gallon.
 - D. Grease catches on all exhaust systems and all roof exhausts must have the Facilitec grease trap system.
4. All Tenant work executed by others must adhere to the following:
 - A. The Tenant is responsible for all applicable insurance and liability with respect to materials, subcontractors, and employees.
 - B. Only work that is detailed on PERMITTED PLANS (Bldg. Dept. Stamped and Approved) is allowed. Plans must be approved by TCI Construction Co. prior to construction start.
 - C. Only a Certified Building Contractor may execute commercial construction with proof of current license, occupational license and all required insurance coverages.
 - D. Any subcontractor working for the Tenant that is required to have their own permit, must have that permit finalized before the applicable county can provide a certificate of occupancy. Landlord will not be penalized for delays associated with permits not being finalized in a timely manner.
5. Tenant service requirements:
 - A. Sewer Impact Fees must be paid at the time the Tenant schedules meter installation (if needed). The utility department sets the cost and the General Contractor pays them to expedite the process and will bill the Tenant accordingly.
 - B. Water must be turned on by the Landlord on behalf of the Tenant, prior to scheduling the final plumbing inspection.
 - C. Electric must be turned on by the Tenant in the Tenant's name prior to scheduling the fire safety inspection.
 - D. Phone is solely the responsibility of the Tenant.
 - E. Tenant must tie in its Fire Alarm System to the Landing's master panel for monitoring purposes.
 - F. Mailbox Service and Key are solely the responsibility of the Tenant.
 - G. To obtain a Certificate of Occupancy, all final inspections must be completed in the unit.
6. Moisture protection:
 - A. Any tenant that is planning on saturating the floor with any liquid will be required to have a water barrier installed along the demising walls to prevent liquid from entering adjacent units and potentially damaging the building and/or other tenants' materials. This material shall be approved and inspected by Landlord prior to cover-up.
 - B. Any cost associated with the correction of water or liquid intrusion will be levied against the Tenant for reimbursement.
7. Tenant is responsible for changing the HVAC air filters once every month. Landlord will randomly inspect unit for compliance with this requirement.
8. Notice To All Tenants Regarding Improvements, Including Signage

Not all contractors, subcontractors, sign companies, fabricators and vendors are authorized to work on the Landing premises. Therefore, you must contact the property management department of the Landing for prior WRITTEN approval BEFORE you contract with or hire any contractor, subcontractor or sign company for work to be done within the leasehold premises or elsewhere at the Landing. All signs must be pre-approved by Landlord prior to installation.
9. Typical turnover process - When all construction phases have been completed, including but not limited to, all Final Inspections (Landlord and Tenant), keys will be changed to Tenant locks. All new keys will be forwarded to the Landlord, and Landlord's representative will notify the Tenant when the Tenant may come to Landlord's office to pick up the new key. In addition, an authorized representative of the Tenant will be required to sign for each new key that is received.
10. As part of our own quality control there are specific subcontractors and equipment that our Tenants are encouraged to use:
 - A. Fire sprinkler systems - Wayne Automatic (904) 268-3030
 - B. Roofing - Houston Brothers Roofing (904) 781-5959
 - C. HVAC (Trane equipment only) - Sonny's Services, Inc. (904) 739-0809
 - D. Electrical (for sign hookup and distribution panels) : Nationwide Electric (904) 695-1588 or Spurgeons Electric (904) 225-0671.
11. All Tenants of the Jacksonville Landing are to schedule a pre-construction meeting with a representative of the Landlord prior to commencement of buildout of the Premises.

Signature: _____

Date: _____

Signature: _____

Date: _____

EXHIBIT E
THE JACKSONVILLE LANDING RULES AND REGULATIONS

- A. Off-Duty Police Protection. See Jacksonville Landing Office for details.
- B. Shoplifting, etc. Tenant must form a policy on shoplifting and communicate that policy to all sales associates. While the security personnel employed by the Landlord and the City of Jacksonville may assist by maintaining a profile at the scene of any disturbance or crime, or be de-escalating a situation, it is the Tenant's responsibility to handle shoplifting, bad checks, and other such matters with the local police department.
- C. Operating Standards. Tenant agrees that Landlord may promulgate certain operating standards during the term of this Lease which will govern the tenants and the common area of The Jacksonville Landing, in addition to those standards which are listed within this Addendum. Tenant agrees to abide such standards during the term of its Lease. Any violation of such operating standards, in addition to any other remedy available to Landlord as described in the Lease, Tenant shall pay to Landlord as liquidated damages for each such infraction a sum equal to Twenty-Five Dollars (\$25.00).
- D. Soliciting. Tenant and its sales associates may not solicit customers or business by an objectionable advertising such as loudspeakers, phonographs, public address systems, sound amplifiers, or other disruptive noises, or barking. Any pamphlets or handbills produced by Tenant must be approved by Landlord for distribution in advance. Any product sampling and demonstration must also be approved by Landlord in advance. Tenant may not use the mall, any corridor, or any other common areas of The Jacksonville Landing for the sale or display of any merchandise or for any other business, occupation or undertaking.
- E. Dress Code. Tenant and its sales associates must be well-groomed, neat in appearance and dressed in a professional manner.
- F. Customer Service. Outstanding customer service is a top priority at The Jacksonville Landing. Tenant is required to provide training to its sales associates in all aspects of servicing the customer, which should include: product knowledge, sales training, knowledge of the Landing and its common areas, etc. Sales associates are required to attend orientation or training sessions as provided or designated by the Landlord.
- G. Deliveries. Deliveries may only be made in designated loading areas in the Premises and may not be made in the common area during business hours. If a shipment must be received, it is to be removed from the common area immediately.
- H. Stocking. All re-stocking is to be done before or after business hours. Boxes are not to be brought onto the floor during business hours.
- I. Trash. Mall trash cans are to be used by visitors to the Landing and are not to be used for disposing of the Tenant's daily trash.
- J. Trash Removal Service. At its option, Landlord may furnish (or authorize others to furnish) a service for the removal of Tenant and common area trash from receptacles designated by Landlord for the regular deposit of garbage, trash, rubbish or other refuse, and, if it shall do so, then throughout the term of this Lease, at Landlord's election, Tenant shall either (i) reimburse Landlord monthly, as an additional rent, for all costs incurred by Landlord in furnishing such service, or (ii) pay directly such person, firm, or corporation authorized by Landlord to provide such trash removal service, or (iii) pay directly such person, firm, or corporation authorized by Landlord to provide such trash removal service.
- K. Operating Hours of The Jacksonville Landing means 10:00 a.m. to 8:00 p.m. Monday through Thursday, 10:00 a.m. to 9:00 p.m. Friday and Saturday, and 12:00 Noon to 5:30 p.m. Sunday. These Operating Hours may be extended in connection with certain special events held at The Jacksonville Landing.
- L. Promotion of the Project. Landlord may formulate and carry out an ongoing program for the promotion of the Landing, which program may include, without limitation, special events, shows, displays, signs, marquees, décor, seasonal events, institutional advertising for the Landing, promotional literature to be distributed within The Jacksonville Landing and other activities within the Landing designed to attract customers. In marketing the Landing, Landlord shall have the right to name the Tenant's store in such promotional materials.
- M. Liquor Liability Insurance. In the event at any time during the term of the Lease term Tenant sells or dispenses alcoholic beverages to its customers, Tenant shall, at its expense, take out and keep in force a policy of liquor liability insurance with per occurrence limits of not less than One Million Dollars (\$1,000,000.00). Tenant shall comply in all respects with the provisions of Section 13 of the Lease with respect to such insurance and shall name Landlord and/or its designee(s) as additional insured(s).

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ADDENDUM

THIS ADDENDUM is attached to and made a part of that Lease dated October 18, 2007, between JACKSONVILLE LANDING INVESTMENTS, LLC, a Florida limited liability company, as Landlord, and MAVERICKS AT THE LANDING, LLC, a Florida limited liability company, as Tenant. In the event of a conflict between this Addendum and the Lease, the terms of this Addendum shall control.

~~A. Article 1(a) Premises. Landlord and Tenant agree to have an as-built survey prepared to verify the square footage of the Premises upon completion of the Tenant's Work. All charges due under this Lease, including Base Rent, Prepays, and the breakpoint amounts which are further described in Addendum item D below, will be adjusted based upon the final square footage of the Premises as indicated on the as-built survey described herein.~~ SAB 9-12-2007

B. Article 1(c)(1) Primary Term. The Primary Term of this Lease and the payment of Rent shall begin as follows:

1. "Commencement Date" means September 12, 2007.

2. The obligation to pay Base Rent shall commence ("Rent Commencement Date") on February 1, 2008, the date which is sixty (60) days following the Commencement Date, and shall be payable on the first day of the month following the Rent Commencement Date (including any *pro rata* payment for any partial month). ~~In the event this lease is terminated prior to the expiration of the Primary Term, Tenant shall repay Landlord an amount equal to four (4) months rent.~~ SAB 9-12-2007

C. Article 1(d) Base Rent. "Base Rent". Tenant's annual Base Rent at the beginning of the Primary Term shall be Three Hundred Fifty-Seven Thousand Dollars (\$357,000), payable in monthly installments of Twenty-Nine Thousand Seven Hundred Fifty Dollars (\$29,750.00) and shall increase as set forth below.

Portion of the Term	Annualized Base Rent	Payable Monthly	Per Sq. Ft.
Years 1-3 Months 1-36	\$357,000.00	\$29,750.00	\$17.00
Year 4 Months 37-48	\$367,710.00	\$30,642.50	\$17.51
Year 5 Months 49-60	\$378,741.30	\$31,561.78	\$18.04

D. Article 1(f) Permitted Use. The following is added at the end of the first sentence of Article 1(f): "as is more specifically shown on the menu attached to this Lease as Exhibit F. Should Tenant contemplate revising the concept of its restaurant or bar, Tenant agrees to discuss such new concepts in advance and provide Landlord with a copy of its new menu as well."

E. Article 1(h) Security Deposit. Article 1 (h) is deleted in its entirety.

F. Article 4(c)(iv) Waste. The last sentence "Any breach of the foregoing by Tenant shall be a material default hereunder, in respect of which Landlord may exercise any or all rights and remedies provided in this Lease including, without limitation, the right to terminate this lease" is replaced with the following sentence: "Any breach of the foregoing by Tenant shall be a material default hereunder, in respect of which Landlord may exercise any or all rights and remedies provided in Article 16, Default, which may include termination of the Lease."

G. Article 4(f) Relocation. The following is added at the end of Article 4(f). In the event Tenant is relocated as described herein, all reasonable costs and expenses associated with such relocation shall be borne by Landlord. Landlord is to provide the same level of quality in the replacement premises as the Premises. Landlord and Tenant are to mutually agree upon the comparable size and location of the relocated Premises. If Landlord and Tenant are unable to mutually agree upon the relocated premises within sixty (60) days after notice of exercise by Landlord of its relocation option, then Landlord may elect to withdraw its notice requiring Tenant to relocate its business, in which event Tenant shall

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remain in possession of the Premises, and this Lease shall remain in full force and effect. If Landlord shall not elect to withdraw its notice requiring Tenant to relocate its business, the lease term shall terminate on the ninetieth (90th) day after such notice, in which event Landlord and Tenant shall mutually agree upon a lease termination fee to be paid by Landlord to Tenant.

H. Article 9 Construction Obligations. The following is added at the end of Article 9. In no event, however, shall Tenant be responsible for its allocable share of impact fees assessed against the Landing due to the planned significant renovation of the Landing.

I. Article 10(b)(7) Assignment and Subletting. The non-refundable administrative review fee of One Thousand Dollars (\$1,000) is replaced with a Five Hundred Dollar (\$500) fee.

J. Article 11 Alterations; Signs. The requirement for the signage deposit in the amount of Five Hundred Dollars (\$500) is hereby deleted.

K. Article 14 Destruction. In line two (2) after the word "casualty", the following words shall be added "such as an act of God."

L. Article 16(a) Default. In line three (3) of Article 16(a), the following words are deleted "any sum of money" and replaced with the following words "Base Rent and all Prepays."

M. Article 28(I) Quality Assurance. Article 28(I) is deleted in its entirety.

N. Entertainment. Tenant agrees to meet with Landlord on a formal, quarterly basis with representatives of the Landlord to discuss its entertainment plans, or on a less formal basis periodically with the owner of the Landing as requested.

O. Security. Tenant will be responsible for its own security during high public use events at the Landing, such as Florida/Georgia, Super Bowl, New Years Eve, Fourth of July, Jacksonville Jazz Festival, etc. and upon such other times as Tenant and Landlord may mutually agree.


P. Gas Service. If gas is used in the Premises, Tenant is to install and keep in place throughout the term of the Lease a proper gas cut-off valve in the Premises.

Q. Landing Restrictions: Tenant acknowledges that the following uses or activities are prohibited in the Landing. Tenant warrants and agrees that neither it, nor its successors, subtenants or assigns shall violate these prohibited uses or activities:

--food tenant whose menu is primarily Japanese/Korean food and/or sushi.

R. Future Renovations and Construction at the Landing. In connection with the Landlord's planned renovation and construction at the Landing, if such activities render the Premises untenable in whole or in part (for instance, should Tenant lose electricity or water due to Landlord's renovation or construction activities, and such incident is caused by the Landlord's renovation or construction activities), the Base Rent and other charges under this Lease will abate in proportion to the time and extent Tenant is denied use of the Premises.

S. Gross Sales Termination. If Tenant's annual gross sales for the first Lease Year do not exceed Two Million Three Hundred Forty Thousand Dollars (\$2,340,000.00), based upon certification by Tenant's annual statement of gross sales by an independent certified public accountant for the first Lease Year, Landlord and Tenant shall each have the option to terminate this Lease by giving sixty (60) days' advance written notice of its intention to terminate to the other party within sixty (60) days after Tenant has submitted its annual statement of gross sales to Landlord. If either party shall exercise such option to terminate this Lease, this Lease shall terminate as of the end of the second (2nd) Lease Year; however, Landlord shall have the right at the time it exercises its option to terminate or at any time following its or Tenant's exercise of the option to terminate, to notify Tenant of an earlier termination date, which shall not be less than sixty (60) days from the date of such notice. In any event, upon any such termination, all contents of the Premises shall remain in and with the Premises and shall not be part of Tenant's property.

and
Tenant 
9-12-2007



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END OF ADDENDUM

A handwritten signature in black ink, consisting of a stylized 'D' followed by a loop and a horizontal stroke.

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Tracy Considine, P.A.
Attorneys at Law

- TRIAL PRACTICE
- PERSONAL INJURY & WRONGFUL DEATH
- COMMERCIAL REAL ESTATE LANDLORD/TENANT

1 SLEIMAN PARKWAY • SUITE 210
JACKSONVILLE, FLORIDA 32216
(904) 636-9777 • FAX (904) 636-5665

www.tjclaw.com

SATELLITE OFFICE:
2111 E. MICHIGAN STREET
SUITE 200
ORLANDO, FLORIDA 32805

REPLY TO: JACKSONVILLE

November 2, 2017

**NOTICE OF TERMINATION OF
NON-RESIDENTIAL MONTH-TO-MONTH TENANCY**

Mavericks at the Landing, LLC
c/o Darrin Kurtz, Manager
1440 Kipling Lane
Ponte Vedra Beach, Florida 32081

Via E-Mail and Certified Mail

**And All Other in Possession of the Following Described Premises
2 Independent Drive, Suite 208, Jacksonville, Florida 32202**

As you know, the above firm has been retained by Jacksonville Landing Investments, LLC, with regard to your commercial month-to-month tenancy at the above address.

This shall serve as formal written Notice of Termination of your Month-to-Month Tenancy, pursuant to the expiration of your lease and applicable Florida Statutes. Therefore, you should vacate the property on or before November 30th, 2017. Please also accept this as formal Statutory Notice of Landlord's demand for Double Rent pursuant to F.S. §83.06, in the event you do not vacate the property by the above date.

This Notice should not be deemed a waiver or forbearance of any of your landlord's rights during any part of the Notice period. If you have any questions regarding this Notice, please contact your attorney so he can contact our office.

PLEASE GOVERN YOURSELF ACCORDINGLY.

Respectfully,


Tracy J. Considine

TJC/jc
cc: Landlord
Matthew T. Jackson, Esq.

"Exhibit B"