



THE SUNRISE CITY
FORT PIERCE
CITY ATTORNEY'S OFFICE *Florida*

Received

APR - 9 2019

City of Fort Pierce
City Manager's Office

TO: MARINA MANAGER, DEAN KUBITSCHKEK
FROM: Peter Sweeney, City Attorney
RE: Cobb's Landing Lease
CAO RLS File: No. 19-71
DATE: April 9, 2019

I have reviewed the Request for Legal Services related to the Cobb's Landing Lease Reassignment. It is approved as to Form and Correctness and I have signed in the appropriate signature spaces.

If you have any further questions, please contact this office via phone or email.

Thank you.

PS/mm

cc: Nicholas C. Mimms, P.E., City Manager
Linda Cox, City Clerk

OK
N
4/9/19



MEMO

TO: City Manager, Nick Mimms
FROM: Marina Manager, Dean Kubitschek *DK*
SUBJECT: Cobb's Landing Lease Reassignment
DATE: April 2, 2019

Please review and forward to City Attorney the request for legal services for the reassignment of Cobb's Landing lease from Ianco, LLC to Salty 4 Eleven, LLC.





CITY ATTORNEY USE ONLY

Date Received:	
Assigned To:	
File:	19:71
Due Date:	
Hours:	

REQUEST FOR LEGAL SERVICES

To: CITY ATTORNEY
SUBMITTED BY: ORIGINATING STAFF MEMBER



CITY MANAGER AUTHORIZATION: *for* NICHOLAS C. MIMMS, P.E., CITY MANAGER *MA*

RE: COBB'S LANDING LEASE

DATE: APRIL 2, 2019

Service Required: (please circle or underline)		
Review Documents	Draft Document	Written Opinion Requested
Attend Meetings	Advise	Other: _____
<p>Upon review and/or "Approval as to Form and Correctness," the Department submitting the RLS is responsible for placement of any related item on a Commission or Board Agenda.</p>		

- Brief statement of the nature of the request or problem:** Reassignment of the Cobb's Landing lease from Ianco, LLC dated July 17th, 2017 to Salty 4 Eleven, LLC (Owners Donna Qvarnstrom and Diego Larroude). Note: Exhibit "A" mentioned in lease is not in the City Clerks files. Location unknown.
- Discussion of the implications and the possible impact if not apparent from preceding information:** Enhancement of outside area and adding 48 seats to dining will increase income to Fort Pierce Redevelopment Agency.
- Time considerations and their significance:** Request to be placed on the City Commission Agenda for May 6, 2019 with the lease transfer to occur on May 15, 2019.
- Are City funds required? If so, list approvals obtained for expenditure of funds:** No.

5. Factual background: (Outline the facts related to the underlying matter to provide context for the request.)

- Location – 200 North Indian River Dr., Fort Pierce
- Phase of Construction - Existing
- Parties Involved – Ianco LLC, Salty 4 Eleven, LLC

6. List and/or attach all related documents and known authorities (e.g., statute, ordinance, resolution, administrative code, legal case, RFP, bidder’s response, contract, lease, letter, memorandum, prior legal opinion, deed, etc.): (Requestor should investigate the issue and gather all documents/information pertaining to the matter from any other related departments *prior* to submitting the request to this office):

- FL State Statute
- Ordinance Number
- Contract

7. Identify prior legal assistance on this or a related matter and the attorney who handled it:
 Former City Attorney, Rob Schwerer – original lease – July 1, 2006. Former City Attorney, Jim Messer – Lease dates July 17, 2017 – 2021.

8. If this is a request for review of a contract, provide the following:

- a. **List of individuals who have read and approved the business terms and conditions of the contract and confirmed the ability to carry out the terms of the contract as they apply to the City:** (This office is not responsible for reviewing either the accuracy or value of the business terms and conditions or product specifications of the contract as agreed upon between the department and contractor. However, this office is available to negotiate the terms as desired by the City upon request.)
- b. **Insurance requirements that differ from the City’s template insurance terms:** (The department should consult with the Risk Manager for each contract to determine whether there are any special insurance requirements.)

CITY ATTORNEY USE ONLY			
Routed for Review	Date	Response Deadline	Response

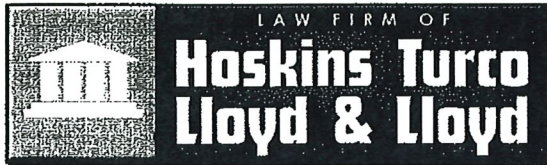
Approved as to Form & Correctness

City Attorney - Peter J. Sweeney

Signed: 

Date: 4-9-18

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Personal Injury • Workers' Compensation • Bankruptcy
Social Security Disability • Veterans' Disability

Steve Hoskins*	Donna E. DeMarchi	Justin A. Lefko
Louis D. Turco	Ronald S. Fanaro	Kiernan P. Moylan
Colin V. Lloyd	Taylor B. Hoskins**	*Board Certified Civil Trial Lawyer
Ian T. Lloyd	Agnes A. Lambert	**LLM in Trial Advocacy

April 1, 2019

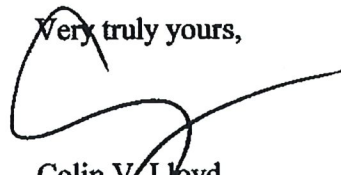
City of Fort Pierce
Attn: Dean Kubitschek
100 N. US1
Ft. Pierce, FL 34950

RE: Assignment of Cobb's Landing lease

Dear Mr. Kubitschek:

It is the intention of Ianco, LLC to assign it's interest in the Lease Agreement for Cobb's Landing Property dated July 17th, 2017 with the City of Fort Pierce, to Donna Qvarnstrom and Diego Larroude. Thus, we respectfully request this be placed on the City Commission's next available consent agenda. Thank you and should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,



Colin V. Lloyd
Managing Member, Ianco, LLC

CVL/

FORT PIERCE OFFICE
302 S. 2nd Street
Fort Pierce, Florida 34950
Phone 772-464-4600
Fax 772-465-4747

PORT ST. LUCIE OFFICE
1887 S.E. Port St. Lucie Boulevard
Port St. Lucie, Florida 34952
Phone 772-344-7770
Fax 772-344-3838

VERO BEACH OFFICE
2101 15th Avenue
Vero Beach, Florida 32960
Phone 772-794-7774
Fax 772-794-7773

OKEECHOBEE OFFICE
402 N.W. 3rd Street
Okeechobee, Florida 34972
Phone 863-357-5800
Fax 863-763-2237

**LEASE AGREEMENT
FOR COBB'S LANDING PROPERTY**

THIS LEASE AGREEMENT is entered into this 17th day of July, 2017 having an effective date of July 1, 2006, by and between the **FORT PIERCE REDEVELOPMENT AGENCY**, a Dependant Special District of the City of Fort Pierce, Florida, (hereafter "LANDLORD") whose address is 100 North U.S. 1, Fort Pierce, Florida 34950; and **IANCO, LLC**, a Florida Limited Liability Company, (hereafter "TENANT"), whose business address is 302 South 2nd Street, Fort Pierce, Florida 34950.

WITNESSETH:

WHEREAS, the LANDLORD, is the owner of a building and certain improvements located on the western side of the Fort Pierce City Marina, consisting of a free standing two-story structure containing approximately six thousand six hundred and forty three (6,643) square feet of restaurant and semi enclosed tiki bar, said building currently known as Cobb's Landing and formerly known as the Manatiki Restaurant located at 200 North Indian River Drive, Fort Pierce, FL 34950 (the "Demised Premises") which is more fully depicted on Exhibit "A" attached hereto;

WHEREAS, the TENANT was previously selected by the Fort Pierce Redevelopment Agency through a competitive selection process as the interim operator and lessee of the Demised Premises from January 1, 2006 through June 30, 2006; and

WHEREAS, the TENANT operated and improved the restaurant facility for this interim period pursuant to an Interim Lease Agreement dated February 21, 2006 and effective December 15, 2005; and

WHEREAS, in January 2006, the City sought proposals through its Request for Proposal No. 5587 for the lease and operation of the Demised Premises; and

WHEREAS, on April 26, 2006, the Fort Pierce Redevelopment Agency authorized staff to enter into a contract with the highest ranked bidder Ianco, LLC; and

WHEREAS, as of the date of this Lease, no contract has been executed between the parties; and

WHEREAS, the parties desire to enter into this Lease with an effective date of July 1, 2006.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **TERM.** The term of this Lease is fifteen (15) years commencing July 1, 2006, to and including June 30, 2021, provided that TENANT shall at all times remain in full compliance with all terms and conditions of this Lease. The fifteen (15) year term consists of an initial ten (10) year term and a mutually agreed to extension of the Lease for five (5) years. TENANT shall have an option to renew this Lease for one (1) additional five (5) year term upon written consent of both parties. TENANT shall furnish LANDLORD with a minimum of one (1) year written notice of its intention to exercise this option prior to the expiration of the fifteen (15) year lease term.

2. **DEMISED PREMISES.** The Demised Premises consists of an approximate six thousand six hundred forty three (6,643) square foot restaurant building currently known as Cobb's Landing and formerly known as the Manatiki Restaurant located at the western side of the Fort Pierce City Marina as depicted on Exhibit "A", attached hereto and incorporated herein by reference. TENANT acknowledges that its use and occupancy of the restaurant facility shall at all times be subject to LANDLORD's joint and concurrent use of the ground area underlying and surrounding the foot print of the restaurant building as LANDLORD may deem necessary

for all uses in connection with the operation of it's the adjacent marina facility, including, but not limited to the sidewalk areas and support structures for bulkheads and seawalls.

3. **LEASE PAYMENTS.** TENANT in consideration of this Lease, shall pay LANDLORD, without demand, at the offices of the Director of Finance, City Hall, 100 North U.S. 1, Fort Pierce, Florida 34954, or such other place as LANDLORD may from time to time designate in writing, rent in the amount of seven and one-quarter (7.25%) percent of all gross revenues and sales of the business (exclusive of sales tax) or \$6,500.00 per month, whichever is greater.

All percentage or minimum rent specified in this section shall be payable monthly. Within five (5) business days of the closing of any monthly period, TENANT shall furnish to LANDLORD all register tapes from the business together with the rent due herein, plus all applicable Florida state sales tax. At the request of LANDLORD, TENANT shall further furnish audited financials and sales reports. At all times during this Lease, LANDLORD shall also have the right to examine and audit all of the books and records of the business operated by TENANT, including, but not limited to, quarterly tax (federal and state) reporting forms, sales tax reports and receipts, inventory purchase records, and sales receipts pertaining to the operation of said business. The covenant of TENANT to pay rent is separate and distinct from other covenants and TENANT shall have no right of set-off or reduction in the payment of rent for any reason. Payments required hereunder shall be in United States currency or its equivalent.

4. **SALES TAX.** In addition to rent specified herein, and other sums of money provided in and by this Lease to be paid by TENANT, TENANT shall pay in advance the full amount of all sales, use, excise, and rental taxes levied, assessed or payable for or on account on

this Lease, or the rent payments contemplated by this Lease, or the rents and other sums of money payable under or by virtue of this Lease.

5. **LATE CHARGES.** In the event any base rent payment due hereunder shall not be paid within ten (10) days after the due date, TENANT shall pay LANDLORD a late charge of five (5%) percent of such late payment.

6. **HOURS OF OPERATION.** At all times during this Lease, TENANT shall be required to operate a first-class restaurant facility with minimum hours of operation from 11:00 a.m. to 10:00 p.m., seven (7) days per week unless agreed otherwise in writing by LANDLORD.

TENANT further acknowledges the need for the continuous and regular operation of its restaurant facility, including the duty to exercise best management practices, and the operation of said business as provided for herein shall be a separate covenant under this Lease. TENANT shall have the right to extend business hours at its election.

7. **COMMON AREA.** The term Common Area: shall mean that part of the entire adjacent marina property owned and operated by the City of Fort Pierce located at One Avenue "A", Fort Pierce, Florida 34950 as designated by LANDLORD or the City from time to time for the common use of all occupants of the Fort Pierce City Marina, including, among other facilities, parking area, walkways, landscaping, and loading areas, all of which shall be subject to LANDLORD's and the City's sole management and control. TENANT and its employees, customers, subtenants, licensees and concessionaires shall have the nonexclusive right and license to the use the Common Area as constituted from time to time, such use to be in common with LANDLORD, other tenants and occupants of the property, and all other persons permitted by LANDLORD or the City to use the same and subject to such reasonable rules and regulations governing the use thereof as LANDLORD may from time to time prescribe, including the

designation of specific areas within the property or in reasonable proximity thereto in which automobiles and vehicles owned or operated by TENANT, its employees, business invitees, and licensees shall travel or be parked. LANDLORD shall operate, maintain and repair the Common Area in such a manner as LANDLORD shall in its sole discretion determine.

8. **INSURANCE.** TENANT shall obtain and keep in force during the term of this Lease a policy of comprehensive general liability insurance in an amount not less than a combined single limit of \$1,000,000.00. TENANT shall also procure and maintain a policy of liquor liability insurance in an amount of \$1,000,000.00. LANDLORD shall furnish a fire insurance policy. TENANT shall furnish LANDLORD with executed Certificates of Insurance showing that such insurance is in full force and effect within thirty (30) days of the execution of this Lease Agreement and shall provide a minimum of thirty (30) days notice to LANDLORD prior to cancellation or termination of any insurance policy. LANDLORD, from time to time, may require evidence of such insurance policies and TENANT shall agree to promptly supply these policies. LANDLORD shall have the right to require TENANT to make reasonable increases to the minimum required limits of insurance during the term of this Lease.

9. **USE OF PREMISES.** TENANT will use and occupy the premises solely as a combined restaurant and bar establishment. TENANT specifically agrees not to conduct its business in a manner that disturbs the quiet enjoyment of other tenants and occupants of the property and agrees to conduct its business in compliance with all applicable laws. TENANT further agrees to keep the premises in a clean and sanitary condition; to comply with all laws, ordinances, rules, regulations, environmental permits, and all other obligations imposed by applicable provisions of building, housing, health and environmental codes of any State or Federal law, regulation, or agency; to make no alterations or additions to the Demised Premises

without the prior written consent of LANDLORD; to commit no waste of the premises; to remove all garbage and other debris which results from the operation of TENANT's business in a clean and sanitary manner and to remove the garbage and debris in conformity with all laws and regulations; to keep all plumbing fixtures used by TENANT clean and sanitary and in repair; to use and operate in a reasonable manner all electrical, plumbing, heating, ventilating, air conditioning and other facilities and appliances; not to destroy, deface, damage, impair or remove any part of the Demised Premises, or property therein belonging to LANDLORD; to direct persons on the premises with TENANT's consent to conduct themselves in a manner that does not unreasonably disturb other tenants or occupants or constitute a breach of the peace; and to surrender the Demised Premises at the termination of this Lease in as good state and condition as reasonable use and wear will have permitted.

10. **MAINTENANCE AND REPAIR.** TENANT shall at all times maintain its restaurant facility(s), and all appurtenances thereof, in a first-class condition and appearance, in compliance with all local, state or federal statutes, codes, ordinances and rules. TENANT shall keep and maintain in good order, condition and repair (which repair shall mean replacement if necessary subject to the provision below regarding structural damage) the foundation, exterior and interior walls, roof, exterior and interior portions of all doors, windows, glass, plumbing and sewage facilities, fixtures, heating, air-conditioning (including exterior mechanical equipment), interior electrical equipment serving the Demised Premises, floors and ceilings, and all other parts of the Demised Premises. LANDLORD shall not be responsible to maintain or to make any improvements or repairs of any kind in or upon the Demised Premises. However because of the age of the premises, if any portion of the structure (including the foundation, walls, second floor to extent it cannot bear weight, etc.) is damaged or any other structural defect arises

rendering the premises uninhabitable or impedes TENANT's ability to safely operate the restaurant, TENANT shall immediately in writing notify LANDLORD. LANDLORD may elect to repair or replace the structural defect by giving TENANT written notice within thirty (30) days of TENANT's notice. If LANDLORD elects to replace/repair the structural damage and the repairs require closure of the restaurant, TENANT's rent shall completely abate during the period of closure. In the event completion of the repairs take more than 180 days from the date of the LANDLORD's notice to TENANT that it is electing to repair the structure, TENANT may elect to terminate the lease by giving written notice to LANDLORD within fifteen(15) days after the expiration of the 180 days.

In the event the LANDLORD elects not to repair or replace the structural defect(s), TENANT may elect to make the necessary repairs at its own expense or terminate the Lease. In the event TENANT elects to terminate the lease, it shall give written notice to LANDLORD within ninety (90) days of the expiration of the thirty (30) day LANDLORD election period above in this Paragraph 10. If TENANT elects to replace/repair the structural damage and the repairs require closure of the restaurant, TENANT's rent shall completely abate during the period of closure. If either LANDLORD or TENANT exercises the option to repair the structural damage, the term of this lease shall be extended by the period of time the repairs required closure of the restaurant.

It is anticipated that TENANT may need to replace certain equipment at the restaurant facility which may include the fire system, kitchen equipment, and similar fixtures which will become a part of the Demised Premises.

If any repairs required to be made by TENANT hereunder are not made within ten (10) days after written notice delivered to TENANT by LANDLORD (or within such shorter period

as LANDLORD should require in the event of an emergency, with or without notice), LANDLORD may, at its option, make such repairs without liability to TENANT for any loss of damage which may result to its stock or business by reason of such repairs, and TENANT shall pay to LANDLORD immediately upon demand as additional rent hereunder, the costs of such repairs plus ten (10%) percent of the amount thereof (for LANDLORD's service and overhead costs). At all times during the term of this Lease, TENANT shall maintain the Demised Premises and operate its restaurant facility(s) and business in a high grade and tasteful manner in order to enhance the image and appearance of the City's adjacent marina facility.

11. **ALTERATIONS.** TENANT shall not make any alterations, additions or improvements to the Demised Premises without the prior written consent of LANDLORD, except for the installation of unattached, movable trade fixtures which may be installed without defacing the Demised Premises. All alterations, additions, improvements and fixtures (other than movable trade fixtures) which may be made or installed upon the Demised Premises shall become the property of LANDLORD upon installation and shall remain upon and be surrendered with the Demised Premises at the termination of the Lease unless LANDLORD requests their removal, in which event TENANT shall remove the same and restore the Demised Premises to the original condition at TENANT's expense. Any linoleum, carpeting or other floor covering which may be cemented or otherwise affixed to the floor of the Demised Premises shall be a permanent fixture and shall become the property of LANDLORD without credit or compensation to TENANT. LANDLORD shall at all times retain sole control of the exterior appearance of the building and the Demised Premises, including but not limited to approval over exterior colors and color scheme for the building and all of its fixtures and appurtenances, to further include all signage.

12. **UTILITIES.** TENANT shall contract, in its own name and shall pay the charge before delinquency, for all utility services rendered or furnished to the Demised Premises, including heat, water, gas, electricity, telephone, garbage and the like, together with all taxes or other charges levied on such utilities.

13. **TITLE TO IMPROVEMENTS.** Title to any building, structure, or other improvements (other than movable trade fixtures) that shall be constructed, installed, or placed upon the Demised Premises shall vest in LANDLORD upon the termination of this Lease or any renewal of extension hereof, and TENANT acknowledges that it shall have no right to remove such fixed and permanent improvements and any fixed appliances, apparatus, or equipment related to the improvements, including all replacements, accessories and modifications thereof from the Demised Premises.

14. **DAMAGE AND OBLIGATION TO RESTORE.** TENANT shall give immediate written notice to LANDLORD of any damage caused to the Demised Premises by fire or other casualty. If the Demised Premises should be: (1) damaged by any uninsured casualty or; (2) be damaged to an extent in excess of fifty percent (50%) of the cost of replacement thereof, LANDLORD may elect either to terminate the Lease or to proceed to rebuild and repair the Demised Premises. Should LANDLORD elect to terminate the Lease, it shall give written notice of such election to TENANT within ninety (90) days after the occurrence of such casualty. Except as otherwise provided herein, in the event the Demised Premises should be damaged by fire or other casualty insurable under standard fire and extended insurance coverage, LANDLORD shall proceed with reasonable diligence to rebuild and repair the Demised Premises. LANDLORD's obligation to rebuild and repair shall be limited to restoring the Demised Premises to substantially return to the condition in which same existed prior to the

casualty, shall be limited to the extent of the insurance proceeds available to LANDLORD for such restoration and, further, shall exclude any obligation with regard to the personal property and trade fixtures of TENANT. In the event LANDLORD should elect to restore the Demised Premises and TENANT should be deprived of the occupancy and use of a portion of the Demised Premises, rent shall be equitably apportioned according to the area of the Demised Premises which is unusable by TENANT, until such time as LANDLORD shall have completed its restoration as provided herein. In the event of total destruction, TENANT's rent shall completely abate from the date of such destruction. In the event any portion of the business property should be damaged to such an extent that LANDLORD, in its sole discretion, should elect to discontinue operation of a business on the Demised Premises, LANDLORD may cancel this Lease by giving written notice to TENANT, and the Lease shall terminate and become null and void.

15. **LIABILITY AND INDEMNIFICATION.** LANDLORD shall not be liable for any damage or injury to any person or property whether it be to the person or property of TENANT, TENANT's employees, agents, guests, invitees, or otherwise, by reason of TENANT's occupancy of the leased premises or because of fire, flood, wind storm, acts of God, or for any other reason, except such damage or injury arising or occurring as a result of LANDLORD's positive acts, negligence, acts or omissions. This paragraph shall apply also to damage caused as previously stated or by frost, steam, excessive heat or cold, falling objects, broken glass, sewage, gas, odors, or noise, or the bursting or leaking of pipes of plumbing fixtures and shall apply equally whether any such damage results from the acts or omissions of other tenants, occupants or of any other person, whether such damage be caused by or result from any other thing or circumstances above mentioned, or any other thing or circumstances, whether of a like or wholly

different nature. TENANT agrees to indemnify and save harmless LANDLORD from and against any and all loss, damage, claim, demand, liability, or expense by reason of damage to person or property which may arise or be claimed to have arisen as a result of the negligent occupancy or use of the Demised Premises by the TENANT, or in any way arising on account of any injury or damage caused to any person or property on or in the Demised Premises as a result of TENANT's negligence, including LANDLORD's attorney's fees and costs, both at the trial and appellate levels.

16. **EMINENT DOMAIN.** If the Demised Premises or any part thereof should be permanently taken, condemned or transferred by agreement in lieu of condemnation for any public or quasi-public use or purpose by any competent authority, whether or not the Lease shall be terminated, the entire compensation award therefore, both leasehold and reversion, shall be the property of LANDLORD without any deduction therefrom for any present or future estate of TENANT, and TENANT hereby assigns to LANDLORD all its right, title and interest to any such award. TENANT shall execute all documents required to evidence such result. TENANT shall, however, be entitled to claim, prove and receive in such condemnation proceedings such award as may be allowed for fixtures and other equipment installed by it, but only if or to the extent such award shall be in addition to the award for the land and the building and other improvements (or portions thereof) containing the Demised Premises.

If the entire Demised Premises should be taken, condemned, or transferred as aforesaid, the Lease shall terminate as of the time possession thereof is required for public sale. If a portion of the Demised Premises should be taken, condemned or transferred as aforesaid, LANDLORD may elect to terminate the Lease or, at its own expense, to repair and restore the portion not

affected by the said taking, in which latter event the minimum rent shall be reduced in proportion to the area taken, effective at the time possession is required for public use.

In the event any portion of the Common Area should be taken to such extent that LANDLORD, in its sole discretion, should elect to discontinue operation of the business, LANDLORD may cancel the Lease by giving written notice to TENANT, and the Lease shall terminate and become null and void ninety (90) days after said notice.

17. **ASSIGNMENT AND SUBLETTING.** The identity and financial standing of TENANT is a material consideration of LANDLORD in entering into the Lease. TENANT shall not voluntarily, involuntarily, or by operation of law assign, sell, mortgage, pledge, or in any manner transfer the Lease or any estate or interest therein or sublet the Demised Premises or any part thereof, or grant any license, concession, or other right to occupy any portion of the Demised Premises without the prior written consent of LANDLORD, which consent LANDLORD may not unreasonably withhold. For purposes of this provision, the sale, transfer, or assignment by any shareholder of TENANT of its shares, or the sale of shares by TENANT to any individual, firm, or entity which results in the transfer of more than forty (40%) percent of the stock of such corporation, or causes the existing shareholders to be less than a majority of the control of the corporation, shall also be considered a transfer of this Lease which shall require LANDLORD's prior written consent. Although TENANT may have the right to mortgage its interest in this Lease, all rights acquired under the leasehold mortgage shall be subject to all of the terms of this Lease. There shall be no subordination of this Lease and the LANDLORD shall otherwise be protected in any financing arrangement. TENANT agrees that any leasehold mortgage it may execute in obtaining financing for the construction and development of the restaurant facility shall contain language incorporating the foregoing provision. Consent by

LANDLORD to one or more assignments or sublettings shall not operate as a waiver of LANDLORD's rights as to any subsequent assignments and subletting. Notwithstanding any assignment or subletting, TENANT and any guarantor of TENANT's obligations under the Lease shall at all times remain fully responsible and liable for compliance with all of the obligations of TENANT, including the payment of rent.

In the event of the transfer and assignment by LANDLORD of its interest in the Lease and in the building containing the Demised Premises, LANDLORD shall thereby be released from any further obligations and TENANT agrees to look solely to such successor in interest for performance of such obligations. Such transfer and assignment, however, shall not affect the validity of this Lease, and TENANT shall continue in possession of the premises subject to all terms and conditions provided in the Lease.

18. **DEFAULT AND REMEDIES.** The occurrence of any one or more of the following events shall constitute a material default and breach of the Lease by TENANT:

- (a) The vacating or abandonment of the Demised Premises by TENANT.
- (b) The failure by TENANT to make payment of rent or any other payment required to be made by TENANT hereunder, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from LANDLORD to TENANT.
- (c) The failure by TENANT to observe or perform any of the covenants, conditions or provisions to be observed or performed by TENANT, other than described in Paragraphs (a) and (b) above, where such failure shall continue for a period of ten (10) days after written notice thereof from LANDLORD to TENANT; provided, however, that if the nature of TENANT's default is such that more than ten (10) days are reasonably required for its cure,

TENANT shall not be deemed to be in default if TENANT commences such cure within said ten day period and thereafter diligently pursues such cure to completion.

(d) If TENANT or any guarantor should commence, in any court pursuant to any statute either of the United States or of any state, an insolvency or bankruptcy proceeding (including, without limitation, a proceeding for liquidation, reorganization or for adjustment of debts of an individual with regular income), or if such a proceeding is commenced against TENANT or any said guarantor and either an order of relief is entered against such party or such party fails to secure a discharge of the proceeding within thirty (30) days of the filing thereof, or if TENANT or any said guarantor becomes insolvent or is unable or admits in writing its inability to pay its debts as they become due, or makes an assignment for the benefit of creditors or petitions for or enters into an arrangement with its creditors or a custodian is appointed or takes possession of TENANT's or any said guarantor's property whether or not a judicial proceeding is instituted in connection with such arrangement or in connection with the appointment of such custodian.

(e) The discovery by LANDLORD that any financial statement given to LANDLORD by TENANT, any assignee of TENANT, any subtenant of TENANT, any successor in interest of TENANT or any guarantor of TENANT's obligations, and any of them, is materially false.

In the event of any default or breach by TENANT, LANDLORD may at any time thereafter, without notice or demand and without limiting LANDLORD in the exercise of any right or remedy which LANDLORD may have by reason of such default or breach:

(a) Declare the entire rent for the balance of the Lease term, or any part thereof, due and payable forthwith, and bring an action for the recovery thereof.

(b) Terminate TENANT's right to possession of the Demised Premises by any lawful means and retake possession thereof for the account of LANDLORD, in which event TENANT shall immediately surrender possession of the Demised Premises to LANDLORD and all further liability under the Lease on the part of the TENANT and LANDLORD shall terminate.

(c) Maintain TENANT's right to possession, in which event the Lease shall continue in effect whether or not LANDLORD shall have abandoned the Demised Premises. In such event, LANDLORD shall be entitled to relet the Demised Premises and to enforce all of LANDLORD's rights and remedies under the Lease, including the right to recover its rent as it becomes due.

(d) Pursue any other remedy now or hereafter available to LANDLORD under the laws and judicial decisions of the State of Florida. In the event of a proceeding involving TENANT under the Bankruptcy Code, 11 U.S.C. §101 et seq., if the Lease is assumed by TENANT's trustee in bankruptcy (after he has cured all existing defaults, compensated LANDLORD for any loss resulting therefrom and provided adequate assurance of future performance), then the lease may not be assigned by the trustee to a third party, unless such party (1) executes and delivers to LANDLORD an agreement in recordable form whereby such party assumes and agrees with LANDLORD to discharge all obligations of TENANT under the Lease, (2) has a net worth and operating experience at least comparable to that possessed by TENANT and any guarantor hereof as of the time of execution of the Lease, and (3) grants to LANDLORD, to secure the performance of such party's obligations under the Lease, a security interest in such party's merchandise, inventory, personal property, fixtures, furnishings, and accounts receivable (and in the proceeds of all of the foregoing) with respect to its operations in

the Demised Premises, and in connection therewith, such party shall execute such security agreements, financing statements and other documents (the forms of which are to be prepared by LANDLORD) as are necessary to perfect such lien.

If the LANDLORD should exercise any of its remedies hereunder, TENANT shall be liable for and shall pay to LANDLORD the costs of removing and storing TENANT's or other occupant's property; the costs of repairing, altering, remodeling or otherwise putting the Demised Premises into condition acceptable to a new tenant or tenants; real estate commissions actually paid; that portion of the leasing commission paid by LANDLORD applicable to the unexpired term of the Lease, if applicable; and all reasonable expenses incurred by LANDLORD, including attorney's fees.

If the Lease should be terminated, or the Lease term should expire, LANDLORD shall have the immediate right thereafter to re-enter the Demised Premises and to remove all persons and property therefrom. Such property may be stored in a public warehouse or elsewhere at the cost of, and for the account of TENANT. In such event, LANDLORD shall not be deemed guilty of trespass or become liable for any loss or damage which may be occasioned thereby.

The rights and remedies granted herein to LANDLORD are distinct, separate and cumulative remedies, and the exercise of any of them shall not be deemed to exclude LANDLORD's right to exercise any or all of the others. All charges payable by TENANT under the terms of the Lease shall be deemed rent for the purpose of LANDLORD exercising its remedies.

No waiver of any covenant or condition or of the breach of any covenant or condition of the Lease shall be taken to constitute a waiver of any subsequent breach of such covenant or condition nor to justify or authorize the nonobservance of any other occasion of the same or of

any other covenant or condition hereof, nor shall the acceptance of rent by LANDLORD at any time when TENANT is in default under any covenant or condition hereof be construed as a waiver of such default or of LANDLORD's right to terminate the Lease on account of such default, nor shall any waiver or indulgence granted by LANDLORD to TENANT be taken as an estoppel against LANDLORD, it being expressly understood that if any time TENANT should be in default in any of its covenants or conditions hereunder, an acceptance by LANDLORD of rent during the continuance of such default or the failure on the part of LANDLORD promptly to avail itself of such other rights or remedies as LANDLORD may have shall not be construed as a waiver of such default, but LANDLORD may at any time thereafter, if such default continues, terminate the Lease on account of such default.

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

TENANT hereby acknowledges that late payment by TENANT to LANDLORD of rent and other sums due hereunder will cause LANDLORD to incur costs not contemplated by the Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on

LANDLORD by the terms of any mortgage covering the Demised Premises. Accordingly, if any installment of rent or any other sum due from TENANT shall not be received by LANDLORD or LANDLORD's designee within ten (10) days after such amount shall be due, TENANT shall pay to LANDLORD a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs LANDLORD will incur by reason of late payment of TENANT. Acceptance of such late charge by LANDLORD shall in no event constitute a waiver of TENANT's default with respect to such overdue amount, nor prevent LANDLORD from exercising any of the other rights and remedies granted hereunder.

19. **LANDLORD SECURITY.** To secure the payment of all rent and other sums of money due and to become due and the faithful performance of the Lease by TENANT, TENANT hereby grants to LANDLORD an express first and prior lien and security interest on all property (including fixtures, equipment, chattels and merchandise) which may be placed in the Demised Premises, and also upon all proceeds of any insurance which may accrue to TENANT by reason of destruction of or damage to any such property. Such property shall not be removed therefrom without the written consent of LANDLORD until all arrearages in rent and other sums of money then due to LANDLORD hereunder shall first have been paid. This lien and security interest is given in addition to the LANDLORD's statutory lien and shall be cumulative thereto. Consequently with the execution of the Lease (or later if requested by LANDLORD at its discretion), TENANT shall execute and deliver to LANDLORD Uniform Commercial Code financing statements in sufficient form so that when properly filed, the security interest hereby given shall be perfected. The lien and security interest created hereby shall be terminated when

all of the rent and other sums of money becoming due during the Lease term shall have been paid in full.

20. **SUBORDINATION AND ATTORNMENT.** The Lease, at LANDLORD's option, shall be subordinate to any ground lease, mortgage or any other hypothecation for security now or hereafter placed upon the real property of which the Demised Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. If any mortgagee or ground lessor should elect to have the Lease prior to the lien of its mortgage or ground lease, and should give written notice thereof to TENANT, the Lease shall be deemed prior to such mortgage or ground lease, whether the Lease is dated prior or subsequent to the date of said mortgage or ground lease.

TENANT agrees to execute any documents required to effectuate such subordination or to make the Lease prior to the lien of any mortgage or ground lease, as the case may be, and failing to do so within ten (10) days after written demand, does hereby make, constitute and irrevocably appoint LANDLORD as TENANT's attorney in fact and in TENANT's name, place and stead, to do so.

Upon request of LANDLORD, TENANT shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by LANDLORD covering the Demised Premises, attorn to the purchaser upon any such foreclosure of sale and recognize such purchaser as LANDLORD under the Lease.

21. **TENANT ESTOPPEL CERTIFICATE.** TENANT shall at any time upon not less than ten (10) days prior written notice from LANDLORD execute, acknowledge and deliver to LANDLORD a statement in writing: (1) certifying that the Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that the

Lease, as so modified is in full force and effect) and the date to which the rent and other charges are paid in advance, if any; (2) acknowledging that there are not, to TENANT's knowledge, any uncured defaults on the part of LANDLORD, or specifying such defaults if any are claimed; and (3) otherwise be in a form reasonably acceptable to LANDLORD. Any such statements may be conclusively relied upon by any prospective purchaser or existing or prospective encumbrancer of the Demised Premises.

If LANDLORD desires to finance, refinance, or sell the Demised Premises, or any part thereof, TENANT hereby agrees to deliver to any lender or purchaser designed by LANDLORD such financial statements of TENANT as may be reasonably required by such lender or purchaser. All such financial statements shall be received by LANDLORD and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

22. **NOTICES.** All notices required to be served upon LANDLORD shall be served by registered or certified mail, return receipt requested, to: CITY OF FORT PIERCE, Attention: City Manager, P. O. Box 1480, Fort Pierce, Florida 34954, with a copy to the Office of the City Attorney, P. O. Box 1480, Fort Pierce, Florida 34954, or such other place as LANDLORD may designate in writing. All notices required to be served upon TENANT shall be served by hand delivery or registered or certified mail, return receipt requested to: IANCO, LLC, Attention: Colin V. Lloyd, 302 South 2nd Street, Fort Pierce, Florida 34950, or such other place as TENANT may designate in writing. All such notices shall be deemed to have been duly given, delivered, or served if and when hand delivered or deposited in the U.S. Post Office, postage prepaid, whether evidence of delivery received is obtained or not obtained.

23. **ACCESS TO PROPERTY.** During the term of this Lease, and any renewal or extension thereof, TENANT shall permit LANDLORD and the agents and representatives of

LANDLORD access to the leased property and licensed area at all reasonable times deemed necessary for the purpose of this Lease, including inspection of all work being performed in connection with the construction of improvements thereon, the management and operation of the restaurant facility, and to assure compliance with all ordinances, statutes and rules and regulations of federal, state and local agencies having jurisdiction.

24. **GENERAL PROVISIONS.** The following general provisions shall be an integral part of this Lease:

(a) TENANT shall not record the lease without LANDLORD's prior written consent, and any such recordation shall, at the option of LANDLORD, constitute a non-curable default of TENANT.

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

(c) The invalidity of any provision of the Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provisions hereof.

(d) Time is of the essence.

(e) The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

(f) Whenever a period of time is prescribed for action to be taken by LANDLORD, LANDLORD shall not be liable or responsible for and there shall be excluded

from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of LANDLORD.

(g) Upon TENANT paying the rent reserved hereunder and observing and performing all the covenants, conditions and provisions on TENANT's part to be observed and performed hereunder, TENANT shall have quiet possession of the Demised Premises, for the entire Lease term, subject to all the provisions of the Lease.

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

(i) Subject to the provisions hereof restricting assignment or subletting by TENANT and regarding LANDLORD's liability, this Lease shall bind the parties, their personal representatives, successors and assigns. The Lease shall be governed by the laws of the State of Florida.

(j) The terms "LANDLORD" and "TENANT", as used herein, denote both singular and plural and all genders. Where "TENANT" consists of more than one person, whether natural or artificial, all the persons constituting "TENANT" shall be jointly and severally liable for all obligations to be performed by TENANT herein.

(k) The Effective Date of the Lease shall be July 1, 2006.

(l) All terms, covenants, and conditions herein contained, to be performed by TENANT, shall be performed at its sole cost and expense, and if LANDLORD shall pay any

sum of money or do any act which requires the payment of money, by reason of the failure, neglect or refusal of TENANT to perform such term, covenant, or condition, the sum of money so paid by LANDLORD shall be deemed additional rent and shall be payable by TENANT with the next succeeding installment of rent together with such interest as may have accrued thereon.

(m) Any amount due to LANDLORD not paid when due shall bear interest at the maximum rate allowable by law accruing from the due date. Payment of such interest shall not excuse or cure any default by TENANT under the Lease.

(n) Notwithstanding anything to the contrary provided in the Lease, it is specifically understood and agreed by LANDLORD and TENANT that there shall be absolutely no personal liability on the part of LANDLORD, or its successors, or any partners or corporate shareholders of LANDLORD, or its successors, with respect to any of the terms, conditions and covenants of the Lease, and that TENANT shall look solely to the interest of LANDLORD in the business for the satisfaction of each and every remedy of TENANT in the event of any breach by LANDLORD of any terms, conditions and covenants of the Lease to be observed or performed by LANDLORD.

25. **JOINT VENTURE.** It is specifically understood and agreed that nothing in this Lease shall be construed as creating a joint venture, partnership, or other relationship between the parties to the agreement other than LANDLORD and TENANT.

26. **ATTORNEY'S FEES AND COSTS.** The prevailing party shall be entitled to an award of all costs, charges, and expenses, including the fees of counsel, agents, and others retained by such party and incurred in enforcing either party's obligations hereunder or in any litigation or appellate proceedings.

27. **PAYMENT.** No payment by TENANT or receipt of payment by LANDLORD of an amount less than the full amount then due LANDLORD under this Lease shall be construed as anything other than a partial payment of the sum then due and owing. No endorsement or statement on any check or letter or any form of payment or accompanying documents shall be deemed to be an accord and satisfaction or other form of settlement, and LANDLORD may accept any such payment without prejudice to its rights to recover the balance of any sums due and owing under this Lease or to pursue any other remedy permitted under this Lease or Florida law.

28. **RADON GAS.** Pursuant to Fla. Stat. Sec. 404.056(8), Radon is a naturally occurring radioactive gas that when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the St. Lucie County Public Health Unit.

29. **LANDLORD'S FURNITURE AND EQUIPMENT.** TENANT acknowledges that certain items of furniture or equipment belong to LANDLORD that are currently located on the premises. Such furniture or equipment shall remain with the Demised Premises when vacated.

30. **INSPECTION.** LANDLORD or its agents shall have the right to enter the Demised Premises at all reasonable hours for the purpose of inspecting or for any other purpose not inconsistent with the terms and provisions of this Lease.

31. **PARTIAL INVALIDITY.** In the event any term, provision, or condition of this Lease shall be adjudged, decreed, held, or ruled to be invalid, such provision or a portion thereof

shall be deemed severable, and it shall not invalidate or impair this Lease as a whole or any other provision of this Lease.

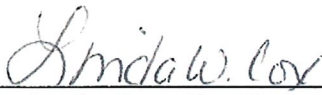
32. **TIME.** Time is of the essence of this Lease and every term and provision of this Lease.

33. **ENTIRE AGREEMENT.** This Lease contains the entire and sole agreement between the parties hereto relative to the rental of the leased premises and it may be modified only by an agreement in writing executed by LANDLORD and TENANT with the same formalities as this Lease. No surrender of the lease premises or of the remainder of the term of this Lease shall be valid unless accepted by LANDLORD in writing. This agreement shall be interpreted and enforced under the laws of the State of Florida. It is agreed and understood that this agreement has been negotiated and drafted jointly and is not to be construed against any party.

IN WITNESS WHEREOF, the parties hereto have signed, sealed, and delivered this Lease as of the day and year first above written.

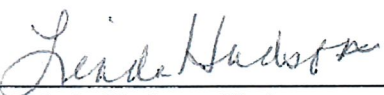
WITNESS AS TO LANDLORD:

ATTEST:

By: 
Linda Cox, City Clerk

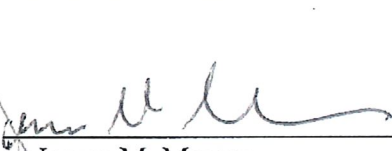
LANDLORD:

**FORT PIERCE REDEVELOPMENT
AGENCY FLORIDA**

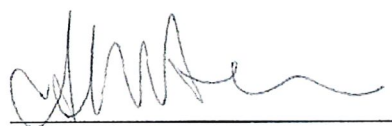
By: 
Linda Hudson, Chairman

Date: 7/17/19

**APPROVE AS TO FORM
AND CORRECTNESS:**

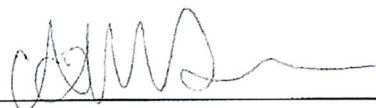
By: 
James M. Messer
City Attorney

WITNESSESS AS TO TENANT:





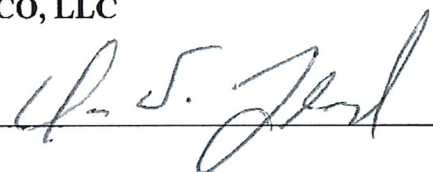
WITNESSESS AS TO GUARANTOR:





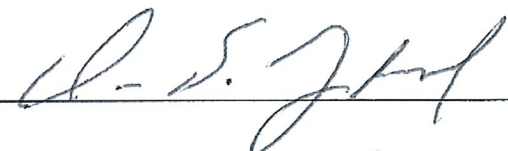
TENANT:

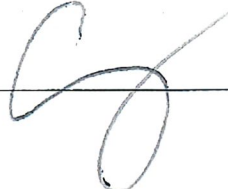
IANCO, LLC

By: 

Date: 7/12/17

GUARANTOR:



7/12/17 

GUARANTEE

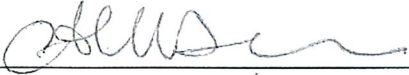
THE UNDERSIGNED, as Guarantor, guarantees all of the obligations of the TENANT under that certain Lease dated the _____ day of _____ having an effective date of July 1, 2006, between **FORT PIERCE REDEVELOPMENT AGENCY, FLORIDA**, a Florida municipal corporation, as LANDLORD, and **IANCO, LLC**, a Florida Limited Liability Company, as TENANT, for the Demised Premises identified therein and located at 200 North Indian River Drive, Fort Pierce, FL 34950, adjacent to the City Marina of the City of Fort Pierce, Florida.

The undersigned, jointly and severally, further confirm and acknowledge the following:

1. The liability of the undersigned is absolute and unconditional irrespective of (i) any lack of validity or enforceability of the Lease; (ii) the existence of any property given as security for, or other guarantee of the Lease; or (iii) any other circumstance which might otherwise constitute a defense available to, or a discharge of, the TENANT in respect of the Lease or the undersigned in respect of this Guarantee.
2. The undersigned has a monetary interest (direct or indirect) in TENANT, and/or in the conduct of the business to the Demised Premises.
3. The undersigned has executed this Guarantee to induce LANDLORD to lease the Demised Premises to TENANT.
4. With regard to obligations of TENANT to pay money, this Guarantee imposes on the undersigned a guarantee of payment and not of collection.
5. LANDLORD has the right to take action against one or more of the undersigned guarantors, if more than one, without affecting the obligations of any other of the undersigned guarantors not being proceeded against.

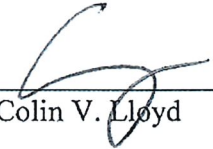
WITNESS our hands and seals this 12th day of July, 2017.

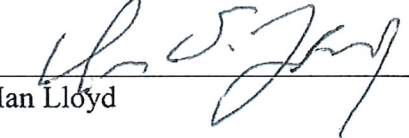
WITNESSES:





GUARANTOR:

By: 
Colin V. Lloyd

By: 
Ian Lloyd