

AMENDED AND RESTATED LEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AGREEMENT made and entered into this 17th day of DECEMBER, 2008 ("Effective Date"), at Venice, Florida, by and between the CITY OF VENICE, a Municipal Corporation, hereinafter called "Lessor" and VENICE PIER GROUP, INC. f/k/a PIER GROUP, INC., a Florida corporation, hereinafter called "Lessee".

WHEREAS, Lessor is the owner of certain lands and improvements located in Sarasota County, Florida, which are more particularly described by the legal description found in Exhibit "A" attached hereto ("Leased Premises" or "Premises"); and

WHEREAS, the Lessee currently Leases land and improvements pursuant to the terms of a Lease dated January 15, 1986, attached hereto as Exhibit "C" ("Prior Lease"); and

WHEREAS, Lessee wishes to extensively alter the existing improvements on the Leased Premises; and

WHEREAS, the parties now desire to enter into this Amended and Restated Lease Agreement to modify and amend the terms and provisions of the Prior Lease and to terminate the Agreement for Alteration of Improvements at Venice Fishing Pier between the parties dated August 31, 2000.

NOW, THEREFORE, in consideration of the rent to be paid hereunder and the other covenants and agreements contained herein, the Prior Lease is hereby amended and restated in its entirety as follows:

1. **TERM.** Lessor does hereby Lease to Lessee, and Lessee does hereby Lease from Lessor, the Leased Premises for a term commencing on the Effective Date of this Lease and ending on January 19, 2016 ("Initial Term") unless otherwise extended as provided herein. Commencing on the date a Certificate of Occupancy is first issued for the

renovated restaurant facility and other improvements as set forth in Paragraph 36 of this Lease ("Extended Term Commencement Date") the Initial Term shall be extended automatically for thirty (30) years ("Extended Term") beginning on the Extended Term Commencement Date and ending thirty (30) years thereafter ("Expiration Date"). Notwithstanding any provision contained in this Lease to the contrary, Lessee shall not have the right to extend the Initial Term of this Lease unless and until Lessee substantially complies with the terms and provisions of paragraph 36 of this Lease.

2. **RENEWAL OF TERM.**

(a) The Lessee is hereby granted the right to renew ("First Renewal Option") the Extended Term of this Lease for a period of five (5) additional years ("First Renewal Period") from the Expiration Date of the Lease on the same terms and conditions as set forth in this Lease except that rent shall be payable according to the provisions of Paragraph 3. Lessee shall notify Lessor by certified mail, return receipt requested, of its election to exercise the First Renewal Option nine (9) months prior to the Expiration Date.

(b) If the Lessee exercises the First Renewal Option, then Lessee shall have the right to renew ("Second Renewal Option") the Lease term and First Renewal Period for an additional five (5) years ("Second Renewal Period") from the expiration of the First Renewal Period on the same terms and conditions as set forth in said Lease, except that rent shall be payable according to the provisions of Paragraph 3. Lessee shall notify Lessor by certified mail, return receipt requested, of its election to exercise the Second Renewal Option nine (9) months prior to the expiration of the First Renewal Period.

(c) It is intended hereby to grant Lessee in addition to the Extended Term, two option periods of five (5) years each, so that Lessee, if it so desires, shall have the privilege and

option of leasing the Premises for a maximum of forty (40) years from the Extended Term Commencement Date.

3. **RENT.** The rent herein specified shall be net to the Lessor in each year during the Initial Term and the Extended Term of this Lease, and all costs, expenses, and obligations of every kind relating to the Premises (except as otherwise specifically provided in this Lease) which may arise or become due during the Initial Term and the Extended Term of this Lease or any renewal term, shall be paid by the Lessee. The net rent shall be paid to the Lessor without notice or demand and without abatement, deduction, or set-off (except as otherwise specifically provided in this Lease).

(a) **Ground Rent.** During the Initial Term of the Lease the Ground Rent to be paid by Lessee to Lessor shall be \$13,454.00 per annum in equal monthly installments of \$1,121.21 in advance on the first day of each calendar month of each Lease year plus applicable sales tax, to be adjusted from time to time as provided in this Paragraph 3 (a). If the Initial Term shall commence on a day other than the first day of a calendar month, then Lessee shall pay, on the Effective Date of this Lease, a pro rata portion of the monthly rent described above, prorated on a per diem basis with respect to such fractional calendar month. Lessor and Lessee hereby covenant and agree that during the Initial Term the ground rental payments provided for in this Paragraph 3(a), shall be subject to adjustment at the end of every three (3) years, based on fluctuations in the revised Consumer Price Index for Urban Wage Earners and Clerical workers (CPI-U) issued by the Bureau of Labor Statistics of the U.S. Department of Labor, effective November 1, 1978, said Index having a value of 100 for the year 1967, hereafter referred to as the 'Index'. The first adjustment shall be made on October 1, 2010 and shall be effective for the ensuing three (3) years. Each rental adjustment shall be the result obtained by multiplying the

then existing annual rental amount by a fraction the numerator of which shall be the Index for the month preceding the month in which the adjustment is made and the denominator of which shall be the Index figure for the month three (3) years preceding the month from which the Index used in the numerator was chosen. It is the parties' intent that rent shall be increased by the same percentage amount as the percent increase in the index during the three (3) years preceding the adjustment. In any event the rent shall not be decreased below the ground rent for the Initial Term. Should the Bureau of Labor Statistics change the manner of computing such Index, the Bureau shall be requested to furnish a conversion factor designed to adjust the new Index to the one previously in use, and adjustment to the new Index shall be made on the basis of such conversion factor. Should publication of such Index be discontinued by the Bureau of Labor Statistics, then such Index as may be published by the United States Government most nearly approximating such discontinued index shall be used in making the adjustment herein provided for. If the United States Government discontinues the publication of any such Index, then the parties shall agree upon the rental adjustments for the ensuing three year term

For the initial year of the Extended Term (commencing on the Extended Term Commencement Date), Lessee agrees to pay to Lessor without any prior demand therefore and without any deduction or set-off whatsoever, and as ground rent, \$108,000.00 per annum in equal monthly installments of \$9,000.00 in advance on the first day of each calendar month of the Lease year, plus applicable sales tax. If the Extended Term shall commence on a day other than the first day of a calendar month, then Lessee shall pay, on the Extended Term Commencement Date, a pro rata portion of the monthly rent described above, prorated on a per diem basis with respect to such fractional calendar month. There shall be a five percent (5%) penalty fee on the rent due if not received by Lessor by the tenth of the month.

(b) **Rent Adjustment.** Lessor and Lessee hereby covenant and agree that the ground rental payments for the Extended Term provided for in Paragraph 3(a) above, shall be subject to adjustment at the end of each year of the Extended Term and any renewal period, based on fluctuations in the revised Consumer Price Index for all urban consumers, all items issued by the Bureau of Labor Statistics of the U.S. Department of Labor, as of the effective date, said Index having a value of 100 for the year 1967*, hereafter referred to as the "Index".

(1) The first adjustment shall be made on the first anniversary of the Extended Term Commencement Date, with subsequent adjustments to be made annually thereafter.

(2) Each rental adjustment shall be the result obtained by multiplying the then existing annual base rental amount by a fraction, the numerator of which shall be the Index for the month preceding the month in which the adjustment is made and the denominator of which shall be the Index figure for the month one (1) year preceding the month from which the Index used in the numerator was chosen.

(3) Should the Bureau of Labor Statistics change the manner of computing such Index, the Bureau shall be requested to furnish a conversion factor designed to adjust the new Index to the one previously in use, and adjustment to the new Index shall be made on the basis of such conversion factor. Should publication of such Index be discontinued by the Bureau of Labor Statistics, then such Index as may be published by the United States Government most nearly approximating such discontinued Index shall be used in making the adjustment herein provided for. If the United States Government discontinues the publication of any such Index, then the parties shall agree on the method of determining the annual rental adjustments for the balance of the Extended Term and any renewal period.

(c) **Percentage Rent.** During the Initial Term of the Initial Lease, in addition to the Initial Ground Rent provided for in Paragraph 3(a) of this Initial Lease, Initial Lessee agrees to pay to Initial Lessor in the manner and the time and condition in the time set forth during each Initial Lease Year, and as percentage rent hereunder, a sum equivalent to the amount of five percent (5%) in excess of \$300,000.00 of gross receipts plus applicable sales tax ("Initial Term Percentage Rent"). The Initial Term Percentage Rent shall be payable pursuant to the terms of this Paragraph 3(c). Lessee's obligation to pay the Initial Term Percentage Rent shall cease upon the Extended Term Commencement Date and thereafter, in addition to the aforesaid minimum ground rent, during the Extended Term or any renewal period Lessee agrees to pay to Lessor, in the manner and upon the conditions and at the time hereinafter set forth during each Lease year, and as percentage rent hereunder, a sum equivalent to the amount of five percent (5%) in excess of \$2,200,000.00 of gross receipts (plus applicable sales tax). Percentage rent shall be payable as hereinafter provided at the office of Lessor or at such other place as Lessor may designate without any prior demand therefore, and without any set-off or deduction whatsoever. The \$2,200,000.00 threshold shall not be increased during the term of the Lease or any renewal or extension thereof.

(1) Percentage rent shall be paid annually on March 1, and the amount shall be determined by the total gross receipts for the prior year ending December 31. At the end of the first calendar year of the Extended Term, the percentage rent shall be prorated from the Extended Term Commencement Date of this Lease to December 31. There shall be a 2% penalty if not paid by the tenth (10th) of March.

(2) The Lessee covenants and agrees to keep and maintain an accurate and true record of the gross receipts and all deductions therefrom permitted by this Lease. The

Lessee shall record all gross sales by depositing same in or through a cash register or similar device and maintaining and keeping cash register tapes or similar records. The Lessee further agrees that it will keep and preserve its records according to standard recognized accounting practices and that the Lessee shall make all of its accounting records conveniently available to the Lessor's Auditor at any reasonable time for the purpose of determining the accuracy of the Lessee's reports of gross receipts and deductions.

(3) As soon as is practicable, but in no event later than April 1 of each year this Lease is in effect, Lessee shall furnish to Lessor financial statements which show the total gross receipts for the prior lease year upon which the percentage rent is calculated.

(4) The term "gross receipts" as used herein, is hereby defined to mean receipts from gross retail sales of Lessee and of all licensees, concessionaires, gross revenue from the bait shop on the pier, and lessees of Lessee, from all business conducted on or from the Leased Premises by Lessee and all others, and whether such sales be evidenced by check, credit, charge accounts, exchange, or otherwise, and shall include, but not be limited to, the amounts received from the sale of goods, wares, and merchandise, and for services performed on or at the Leased Premises, whether such orders be filled from the Leased Premises or elsewhere, and whether such sales be made by means of merchandise or other vending devices in the Leased Premises. If any one or more departments or other divisions of Lessee's business shall be sublet by Lessee or conducted by any person, firm, or corporation other than Lessee, there shall be included in the gross receipts for the purpose of fixing the percentage rent payable hereunder, all the gross sales of such departments or divisions, whether such sales be made at the Leased Premises or elsewhere, in the same manner and with the same effect as if the business or sales of such departments and divisions of Lessee's business had been conducted by Lessee. Gross sales

shall not include fishing pier admission fees, sales of merchandise for which cash has been refunded, or allowances made on merchandise claimed to be defective or unsatisfactory, provided they shall have been included in gross sales. There shall be deducted from gross sales the sales price of merchandise returned by customers for exchange, provided that the sales price of merchandise delivered to the customer in exchange shall be included in gross sales. Gross receipts shall not include the amount of any sales tax for purposes of determining or defining gross receipts only.

4. **TAXES.**

(a) The Lessee shall pay as they become due, promptly and before delinquency, all taxes and assessments upon the Premises, and upon the buildings and improvements thereon, which are assessed during the Initial Term or Extended Term, if any. All taxes assessed during the term but payable in whole, or in installments after the Initial Term or Extended Term, shall be adjusted and pro-rated, so that the Lessor shall pay its pro-rated share for the period subsequent to the Initial Term and Extended Term and the Lessee shall pay its prorated share for the Initial Term and the Extended Term.

(b) The Lessee shall have the right at its own expense and cost, and for its sole benefit, to initiate and prosecute any proceedings permitted by law for the purpose of obtaining an abatement of or otherwise contesting the validity or amount of taxes assessed to or levied upon the Premises and required to be paid by the Lessee hereunder, and to defend any claims for lien that may be asserted against Lessor's estate, and, if required by law, the Lessee may take such action in the name of the Lessor, who shall cooperate with the Lessee to such extent as the Lessee may reasonably require, to the end that such proceedings may be brought to a successful

conclusion. Provided, however, that the Lessee shall fully indemnify and save the Lessor from all loss, cost, damage, and expense incurred or to be incurred or suffered by the Lessor.

(c) The Lessee shall furnish to the Lessor for its inspection, within thirty (30) days after the date any amount is payable by the Lessee, as provided in this paragraph, official receipts of the appropriate taxing authority or other proof satisfactory to the Lessor evidencing payment.

5. **UTILITIES.** Lessee shall fully and promptly pay for all water, sewer, gas, heat, light, power, telephone service, solid waste, recycling and storm water and other public utilities of every kind furnished to the Leased Premises for the benefit of the Lessee throughout the Initial Term and the Extended Term or any extension thereof, and all other costs and expenses of every kind whatsoever of or in connection with the use, operation and maintenance of the Leased Premises and all activities conducted thereon for the benefit of the Lessee, and the Lessor shall have no responsibility of any kind for anything therefore, unless Lessor is specifically charged with the responsibility therefore. All utilities for the Leased Premises shall be metered separately. Lessee shall pay for exterior lighting used in connection with its concession and restaurant operation. Lessor shall pay for water and electricity furnished to the Fishing Pier and parking lot. The public restrooms shall be separately metered for water and electricity, and the Lessor shall pay the water, sewer and electricity charges for said facilities.

6. **USE OF PREMISES.** The Leased Premises are to be used by Lessee for the purposes set forth herein:

(a) **Restaurant.** The Lessee will operate a full service restaurant on a continuous basis during the Initial Term and the Extended Term and any extension thereof. The restaurant shall be open a minimum of six (6) days per week. Hours of operation shall be as

agreed between Lessee and Lessor. The Lessee may sell or serve alcoholic beverages for consumption on the Leased Premises. The Lessee may establish a dress code for the restaurant area. The restaurant may be closed for two (2) weeks each year between June 1 and October 1 for vacation or renovation, unless a greater time for renovation or repair is agreed upon, in writing, by the parties.

(b) **Fishing Pier Concession.** The Lessee agrees to operate a fishing pier concession on a continuous basis during the Initial Term, the Extended Term or any extension thereof upon the following terms and conditions:

(1) Lessee shall provide food service to the general public, and may operate a retail concession. Lessee may also rent fishing tackle, sun umbrellas, beach equipment and beach furniture, as allowed by City permits.

(2) The prices charged by Lessee for services, food and drinks, shall be reasonable and shall not be materially in excess of prices prevailing elsewhere for the same kind and quality of service. The quality of service, food, and articles provided by Lessee shall be fit for the ordinary purposes for which such are used, and shall be at least such quality so as to pass without objection in the usual trade.

(3) At no time shall Lessee sell or give away any alcoholic beverages except as may be lawfully allowed to be served and consumed on the Leased Premises to be operated by Lessee. Lessee shall not allow any person to live or sleep on the premises nor shall it permit disorderly persons to remain upon or loiter within the Leased Premises. Lessee shall not use or permit the Premises to be used for any other purpose, or for any unlawful, immoral or indecent activity.

(4) Lessee may operate said concession, twenty-four (24) hours a day or any part thereof, weather permitting. Lessee shall operate said concession from sunrise to sunset at a minimum, except May 1 to October 1, when it shall be operated at least from 8:00 a.m. to 6:00 p.m., or such other hours as may be agreed to in writing between the parties. The Lessee shall operate the concession Monday through Sunday during each and every week of the Initial Term, the Extended Term or any extensions thereof except that the concession may be closed for two (2) weeks each year between June 1 and October 1 for vacation or renovation.

(c) **Outdoor Entertainment.** Lessee shall have the right, during the Initial Term, the Extended Term or any renewal thereof, to have outdoor entertainment on the Leased Premises, in compliance with applicable City of Venice ordinances.

(d) It is understood that the Fishing Pier concession and restaurant are located at a popular municipal facility. It shall be a breach of this Lease for the Lessee to repeatedly fail to provide prompt, clean and friendly service to the general public using the Fishing Pier and the facilities leased hereunder.

7. **LIENS.** Lessee shall save harmless and indemnify the Lessor from and against any claim of lien, materialmen's or labor lien or any lien of whatever nature that may be imposed against said property due to any construction or placing of any improvements by Lessee on the Property.

8. **MAINTENANCE OF IMPROVEMENTS:** Lessee shall, throughout the Initial Term, Extended Term, and any extension thereof exercised pursuant to Paragraph 2 of this Lease, at its own costs, and without any expense to the Lessor, keep and maintain the Leased Premises, including all buildings and improvements of every kind which may be a part thereof, and all appurtenances thereto, in good, sanitary and neat order, condition and repair, and, except

as specifically provided herein, restore and rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty or any other cause whatsoever, ordinary wear and tear excepted. Lessor shall not be obligated to make any repairs, replacements, or renewals of any kind, nature or description whatsoever to the Leased Premises or any buildings or improvements thereon, except as otherwise provided herein. The Lessor shall make any repairs needed to the existing seawall and, in the event of sand or soil loss due to erosion or wave action, shall maintain or restore the sand or soil to the presently existing grade within the Leased Premises, which obligations shall be subject to the availability of necessary permits, which it will vigorously pursue. Other than the aforesaid limited obligations to repair the existing seawall and restore the grade, the Lessor shall have no responsibility for any damages caused by wind, erosion or wave action. If any damage is caused to the existing seawall by the actions or the inaction of the Lessee, the Lessee will be responsible for the costs of the repairs to the existing seawall. Lessee shall permit, maintain and allow public access across the Leased Premises to the pier and beach areas from the parking lot. Notwithstanding anything herein to the contrary, Lessee shall be responsible and shall make any repairs needed to any additional seawall constructed by it.

9. **LANDSCAPING AND GENERAL MAINTENANCE.** The Lessee shall perform all general maintenance on all grounds located within the Leased Premises and also the "Additional Area of Landscaping and General Maintenance" as shown within the designated area on Exhibit "B" attached hereto. Lessee's general maintenance responsibility shall include maintenance of all wooden walkways, landscaping, plants, trees, and shrubbery within such areas, and Lessee shall maintain all trash receptacles located on the pier, and pressure wash the pier, deck and rails at least every four (4) months.

10. **SOLID WASTE REMOVAL.** The Lessor shall be responsible for all solid waste collection from the surrounding beach recreation area. Lessee shall pay all charges associated with a solid waste dumpster to be located on the Leased Premises which dumpster shall be for the exclusive use of Lessee in connection with its concession and restaurant operations in the Leased Premises and receptacles located on the Fishing Pier. Lessor shall have the right to approve the type, size and location of the solid waste dumpster.

11. **MAINTENANCE OF PUBLIC RESTROOM FACILITIES.** Lessor has constructed public restrooms separate from the restaurant facility, and Lessor shall provide all supplies and materials, such as paper products, cleaning products and cleaning supplies for the use of the public restroom facilities (at the pavilion) which facility shall continue to be available for the use of the general public. Lessor shall make any subsequent improvements to the public restroom facilities caused by code or ordinance amendments from the federal, state or local government entities. Lessor shall maintain and repair the public restroom facilities. Lessee shall be responsible for all maintenance, repair, cleaning and improvements required by code or ordinance amendments of the public restrooms constructed on the Leased Premises by Lessee.

12. **PARKING.** The Lessor shall repair, replace and maintain the parking areas and all concrete sidewalks as depicted on Exhibit-"B" hereto, in good condition and repair. No fees can be charged for restaurant parking. The Lessee may designate a space in the parking lot near the restaurant for deliveries.

13. **FISHING PIER CONCESSION.** The Lessee shall maintain and operate the "Fishing Pier Concession" as shown on the attached Exhibit "B". If the Fishing Pier Concession is damaged or destroyed, Lessee will repair or reconstruct the Fishing Pier Concession if permittable.

14. **SIGNS.** Lessee agrees that it will not display, erect, or affix any lettering, signs, posters, streamers, placards, or any other like advertising media on or about the Leased Premises, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. Lessor acknowledges that Lessee shall be entitled to erect and maintain a sign along the easterly boundary of the Leased Premises (along Harbor Drive), and erect and maintain a sign at the corner of Beach Road and Harbor Drive, in compliance with the City of Venice ordinances. The size, location, type, and message of such sign must be approved by Lessor. Lessee shall pay all costs associated with the erection and maintenance of any approved sign or signs during the Initial Term, the Extended Term or any extension thereof.

15. **NON-COMPETITION.** From the Extended Term Commencement Date and for a period of ten (10) years thereafter, Lessor will not rent, own or allow to be operated on its property, whether owned, leased or managed by Lessor, another restaurant from Beach Road on the North to the City limits on the South, and from the waters of the Gulf of Mexico on the West to Harbor Drive. Lessee, in this geographically described area shall have the exclusive right to operate a restaurant. Lessee shall also have the exclusive right to food sales and concessions within the Leased Premises and the adjacent parking lot, to include the beach area adjacent to the Leased Premises and the adjacent parking lot. Since it maybe difficult to assess a damage amount if this provision is violated, Lessee shall have the non-exclusive right to an injunction to require the business to cease operation against the Lessor and any person or entity conducting such a business.

16. **DEFAULT.** The happening of any one or more of the following events (hereinafter referred to as events of default) shall constitute a breach of this Lease on the part of the Lessee.

(a) The failure of Lessee to pay any rent or other amounts or charges due under this Lease and the continued failure to pay same for a period of five (5) days after the grace period.

(b) The making by Lessee of a special assignment for the benefit of creditors. The filing by or against Lessee of a petition to have Lessee adjudged bankrupt or of a petition for reorganization under bankruptcy law, the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets or of Lessee's interest in this Lease.

(c) The failure of Lessee to regularly, diligently and efficiently operate the facility and its related activities for which the Premises are leased.

(d) The Failure of Lessee to correct a breach of this Lease, after having written notice of such breach, of any of the rules, regulations, laws or ordinances regulating Lessee's performance of its duties and responsibilities hereunder.

(e) The failure of Lessee to fully and promptly perform any act required of it in the performance of this Lease or to otherwise comply with all of the terms and covenants and conditions hereof.

(f) The levy of execution or attachment of the leasehold interest of Lessee by process of law or otherwise in satisfaction or partial satisfaction of any judgment, debt or claim; provided Lessee shall have the right to contest any such action against it and during the period of contest, no breach shall occur as a result of any such action.

Lessee shall not be deemed in default under the Lease in the payment of rent or the payment of any other monies required in this Lease, or in the furnishing of any bond or insurance policy when required unless Lessor shall first give to Lessee written notice of the default and Lessee fails to cure the default within five (5) days.

Except as to the provisions or event set forth in the preceding paragraph of this section, Lessee shall not be deemed in default under the Lease unless Lessor first gives to Lessee written notice of default, and Lessee fails to cure the default within a ten (10) day period or, if the default is of such a nature that it cannot be cured within ten days, Lessee fails to commence to cure the default within such ten (10) days or fails to proceed to the curing of the default with all possible diligence. In the event the default is not cured, the Lessor may, at its option, pursue any one or more of the following: (1) terminate this Lease and the same shall end as if terminated by lapse of time and Lessor may re-enter and take possession of the Leased Premises, and all equipment therein, or (2) terminate Lessee's right to possession and occupancy of the Leased Premises without terminating this Lease and in that event the same shall be effective as of the date of written notice of Lessor's election given to Lessee at any time after the date of such event or default, or (3) take any other action permitted by law. Upon any termination of the said terms, whether by lapse of time or otherwise, or upon any termination of Lessee's right to possession or occupancy of the Premises without terminating the Lease, Lessee shall promptly surrender possession and vacate the Premises and Lessee hereby grants to Lessor full and free license to enter into and upon the Premises and the improvements situated thereon in such event with process of law and to expel and to remove therefrom any and all property using for such purpose such force as may be allowed by law, and Lessor shall not be guilty of or liable for trespass, eviction or forcible entry or detainer and said re-entry shall be without relinquishing Lessor's right to rent or any other right given to Lessor hereunder or by operation of law.

17. **LESSOR'S RIGHT TO CURE LESSEE'S DEFAULTS.** If Lessee shall at any time be in default in the payment of any impositions, taxes, insurance premiums, or other amounts to be paid by it hereunder, or in the performance of any other act on its part to be

performed hereunder, Lessor, in addition to invoking any other remedy for such default, may, but shall not be obligated to, pay any such imposition, tax, insurance premium, or other amount or, after giving Lessee ten (10) days' prior written notice, perform such other act on the part of Lessee to be performed, in such manner and to such extent as Lessor may deem desirable, and may pay any expenses incidental thereto. All sums so paid by Lessor shall constitute additional rent payable on demand. Failure to make such payments on demand shall constitute a new default by Lessee and Lessor shall have the same rights and remedies as in the case of default by Lessee in the payment of any installments of rent.

18. **WAIVER OF DEFAULT.** No waiver by the parties hereto of any default or breach of any term, condition, or covenant of this Lease shall be deemed to be a waiver of any other breach of the same or any other term, condition, or covenant contained herein.

19. **INSURANCE.**

(a) The Lessee shall procure and maintain, throughout the term of this Lease, unless otherwise specified, insurance listed below. The policies of insurance shall be primary and written on forms acceptable to the Lessor and placed with insurance carriers approved and licensed by the Insurance Department in the State of Florida and meet a minimum financial AM Best and Company rating of no less than A:VII. No changes are to be made to these specifications without prior written specific approval by the Lessor.

(1) **PROPERTY** – Coverage against loss or damage by fire, flood, and such other risks as may be included in a broad form of extended coverage insurance from time to time available in amounts sufficient to prevent the Lessor or the Lessee from becoming a co-insurer within the terms of the applicable policies, and in any event, in an amount not less than 80% of the then full insurable value of the building and improvements on the Leased Premises, if

obtainable. Flood insurance shall be required only if it is obtainable and the cost is reasonable. The term "full insurable value" shall mean the actual replacement cost and shall be determined whenever reasonably requested by the Lessor.

(2) **COMMERCIAL GENERAL LIABILITY** – Including but not limited to bodily injury, property damage, contractual, products and completed operations, and personal injury with limits of not less than \$3,000,000 per occurrence, \$3,000,000 aggregate.

(3) **WORKERS COMPENSATION** – Lessee will provide Workers Compensation Insurance, on behalf of all employees, as required under Florida Laws, Chapter 440, and Employers Liability with limits of not less than \$100,000 per employee per accident; \$500,000 disease aggregate; and \$100,000 employee per disease.

(b) All policies, required by this contract, with the exception of Workers Compensation, or unless specific approval is given by the Lessor, are to be written on an occurrence basis, shall name the City of Venice, its Elected Officials, Officers, Agents, Employees as additional insured as their interest may appear under this Lease. Insurer(s), with the exception of Worker Compensation, shall agree to waive all rights of subrogation against the City of Venice, its Elected Officials, Officers, Agents and Employees.

Each insurance policy required by this Lease shall:

(1) Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.

(2) Be endorsed to state that coverage shall not be suspended, voided or canceled by either party except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to the City of Venice Risk Manager.

(c) The Lessor shall retain the right to review, at any time, coverage, form, and amount of insurance.

(d) The procuring of required policies of insurance shall not be construed to limit Lessee's liability nor to fulfill the indemnification provisions and requirements of this Lease.

(e) Unless otherwise specified, the Lessee shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this contract and shall be solely responsible for the payment of any deductible and/or retention to which such policies are subject, whether or not the Lessor is an insured under the policy.

(f) Certificates of Insurance evidencing insurance under this Lease are to be furnished to the City's Risk Manager (401 West Venice Avenue, Venice, FL 34285) a minimum of thirty (30) calendar days prior to expiration of the insurance contract when applicable.

20. **INDEMNIFICATION OF LESSOR.** Lessor shall not be liable for any loss, injury, death or damages to persons or property which at any time may be suffered or sustained by Lessee or by any person whosoever may at any time be using or occupying or visiting the Leased Premises or be in, on or about the same, whether such loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Lessee or of any occupant, visitor or user of any portion of the Premises, or shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth, and Lessee shall save harmless and indemnify Lessor from and against all claims, liability, loss or damage whatsoever on account of any such loss, injury, death or damage, provided that Lessee's indemnity obligations under this Lease shall not exceed

\$3,000,000.00 per occurrence. Lessee hereby waives all claims against Lessor that may arise out of the current condition of the Premises or any improvements thereon.

21. **CONDEMNATION.**

(a) In the event of the taking of part or all of the Premises or improvements located thereon, in any proceedings for condemnation or eminent domain (or any conveyance by Lessor to avoid legal proceedings, which Lessee shall be immediately notified of) all parties hereto, including any mortgagee, shall be entitled to such rights as provided to each of them by Florida law. If only a portion of the Premises shall be so taken, then this Lease shall continue in full force and effect; provided, however, if the part of the Premises so taken shall contain more than twenty percent (20%) of the total area of the Premises immediately prior to such taking, then the Lessee, at its option, may give the Lessor thirty (30) days notice of termination of this Lease.

(b) If Lessee exercises its option to terminate, it shall be released from payment of any rents, taxes, or other obligations under the Lease and from any further liability for the payment of any rent or the performance of any conditions thereunder.

(c) If the Lessee does not exercise its option to terminate or if the taking is of less than twenty percent (20%) of the total area of the Premises immediately preceding such taking, then all of the terms and conditions of the Lease shall continue in full force and effect except that Lessee shall be entitled to a rental adjustment throughout the remaining term of the Lease and any extension thereof, said rental adjustment to accurately reflect the decreased value of the leasehold interest for which Lessee has not been fully compensated.

22. **DAMAGE TO AND DESTRUCTION OF IMPROVEMENTS.** The damage, destruction, or partial destruction of any building or other improvement which is a part of the

Premises shall not release Lessee from any obligation hereunder, except as hereinafter expressly provided. In case of damage to or destruction of any such building or improvement, Lessee shall at its own expense promptly repair and restore the same to a condition as good as or better than that which existed prior to such damage or destruction. If the buildings or improvements cannot be restored because the Leased Premises do not exist or the buildings or improvements are not permittable or cannot be rebuilt for any reason, the Lessee may terminate this Lease. Without limiting such obligations of Lessee, the proceeds of any insurance covering such damage or destruction shall be made available to Lessee for such repair or replacement, or for compensation if the Lease is terminated as provided herein.

23. **FORCE MAJEURE.** In the event that the obligation of any party to this Lease shall be impossible to perform by reason of an act of God, or the elements, shortage or unavailability of necessary materials, supplies, or labor, shortages or interruptions of transportation facilities, or because of applicable governmental regulations or restrictions, including zoning ordinances applicable to the premises, or other cause beyond the affected party's control, then in such event the time for performance of the obligation of the party so affected shall be extended until the termination of such cause beyond such party's control.

24. **LESSEE'S RIGHTS IF FISHING PIER IS CLOSED.** Lessee's rights to recover damages from Lessor resulting from the closing of the Fishing Pier by reason of damage or destruction shall be limited to those rights described herein:

(a) Lessor acknowledges that neither the restaurant, nor any portion thereof, will be closed for repairs to the Fishing Pier.

(b) In the event the restaurant is not reasonably accessible to the public for more than five (5) consecutive days, then Lessee shall be entitled to a rent abatement for the entire period of such inaccessibility.

(c) In the event of a serious red tide outbreak lasting more than thirty (30) consecutive days, the Lessee may apply to the City Council for a rent abatement or adjustment for the period of time when red tide related odor or health considerations substantially impaired the gross revenues of the Lessee. The Lessee may, with the prior written approval of the City Manager, temporarily suspend or curtail all or a portion of concession or restaurant operations during a period of serious red tide outbreak.

25. **OBLIGATION AND SUBORDINATION TO OBEY THE LAW.** The Lessee at all times shall obey and promptly comply with all present and future laws and ordinances of the Federal Government, the State of Florida, and the City of Venice respecting the condition of the Premises; the use made thereof and the business conducted thereon or in connection therewith, and with all lawful orders, regulations and requirements of all government authorities or agencies which may have jurisdiction. The Lessee shall not use or permit the Premises to be used, for any unlawful or immoral purpose, or do in or upon or about said Premises, or permit the doing therein or thereon or thereabout, of anything which tends to create a nuisance; and the Lessee further covenants that it will, at all times, obey and promptly comply with the lawful rules and regulations as promulgated, from time to time, by the Lessor or the Federal Aviation Administration and its successors, which regulate and apply to the use of this Leased Premises for governmental aviation purposes or governmental aviation uses. The provisions of this Lease shall be subordinate and subject to the terms of any agreement required as a condition precedent in obtaining federal aid for airport development, operation or

maintenance. This Lease is also subject in all respects to the terms and conditions under which the Lessor holds the Premises from the United States of America, and shall be cancelled if and when the Lessor's tenure is thereby terminated without further obligation on the part of either party to the other except as to past performance hereunder; provided, however, that in the event the Lessor's tenure is terminated due to the fault of the Lessor, then Lessee shall be entitled to compensation as provided by law.

26. **NON-DISCRIMINATION.**

(a) Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that:

(1) No person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination in the use of the Lessor's facilities;

(2) In the construction of any improvement on, over, or under such Leased Premises, and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied benefits of, or otherwise be subject to discrimination; and

(3) Lessee shall use all Lessor's areas in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation Subtitle A, Office of the Secretary, Part 21, non-discrimination in Federally assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as those Regulations may be amended.

(4) Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subject. Lessee assures that it will require that it is covered by this subject. Lessee assures that it will require that its covered suborganizations provide assurances to the Lessor and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

(b) In the event of a breach of any of the above non-discrimination covenants, Lessor shall have the right to terminate this Lease. This subsection (b) shall not be effective until the procedures of 49 CFR 21 are followed and completed, including exercise or expiration of appeal rights.

27. **NOTICES.** Any notice under this Lease shall be in writing and shall be delivered personally or by certified mail, return receipt requested, to the address of the party designated in this Lease or to such other address as either party may from time to time designate by giving notice. The Lessor hereby designates its address as 401 West Venice Avenue, Venice, Florida 34285. The Lessee hereby designates its address as 1600 South Harbor Drive, Venice, Florida 34285.

28. **ASSIGNMENT.** Lessee shall not assign this Lease, or an interest therein, without the prior written consent of Lessor, which shall not be unreasonably withheld, and a consent to an assignment shall not be deemed to be a consent to any subsequent assignment. It is anticipated that the Lessee may sublease or assign this Lease to a corporation or other legal

entity. Neither this Lease nor the leasehold estate of Lessee nor any interest of Lessee hereunder in the Leased Premises or any buildings or improvements thereon shall be subject to involuntary assignment, transfer or sale, or to assignment, transfer or sale by operation of law in any manner whatsoever, and any such attempted involuntary assignment, transfer or sale shall be void and of no effect and shall, at the option of Lessor, terminate this Lease.

29. **SURRENDER UPON TERMINATION.** Lessee, on the expiration or the sooner termination of the Lease, shall surrender to Lessor the Premises, including all buildings, replacements, changes, additions and improvements constructed or placed by the Lessee thereon, with all equipment in or appurtenant thereto, free of subleases, and in good condition and repair, reasonable wear and tear excepted. Lessee may remove all movable fixtures, including equipment. Any fixtures, furniture, or personal property belonging to the Lessee or to any sublease, if not removed at such termination and if the Lessor shall so elect, shall be deemed abandoned and become the property of the Lessor without any payment or offset therefore. Lessee shall have thirty (30) days after the termination or expiration of this Lease to remove its property.

30. **RIGHTS AND REMEDIES CUMULATIVE.** The rights and remedies provided by this Lease are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to sue on any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

31. **QUIET POSSESSION.** The Lessee, so long as it shall not be in default hereunder, shall peaceably and quietly hold and enjoy the Premises for the Initial Term, the Extended Term and any extensions therefore.

32. **ATTORNEY'S FEES.** In the event Lessor or Lessee breaches any of the terms of this Lease whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other's reasonable attorney's fees, costs and expenses so incurred by such other party including any attorney's fees, costs and expenses incurred in appellate proceedings.

33. **ENTIRE AGREEMENT.** This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing signed by the parties.

34. **FUTURE COLLECTION OF FISHING PIER ADMISSION FEES.** In the event Lessor decides to charge admission fees to the Venice Fishing Pier, Lessee shall collect and pay to Lessor, in the manner and upon the conditions and at the time hereafter set forth, an amount equal to one hundred percent (100%) of collected fishing pier admission fees up to \$20,000.00. The Lessee shall also pay Lessor fifty percent (50%) of all fishing pier admission fees collected in excess of \$20,000.00. The annual term for calculating total admission fees shall commence January 1 of each year and end on December 31 of said year. Said fishing pier admission fees shall be payable as hereinafter provided at the office of Lessor or at such other place as Lessor may designate without any prior demand therefore, and without any set-off or deduction whatsoever.

Lessee shall, commencing within thirty (30) days after Lessor notifies Lessee in writing that Lessor intends to charge admission fees to the Venice Fishing Pier, sell consecutively numbered adult and child admission tickets to the fishing pier which tickets shall be provided to Lessee by Lessor. Each person admitted to the fishing pier shall be issued an admission ticket to the pier upon payment of the admission fee. Lessee shall initially be provided

with 1,000 admission tickets prior to the issuance of additional admission tickets. Lessee shall pay to Lessor any amount due Lessor as fishing pier admission fees. Notwithstanding the foregoing, said fishing pier admission fees shall be payable no less frequently than monthly. On or before the third (3rd) day of each month following the month in which admission fees start being charged and on or before the third (3rd) day of each month thereafter, to and including the month following that in which the term of this Lease terminates, Lessee shall deliver to Lessor a complete written statement showing in reasonable detail the amount of receipts for the preceding month including a report of the ticket numbers which correspond to the receipts and such other detail as the Lessor may from time to time require. The Lessee further agrees that it will keep and preserve its records according to standard recognized accounting practices and that Lessee shall make all of its accounting records conveniently available to Lessor's auditor at any reasonable time for the purpose of determining the accuracy of Lessee's reports of fishing pier admission fees. Lessor shall have the right to conduct unannounced inspections of Lessee's accounts and admission tickets for the purposes of determining compliance herewith.

(b) The Lessor shall establish the charges for fishing pier admission which are initially set at \$1.00 per adult and \$.50 for children under 12 years of age and shall remain as such until changed by Lessor. In the event that the admission fees are raised or lowered in the future, the parties shall still split equally all fishing pier admission fees collected in excess of \$20,000.00.

(c) Lessor shall have the option of designating not more than five (5) free admission days and on such days no fishing pier admission fees shall be collected by Lessee. Lessor shall give Lessee at least thirty (30) days advance written notice of any such free admission days.

(d) The Lessor may establish discount rates for annual, seasonal or multiple admissions to the fishing pier. It is contemplated that any such special admission packages will be detailed by a supplemental written agreement between the Lessor and the Lessee providing that the Lessee shall sell such special admission packages and that the proceeds of same shall be included in the fishing pier admission fee calculations.

(e) The Lessor shall pay the cost of providing an electric gate or other suitable security device to assist the Lessee in maintaining control of admission onto the fishing pier.

35. **PARKING LOT LICENSE.** Lessor hereby grants to Lessee a non-exclusive license for Lessee and its invitees, customers and employees, to use up to 134 parking spaces in the parking area described on Exhibit "B" to this Lease at all times. This license shall remain in full force and effect throughout the entire Initial Term and the Extended Term and any extensions thereof. Lessor shall not prevent, impair or interfere with Lessee's use or its invitees', customer's or employee's use of such parking spaces without Lessee's prior written consent, which shall not be unreasonably withheld.

36. **LESSEE'S CONSTRUCTION.** The Lessee shall expand and remodel the existing restaurant located on the Premises to provide a seating capacity of not less than 350 seats and not more than 400 seats. The Lessee shall prepare the necessary plans and specifications with input from the Lessor. The architectural design and the quality of construction shall be similar to that of the existing restaurant on the Premises. The parties acknowledge that construction shall be within the legal description of the Premises. Approval of the final plans and specifications by the Lessor is required prior to the commencement of permitting and construction and such approval shall not be unreasonably withheld. The Lessee shall obtain approval of the final plans and specifications and issuance of all permits necessary

for construction of the project within 48 months from the Effective Date of this Lease. Substantial completion of the project, which shall be evidenced by the issuance of a Certificate of Occupancy for the project, must be achieved within 72 months from the Effective Date of this Lease. The Lessee shall be solely responsible for all costs associated with design, engineering, plan and specification approval, permitting and construction related to the expansion and remodeling of the existing restaurant. Furthermore, although the Lessor shall not require the Lessee to construct an extension of the existing seawall, in the event the Lessee decides to extend or construct the seawall, same shall be subject to all administrative and governmental conditions and approvals, and the Lessee shall be solely responsible for all costs associated with the design, engineering, planning, permitting, approvals and construction.

The parties recognize that obtaining approval of the plans and specifications and the issuance of permits necessary for the construction contemplated by this Lease will require cooperation and good faith between the parties, and the Lessor agrees to work with the Lessee to facilitate the approval of plans and specifications by all necessary agencies, in an expedited manner. To facilitate the approval process, the parties agree to the following schedule:

(a) The Lessee shall submit a preliminary concept plan for review by the Lessor. The concept plan shall be considered by the City Council within thirty (30) days of submittal at which time the Lessor will confirm approval or identify any required changes to the concept plan. The Lessee shall have sixty (60) days thereafter within which to submit a revised concept plan. Within thirty (30) days of the Lessor's receipt of the revised concept plan, the Lessor shall either confirm compliance and acceptance of the revisions, or identify any additional changes. The Lessee shall have thirty (30) days within which to submit a revised concept plan

incorporating reasonable requested changes which the Lessor shall approve within thirty (30) days after receipt.

(b) Within ninety (90) days from the Lessor's approval of the concept plan, the Lessee shall submit 30% completed construction drawings consistent with the approved concept plan. Within thirty (30) days of receipt of same, the Lessor shall either confirm approval or identify any required changes. The Lessee shall have sixty (60) days thereafter within which to submit revised construction drawings and the Lessor shall have thirty (30) days from receipt of the revised construction drawings to confirm compliance with the required provisions or identify any reasonable additional changes. The Lessee shall have thirty (30) days within which to submit the revised construction drawings incorporating the requested changes which the Lessor shall approve within thirty (30) days after receipt.

(c) The process and time frames identified in subparagraph b above shall also apply to the submission of the 50% completed construction drawings and the 100% completed construction drawings. The 100% completed construction drawings shall be consistent with the prior approved percentage construction drawings, and the Lessor shall have thirty (30) days from receipt of the 100% completed construction drawings within which to approve or reject same. Said review and permitting by the Lessor shall be under the terms and provisions normal and customary for such permitting for similar projects.

(d) The Lessee shall make all submissions in a timely manner so as to comply with the forty-eight (48) month and seventy-two (72) month deadlines referenced above and its failure to do so shall not in and of itself justify an extension of said deadline.

However, nothing herein requires or guarantees that the concept plan and various percentages of completed construction drawings will receive all necessary approvals, but the

Lessor shall not unreasonably withhold approvals. If the Lessee is delayed in complying with the above referenced time deadlines, and the delay is not the fault or neglect of the Lessee, and upon a showing of good cause by the Lessee, the Lessor shall extend the above referenced timelines for a period equal to the delay.

The Lessee, at its sole expense, shall be required to construct public restrooms as part of the restaurant expansion.

The Lessor has completed construction of improvements within the adjoining public parking lot consisting of a pavilion with public restrooms, 373 parking spaces, lighting, landscaping, a stormwater system and festival facilities. The Lessee shall pay Lessor \$615,000.00 as its contribution towards the cost of the aforementioned improvements ("Lessee Contribution"). One-half of Lessee's Contribution shall be paid by Lessee to Lessor on or before May 1, 2009, with the balance of Lessee's Contribution payable to Lessor on or before May 1, 2010. The payment of Lessee's Contribution shall be required regardless of whether Lessee proceeds with the restaurant expansion, and such payment is non-refundable once paid. Lessee shall also maintain all landscaped areas on the Premises as shown on Exhibit "B" attached hereto. Lessee shall also maintain all trash receptacles located on the Fishing Pier and shall pressure wash the Fishing Pier deck and rails at least every four (4) months. Lessor acknowledges and agrees that Lessee's construction pursuant to this paragraph shall be done in phases so that the Lessee may continue to operate all or a portion of the restaurant and concession while undertaking its construction activities. Any temporary certificate of occupancy for any portion of the restaurant completed pursuant to the phased construction shall not constitute or trigger the Extended Term Commencement Date and the new rent schedule. During Lessee's construction of the restaurant, Lessee may use a portion of the parking lot for staging its

construction activities, including, but not limited to, the placement of a construction trailer, if necessary, and the storing of materials and parking of construction vehicles and equipment. Lessee agrees that prior to the Extended Term Commencement Date, Lessee shall not increase the number of seats on the Leased Premises to more than 299 seats.

The Lessor and Lessee acknowledge that a dune walkover encroaches onto the Leased Premises and the encroaching dune walkover may remain until such time as the Lessee obtains permits for the construction of the restaurant expansion as defined herein and at such time the encroaching dune walkover shall be removed at the expense of the Lessor. As a condition for Lessor and Lessee entering into this Lease, both parties agree to dismiss, with prejudice, the Complaint and Counterclaim currently pending in the Circuit Court in and for Sarasota County Florida as Case No. 2006 CA 007421 SC, with each party being responsible for its own attorney's fees and costs related thereto. The aforementioned dismissal shall be filed by each party within five (5) days from the Effective Date of this Lease with each party delivering to the other party a copy of the respective dismissals.

Signature Page Follows

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the
day and year first above written.

ATTEST:

Dori Stelzer
Venice City Clerk

LESSOR

CITY OF VENICE

By: *[Signature]*

LESSEE

VENICE PIER GROUP, INC.
f/k/a PIER GROUP, INC.

Dori Stelzer
[Signature]

By: *G. Noul*
As: *Michael V. Paolot*
PRESIDENT

Approved By City Council

Date: NOVEMBER 26, 2008

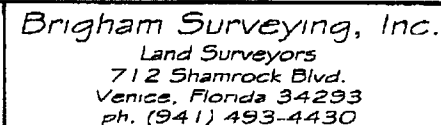




EXHIBIT C TO AMENDED AND RESTATED LEASE AGREEMENT

LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into this 15th day of January, 1986, at Venice, Florida, by and between the CITY OF VENICE, a Municipal Corporation, hereinafter called "Lessor" and PIER GROUP, INC., a Florida corporation, hereinafter called "Lessee".

WHEREAS, Lessor is the owner of certain lands and improvements located in Sarasota County, Florida, and

WHEREAS, the Lessee desires to lease said land and improvements and to alter the existing improvements thereon and to construct a concession and restaurant thereon.

NOW, THEREFORE, in consideration of the rent to be paid hereunder and the other covenants and agreements contained herein, the Lessor shall and hereby does lease to the Lessee the land and improvements described herein upon the following terms and conditions:

1. TERM. Lessor does hereby lease to Lessee, and Lessee does hereby lease from Lessor, that certain property, hereinafter called the "leased premises", situated in Venice, Florida, and described as that area marked in red and with diagonal lines on that survey titled "Easement Survey (Physical Boundary)" by Wm. Lindh dated 1-6-86, a copy of which is attached hereto as Exhibit "A", for a term of twenty (20) years, hereinafter called the "initial term", commencing on the 20th day of January, 1986 to and ending on the 19th day of January, 2006.

2. RENEWAL OF TERM.

(a) The Lessee is hereby granted a first option to extend this lease for a period of five (5) years from the termination date of the lease on the same terms and conditions as set forth in said lease except that rent shall be payable according to the provisions of Paragraph 3. Lessee shall notify Lessor of its election to extend said lease nine (9) months prior to expiration of the lease term.

(b) If the Lessee exercises said first option and elects to extend the lease term for five (5) years, then Lessee shall have a second option to extend the lease term and first option term for an additional five (5) years from the termination of the first option extended term, on the same terms and

conditions as set forth in said lease, except that rent shall be payable according to the provisions of Paragraph 3. Lessee shall notify Lessor of its election to exercise this second option nine (9) months prior to the expiration of the first option period.

(c) It is intended hereby to grant Lessee in addition to the initial twenty (20) year term, two option periods of five (5) years each, so that Lessee, if it so desires, shall have the privilege and option of leasing the premises for a maximum of thirty (30) years.

(d) The parties agree that the ground rent payable throughout extensions of the Lease term shall be based upon fluctuations in the Consumer Price Index as if the original lease term included the renewal term.

3. RENT. The rent herein specified shall be net to the Lessor in each year during the term of this Lease, and all costs, expenses, and obligations of every kind relating to the premises (except as otherwise specifically provided in this lease) which may arise or become due during the term of this Lease, shall be paid by the Lessee. The net rent shall be paid to the Lessor without notice or demand and without abatement, deduction, or set-off (except as otherwise specifically provided in this Lease).

(a) Ground Rent. Lessee agrees to pay to Lessor without any prior demand therefor and without any deduction or set-off whatsoever, and as ground rent, a minimum of \$7,200.00 per annum in equal monthly installments of \$600.00 in advance on the first day of each calendar month of each Lease year to be adjusted from time to time pursuant to the terms of this Paragraph 3, plus applicable sales tax. If the term shall commence on a day other than the first day of a calendar month, then Lessee shall pay, on the commencement date of the term, a pro rata portion of the monthly rent described above, prorated on a per diem basis with respect to such fractional calendar month.

(b) Notwithstanding Paragraph 3(a) above, the ground rental shall be \$200.00 per month until October 1, 1986. The first rental payment shall not be due until the issuance of a certificate of occupancy for the restaurant.

(c) Rent Adjustment. Lessor and Lessee hereby covenant and agree that the ground rental payments provided for in Paragraph 3(a) above, shall be subject to adjustment at the end of every three (3) years, based on fluctuations in the revised Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-U) issued by the Bureau of Labor Statistics of the U.S. Department of Labor,

effective November 1, 1978, said Index having a value of 100 for the year 1967, hereafter referred to as the "Index".

(1) The first adjustment shall be made on October 1, 1989 and shall be effective for the ensuing three (3) years.

(2) Each rental adjustment shall be the result obtained by multiplying the then existing annual rental amount by a fraction the numerator of which shall be the Index for the month preceding the month in which the adjustment is made and the denominator of which shall be the Index figure for the month three (3) years preceding the month from which the Index used in the numerator was chosen.

(3) It is the parties intent that rent shall be increased by the same percent amount as the percent increase in the Index during the three (3) years preceding the adjustment. In any event the rent shall not be decreased below the ground rent for the initial term.

Sample Rent Adjustment For A
October 1, 1989 Rental Adjustment Date

Index figure for the month, prior to the First Rental Adjustment Date (September 1989)	375
Index figure for the month three years previous to September 1989 (September 1986)	300
Factor to be multiplied times the rent initially reserved	$\frac{375}{300} = 1.25$
Rent payable monthly beginning October 1, 1989 and payable each month there- after until the next Rental Adjust- ment Date	$\$7,200.00 \times 1.25 =$ $\$9,000.00$ per year $\$9,000.00 : 12$ or $\$ 750.00$ per month

The foregoing example was prepared using hypothetical Index figures but is illustrative of the method by which the Rental Adjustment should be calculated.

(4) Should the Bureau of Labor Statistics change the manner of computing such Index, the Bureau shall be requested to furnish a conversion factor designed to adjust the new Index to the one previously in use, and adjustment to the new Index shall be made on the basis of such conversion factor. Should publication of such Index be discontinued by the Bureau of Labor Statistics, then such Index as may be published by the United States Government most nearly approximating such discontinued Index shall be used in making the

adjustment herein provided for. If the United States Government discontinues the publication of any such Index, then the parties shall agree upon the rental adjustments for the ensuing three year term.

(d) Percentage Rent. In addition to the aforesaid minimum ground rent, Lessee agrees to pay to Lessor, in the manner and upon the conditions and at the time hereinafter set forth during each Lease year, and as percentage rent hereunder, a sum equivalent to the amount, of five percent (5%) in excess of \$300,000.00 plus applicable sales tax. Said percentage rent shall be payable as hereinafter provided at the office of Lessor or at such other place as Lessor may designate without any prior demand therefor, and without any set-off or deduction whatsoever.

(1) Said percentage rent shall be paid annually on February 1 and the amount shall be determined by the total gross receipts for the prior year ending December 31. The first percentage rent payment shall be due on February 1, 1987 and shall be for the term commencing January 1, 1986 and ending December 31, 1987.

(2) The Lessee covenants and agrees to keep and maintain an accurate and true record of the gross receipts and all deductions therefrom permitted by this Lease. The Lessee shall record all gross sales by depositing same in or through a cash register or similar device and maintaining and keeping cash register tapes or similar records. The Lessee further agrees that it will keep and preserve its records according to standard recognized accounting practices and that the Lessee shall make all of its accounting records conveniently available to the Lessor's Auditor at any reasonable time for the purpose of determining the accuracy of the Lessee's reports of gross receipts and deductions.

(3) As soon as is practicable, but in no event later than April 1 of each year commencing in 1987, Lessee shall furnish to Lessor financial statements which show the total gross receipts for the prior term upon which the percentage rent is calculated.

(4) The term "gross receipts" as used herein, is hereby defined to mean receipts from gross retail sales of Lessee and of all licensees, concessionaires, and lessees of Lessee, from all business conducted on or from the leased premises by Lessee and all others, and whether such sales be evidenced by check, credit, charge accounts, exchange, or otherwise, and shall include, but

not be limited to, the amounts received from the sale of goods, wares, and merchandise, and for services performed on or at the leased premises, whether such orders be filled from the leased premises or elsewhere, and whether such sales be made by means of merchandise or other vending devices in the leased premises. If any one or more departments or other divisions of Lessee's business shall be sublet by Lessee or conducted by any person, firm, or corporation other than Lessee, there shall be included in the gross receipts for the purpose of fixing the percentage rent payable hereunder, all the gross sales of such departments or divisions, whether such sales be made at the leased premises or elsewhere, in the same manner and with the same effect as if the business or sales of such departments and divisions of Lessee's business had been conducted by Lessee himself. Gross sales shall not include fishing pier admission fees, sales of merchandise for which cash has been refunded, or allowances made on merchandise claimed to be defective or unsatisfactory, provided they shall have been included in gross sales. There shall be deducted from gross sales the sales price of merchandise returned by customers for exchange, provided that the sales price of merchandise delivered to the customer in exchange shall be included in gross sales. Gross receipts shall not include the amount of any sales tax.

4. COLLECTION OF FISHING PIER ADMISSION FEES. Lessee agrees to collect for and to pay to Lessor, in the manner and upon the conditions and at the time hereafter set forth, a sum equal to one hundred percent (100%) of collected fishing pier admission fees up to \$20,000.00. The Lessee shall also pay Lessor fifty percent (50%) of all fishing pier admission fees collected in excess of \$20,000.00. The annual term for calculating total admission fees shall commence January 1 of each year and end on December 31 of said year. Said fishing pier admission fees shall be payable as hereinafter provided at the office of Lessor or at such other place as Lessor may designate without any prior demand therefore, and without any set-off or deduction whatsoever.

(a) Lessee shall, commencing within thirty (30) days after the signing of this lease, sell consecutively numbered adult and child admission tickets to the fishing pier which tickets shall be provided to Lessee by Lessor. Each person admitted to the fishing pier shall be issued an admission ticket to the pier upon payment of the admission fee. Lessee shall initially be provided with 1,000 admission tickets. Prior to the issuance of additional admission

tickets, Lessee shall pay to Lessor any amount due Lessor as fishing pier admission fees. Notwithstanding the foregoing, said fishing pier admission fees shall be payable no less frequently than monthly. On or before the third (3rd) day of each month following the month in which the term of this Lease commences and on or before the third (3rd) day of each month thereafter, to and including the month following that in which the term of this Lease terminates, Lessee shall deliver to Lessor a complete written statement showing in reasonable detail the amount of receipts for the preceding month including a report of the ticket numbers which correspond to the receipts and such other detail as the Lessor may from time to time require. The Lessee further agrees that it will keep and preserve its records according to standard recognized accounting practices and that Lessee shall make all of its accounting records conveniently available to Lessor's auditor at any reasonable time for the purpose of determining the accuracy of Lessee's reports of fishing pier admission fees. Lessor shall have the right to conduct unannounced inspections of Lessee's accounts and admission tickets for the purposes of determining compliance herewith.

(b) The Lessor shall establish the charges for fishing pier admission which are initially set at \$1.00 per adult and \$.50 for children under 12 years of age and shall remain as such until changed by Lessor. In the event that the admission fees are raised or lowered in the future, the parties shall still split equally all fishing pier admission fees collected in excess of \$20,000.00.

(c) Lessor shall have the option of designating not more than five (5) free admission days and on such days no fishing pier admission fees shall be collected by Lessee. Lessor shall give Lessee at least thirty (30) days advance written notice of any such free admission days.

(d) The Lessor may establish discount rates for annual, seasonal or multiple admissions to the fishing pier. It is contemplated that any such special admission packages will be detailed by a supplemental written agreement between the Lessor and the Lessee providing that the Lessee shall sell such special admission packages and that the proceeds of same shall be included in the fishing pier admission fee calculations.

(e) The Lessor shall pay the cost of providing an electric gate or other suitable security device to assist the Lessee in maintaining control of admission onto the fishing pier.

5. TAXES.

(a) The Lessee shall pay as they become due, promptly and before delinquency, all taxes and assessments upon the premises, and upon the buildings and improvements thereon, which are assessed during the Lease term. All taxes assessed prior to but payable in whole or in installments after the effective date of the Lease term, and all taxes assessed during the term but payable in whole or in installments after the Lease term, shall be adjusted and pro-rated, so that the Lessor shall pay its pro-rated share for the period prior to and for the period subsequent to the Lease term and the Lessee shall pay its pro-rated share for the Lease term.

(b) The Lessee shall have the right at its own expense and cost, and for its sole benefit, to initiate and prosecute any proceedings permitted by law for the purpose of obtaining an abatement of or otherwise contesting the validity or amount of taxes assessed to or levied upon the premises and required to be paid by the Lessee hereunder and to defend any claims for lien that may be asserted against Lessor's estate, and, if required by law, the Lessee may take such action in the name of the Lessor, who shall cooperate with the Lessee to such extent as the Lessee may reasonably require, to the end that such proceedings may be brought to a successful conclusion, provided, however, that the Lessee shall fully indemnify and save the Lessor from all loss, cost, damage, and expense incurred or to be incurred or suffered by the Lessor.

(c) The Lessee shall furnish to the Lessor for its inspection, within thirty (30) days after the date any amount is payable by the Lessee, as provided in this paragraph, official receipts of the appropriate taxing authority or other proof satisfactory to the Lessor evidencing payment.

6. UTILITIES. Lessee shall fully and promptly pay for all water, sewer, gas, heat, light, power, telephone service and other public utilities of every kind furnished to the concession stand and restaurant for the benefit of the Lessee throughout the term of the Lease or any extension thereof, and all other costs and expenses of every kind whatsoever of or in connection with the use, operation and maintenance of the concession stand and restaurant and all activities conducted thereon for the benefit of the Lessee, and the Lessor shall have no responsibility of any kind for anything therefor, unless Lessor is specifically charged with the responsibility therefor. Lessee shall pay for exterior

lighting used in connection with its concession and restaurant operation, Lessor shall pay for water and electricity furnished to the fishing pier. The public restrooms shall be separately metered for water and the Lessor shall pay the water and sewer charges for said facilities.

7. USE OF PREMISES. The leased premises are to be used by Lessee for the purpose of constructing thereon and thereafter maintaining therefrom restaurant and concession facilities which shall be operated in conjunction with the Lessor's fishing pier which adjoins the leased premises.

(a) Restaurant. The Lessee agrees to upgrade and expand the existing improvements for use as a full service restaurant to be operated by Lessee on a continuous basis during the Lease term and any extension thereof. The restaurant shall be open a minimum of six days per week and shall have sufficient capacity to seat in-doors approximately 40 persons. Hours of operation shall be as agreed between Lessee and Lessor. The Lessee may sell or serve alcoholic beverages for consumption in the restaurant area, including any outdoor deck area where restaurant service to seated customers is permitted. The Lessee may establish a dress code for the restaurant area. The restaurant may be closed for two weeks each year between June 1 and October 1 for vacation or renovation.

(b) Concession. The Lessee agrees to upgrade the existing concession facilities and to operate therefrom a concession on a continuous basis during the term of this Lease or any extension thereof upon the following terms and conditions:

(1) Lessee shall provide food service to the general public. Sales shall be limited to food items, and restricted to soft drinks served in containers other than made of glass, coffee, tea, shaved ice, candies, light lunches, sandwiches, popcorn, peanuts, ice cream products, and such similar items with the exception that, in addition to the food items listed above, Lessee may sell film, suntan oils, lotions, tobacco products and fishing tackle and other items listed on Exhibit "C" attached hereto. Lessee shall sell bait. Lessee may also rent fishing tackle and sun umbrellas. Other sundry items may not be sold or handled by Lessee without written permission.

(2) The prices charged by Lessee for services, food and drinks, shall be reasonable and shall not be in excess of prices prevailing elsewhere for the same kind and quality of service. The quality of service, food, and articles provided by Lessee shall be fit for the ordinary purposes for

which such are used, and shall be at least such quality so as to pass without objection in the usual trade.

(3) At no time shall Lessee sell or give away any alcoholic beverages except as may be lawfully allowed to be served and consumed in the restaurant area to be operated by Lessee. Lessee shall not allow any person to live or sleep on the premises nor shall he permit disorderly persons to remain upon or loiter within the demised premises. Lessee shall not operate or allow to be operated juke boxes, pinball machines or other similar games or devices on the premises. Lessee shall be responsible for the enforcement of the posted rules and regulations for the Fishing Pier. Lessee shall not use or permit the premises to be used for any other purpose, or for any unlawful, immoral or indecent activity. Lessee shall be responsible for the collection of Fishing Pier admission fees and any sales tax due thereon during the hours of operation of the concession.

(4) Lessee may operate said concession twenty-four (24) hours a day or any part thereof. Lessee shall operate said concession from sunrise to sunset at a minimum, except May 1 to October 1, when it shall be operated at least from 6:00 a.m. to 6:00 p.m., or such other hours as may be agreed to in writing between the parties. The Lessee shall operate the concession Monday through Sunday, during each and every week of this Lease term or any extensions thereof except that the concession may be closed for two weeks each year between June 1 and October 1 for vacation or renovation.

(5) It is understood that the fishing pier concession and restaurant will be located at a popular municipal facility. It shall be a breach of this lease for the Lessee to repeatedly fail to provide prompt, clean and friendly service to the general public using the fishing pier and the facilities leased hereunder.

8. CONSTRUCTION OF IMPROVEMENTS:

(a) On or before May 1, 1986, the Lessee shall submit to the Lessor for its approval, which approval shall not be unreasonably delayed or withheld, plans and specifications for the construction of the proposed permanent improvements on the premises; and on or before July 1, 1986, the Lessee, at its sole expense, shall commence the construction of said improvements in accordance with the approved plans and specifications. The plans shall designate public areas and restaurant areas. All improvements to be

constructed hereunder shall be completed within twelve (12) months of the date of this Lease. The minimum cost of such improvements shall be Twenty-Five Thousand and No/100 Dollars (\$25,000.00).

(b) It is anticipated that the Lessee will provide decking from the west side of the existing concession area to the pier. This deck area is to be used as part of the restaurant area (weather permitting) for exterior tables with umbrellas or other overhead protection.

(c) The Lessee shall not authorize any variance from the plans or specifications approved by the Lessor without the prior written approval of the Lessor.

(d) On the completion date, the Lessee shall deliver to the Lessor each of the following:

(1) A certificate of completion which shall certify that all work has been completed in accordance with the approved plans and specifications.

(2) A certificate of occupancy, or any equivalent permit or certificate which may be required by any governmental authority prior to the commencement of business at the premises.

9. LIENS: Lessee shall save harmless and indemnify the Lessor from and against any claim of lien, materialmen's or labor lien or any lien of whatever nature that may be imposed against said property due to any construction or placing of any improvements by Lessee on said property. Lessee shall secure a surety bond, or other security acceptable to the City Attorney, assuring the payment and performance by Lessee's contractor and sub-contractors of all sums due under all contracts for the construction of improvements described in paragraph 8.

10. MAINTENANCE OF IMPROVEMENTS: Lessee shall, throughout the term of this lease, and any extension thereof exercised pursuant to Paragraph 2 of this agreement, at its own costs, and without any expense to the Lessor, keep and maintain the premises, including all buildings and improvements of every kind which may be a part thereof, and all appurtenances thereto, in good, sanitary and neat order, condition and repair, and, except as specifically provided herein, restore and rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty or any other cause whatsoever, ordinary wear and tear excepted. Lessor shall not be obligated to make any repairs, replacements, or renewals of

any kind, nature or description whatsoever to the demised premises or any buildings or improvements thereon, except as otherwise provided herein. The Lessor shall make any repairs needed to the seawall and, in the event of sand or soil loss due to erosion or wave action, shall maintain or restore the sand or soil to the presently existing grade within the leased premises area, which obligations shall be subject to the availability of necessary permits. Other than the aforesaid limited obligations to repair the seawall and restore the grade, the Lessor shall have no responsibility for any damages caused by wind, erosion or wave action.

11. LANDSCAPING AND GENERAL MAINTENANCE. The Lessee shall be responsible to perform all general maintenance on all grounds located within the leased premises and also the "Additional Area of Landscaping and General Maintenance" as shown within the enclosed area on Exhibit "A" attached hereto. Lessee's general maintenance responsibility shall include maintenance of all walkways, landscaping, plants, trees, and shrubbery within such areas.

12. SOLID WASTE REMOVAL. The Lessor shall be responsible for all solid waste collection from receptacles located on the fishing pier and the surrounding beach recreation area. Lessee shall pay all charges associated with a solid waste dumpster to be located on the leased premises which dumpster shall be for the exclusive use of Lessee in connection with its concession and restaurant operations. Lessor shall have the right to approve the type, size and location of the solid waste dumpster.

13. MAINTENANCE OF EXISTING PUBLIC RESTROOM FACILITIES. The Lessor shall provide all supplies and materials, such as paper products and cleaning supplies, for the use and maintenance of the existing public restroom facilities which facilities shall continue to be available for the use of the general public. Lessor shall make all needed repairs to the restroom facilities. Lessor shall clean the restroom facilities once a day, in the morning, on each Monday through Thursday, except legal holidays. At all other times, Lessee shall keep the restroom facilities clean and sanitary.

14. PARKING. The Lessor shall maintain the parking area as depicted on Exhibit "B" hereto. Lessor shall have the right, but shall not be obligated, to arrange for paving or lighting improvements to the parking area and Lessee agrees to participate in the cost of such improvements to the parking area. The

amount of Lessee's contribution to such improvements shall bear the same proportion to the total cost of such improvements as the number of Lessee's required parking spaces bears to the total number of parking spaces contained in the parking area depicted in Exhibit "B". The Lessee shall have at least thirty (30) days advance written notice of any such improvements. In the event that the Lessor proposes to improve the parking lot to standards in excess of the current minimum pavement standards, then the Lessee shall not be obligated to pay any such excess costs over minimum without Lessee's prior written consent. The Lessee may, at its own expense, make improvements to the parking lot provided it obtains the prior written approval of the Lessor. The Lessee may designate a space in the parking lot near the restaurant for deliveries.

15. SIGNS: Lessee agrees that it will not display, erect, or affix any lettering, signs, posters, streamers, placards, or any other like advertising media on or about the leased premises, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. Lessor acknowledges that Lessee shall be entitled to erect a sign along the easterly boundary of the leased premises (along Harbor Drive). The size, location, type, and message of such sign must be approved by Lessor. Lessee shall pay all costs associated with the erection and maintenance of any approved sign or signs during the Lease term or any extension thereof. The Lessor agrees, at its expense, to modify any existing municipal signs concerning the pier to include a provision "fishing pier and restaurant."

16. DEFAULT. The happening of any one or more of the following events (hereinafter referred to as events of default) shall constitute a breach of this Lease on the part of the Lessee.

- (a) The failure of Lessee to pay any rent, fishing pier admission fees or other amounts or charges due under this Lease Agreement and the continued failure to pay same for a period of ten (10) days after the maturity thereof.
- (b) The making by Lessee of a special assignment for the benefit of creditors. The filing by or against Lessee of a petition to have Lessee adjudged a bankrupt or of a petition for reorganization under bankruptcy law, the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets or of Lessee's interest in this Lease.
- (c) The failure of Lessee to regularly, diligently and efficiently operate the facility and its related activities for which the demised premises are leased.

- (d) Breach, after having written notice of such breach, of any of the rules, regulations, laws or ordinances regulating Lessee's performance of its duties and responsibilities hereunder.
- (e) The failure of Lessee to fully and promptly perform any act required of it in the performance of this Lease or to otherwise comply with all of the terms and covenants and conditions hereof.
- (f) The levy of execution or attachment of the leasehold interest of Lessee by process of law or otherwise in satisfaction or partial satisfaction of any judgment, debt or claim; provided Lessee shall have the right to contest any such action against it and during the period of contest no breach shall occur as a result of any such action.

If Lessee shall allow rent, fishing pier admission fees or other amounts or charges set forth under Subparagraph (a) hereof to be in arrears more than three (3) days after written notice of such delinquency or upon the happening of any other event of default, and said default remaining uncured for a period of thirty (30) days after notice thereof by Lessor to Lessee, the Lessor may, at its option, pursue any one or more of the following: (1) terminate the term of this Lease and the same shall end as if terminated by lapse of time and Lessor may re-enter and take possession of the demised premises, and all equipment therein, or (2) terminate Lessee's right to possession and occupancy of the demised premises without terminating the term of this Lease and in that event the same shall be effective as of the date of written notice of Lessor's election given to Lessee at any time after the date of such event or default, or (3) take any other action permitted by law. Upon any termination of the said terms, whether by lapse of time or otherwise, or upon any termination of Lessee's right to possession or occupancy of said premises without terminating said terms, Lessee shall promptly surrender possession and vacate said premises and Lessee hereby grants to Lessor full and free license to enter into and upon the said premises and the improvements situated thereon in such event without process of law and to expel and to remove therefrom any and all property using for such purpose such force as may be necessary, and Lessor shall not be guilty of or liable for trespass, eviction or forcible entry or detainer and said re-entry shall be without relinquishing Lessor's right to rent or any other right given to Lessor hereunder or by operation of law. Except as herein otherwise expressly set forth, Lessee hereby waives service of any demand of the payment of any rent or notice to terminate the tenancy or demand for possession of the premises, or to re-enter the premises

including any and every form of demand and notice prescribed by any statute or other law.

17. LESSOR'S RIGHT TO CURE LESSEE'S DEFAULTS. If Lessee shall at any time be in default in the payment of any impositions, taxes, insurance premiums, or other amounts to be paid by it hereunder, or in the performance of any other act on its part to be performed hereunder, Lessor, in addition to invoking any other remedy for such default, may, but shall not be obligated to, pay any such imposition, tax, insurance premium, or other amount or, after giving Lessee ten days' prior written notice, perform such other act on the part of Lessee to be performed, in such manner and to such extent as Lessor may deem desirable, and may pay any expenses incidental thereto. All sums so paid by Lessor shall constitute additional rent payable on demand. Failure to make such payments on demand shall constitute a new default by Lessee and Lessor shall have the same rights and remedies as in the case of default by Lessee in the payment of any installments of rent.

18. WAIVER OF DEFAULT. No waiver by the parties hereto of any default or breach of any term, condition, or covenant of this Lease shall be deemed to be a waiver of any other breach of the same or any other term, condition, or covenant contained herein.

19. INSURANCE.

(a) The Lessee shall keep the premises insured throughout the term of this Lease against the following:

(1) Loss or damage by fire, flood and such other risks as may be included in a broad form of extended coverage insurance from time to time available in amounts sufficient to prevent the Lessor or the Lessee from becoming a co-insurer within the terms of the applicable policies, and in any event, in an amount not less than eighty percent (80%) of the then full insurable value.

(2) Claims for personal injury or property damage, under a policy of general public liability insurance of limits not less than \$1,000,000.00 in respect of bodily injury, and \$500,000.00 for property damage.

(3) Claims by all persons employed by Lessee under Worker's Compensation Law.

(b) The term "full insurable value" shall mean the actual replacement cost, less physical depreciation. The full insurable value shall be determined whenever reasonably requested by the Lessor.

(c) All policies of insurance shall name the Lessor and the Lessee as the insureds, as their respective interests may appear.

(d) At least thirty (30) days prior to the expiration of any policy of insurance Lessee is obligated to carry under this Lease, the Lessee shall furnish a binder to the Lessor renewing each such policy. Each policy or binder shall provide at least fifteen (15) days notice to the Lessor of any change or cancellation thereof. The Lessee shall promptly deliver to the Lessor a certificate from the insurance carrier evidencing the renewal of a policy and the payment of premium.

(e) With respect to the property insurance, the Lessee shall have the option of requiring the Lessor to obtain such insurance (in the event the Lessor can obtain same at less cost than Lessee) which would name the Lessee as an additional insured. The Lessee would then reimburse the Lessor for the cost of such insurance.

20. INDEMNIFICATION OF LESSOR. Lessor shall not be liable for any loss, injury, death or damages to persons or property which at any time may be suffered or sustained by Lessee or by any person whosoever may at any time be using or occupying or visiting the demised premises or be in, on or about the same, whether such loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Lessee or of any occupant, visitor or user of any portion of the premises, or shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth, and Lessee shall save harmless and indemnify Lessor from and against all claims, liability, loss or damage whatsoever on account of any such loss, injury, death or damage, but not in excess of \$1,000,000.00 per occurrence. Lessee hereby waives all claims against Lessor that may arise out of the current condition of the premises or any improvements thereon.

21. CONDEMNATION.

(a) In the event of the taking of part or all of the premises or improvements located thereon, in any proceedings for condemnation or eminent domain (or any conveyance by Lessor to avoid legal proceedings, which Lessee shall be immediately notified of) all parties hereto, including any mortgagee, shall be entitled to such rights as provided to each of them by Florida law. If

only a portion of the premises shall be so taken then this Lease shall continue in full force and effect; provided, however, if the part of the premises so taken shall contain more than twenty percent (20%) of the total area of the premises immediately prior to such taking, then the Lessee, at its option, may give the Lessor thirty (30) days notice of termination of this Lease.

(b) If Lessee exercises its option to terminate, it shall be released from payment of any rents, taxes, or other obligations under the Lease and from any further liability for the payment of any rent or the performance of any conditions thereunder.

(c) If the Lessee does not exercise its option to terminate or if the taking is of less than twenty percent (20%) of the total area of the premises immediately preceding such taking, then all of the terms and conditions of the Lease shall continue in full force and effect except that Lessee shall be entitled to a rental adjustment throughout the remaining term of the Lease and any extension thereof, said rental adjustment to accurately reflect the decreased value of the leasehold interest for which Lessee has not been fully compensated.

22. DAMAGE TO AND DESTRUCTION OF IMPROVEMENTS. The damage, destruction, or partial destruction of any building or other improvement which is a part of the premises shall not release Lessee from any obligation hereunder, except as hereinafter expressly provided, and in case of damage to or destruction of any such building or improvement, Lessee shall at his own expense promptly repair and restore the same to a condition as good or better than that which existed prior to such damage or destruction. Without limiting such obligations of Lessee, the proceeds of any insurance covering such damage or destruction shall be made available to Lessee for such repair or replacement.

23. FORCE MAJEURE. In the event that the obligation of any party to this Lease shall be impossible of performance by reason of an act of God, or the elements, shortage or unavailability of necessary materials, supplies, or labor, shortages or interruptions of transportation facilities, or because of applicable governmental regulations or restrictions, including zoning ordinances applicable to the premises, or other cause beyond the affected party's control, then in such event the time for performance of the obligation of the party so affected shall be extended until the termination of such cause beyond such party's control.

24. LESSEE'S RIGHTS IF FISHING PIER IS CLOSED. Lessee's rights to recover damages from Lessor resulting from the closing of the fishing pier by reason of damage or destruction shall be limited to those rights described herein and under no circumstances shall Lessee be entitled to recover damages for loss of profits from its operations due to a closing of the fishing pier.

(a) In the event that the fishing pier is closed for repair or other reasons for a period not exceeding six (6) months by action of the Lessor or because of damage or destruction caused by an act of God or the elements, including wind or storms, Lessee's rent shall abate for such period of time, if any, which Lessee is required by Lessor to suspend its concession and restaurant operations to allow for repair to the fishing pier.

(b) In the event the restaurant or fishing pier is not reasonably accessible to the public for more than five (5) consecutive days, then Lessee shall be entitled to a rent abatement for the entire period of such inaccessibility.

(c) In the event of a serious red tide outbreak lasting more than thirty (30) consecutive days, the Lessee may apply to the City Council for a rent abatement or adjustment for the period of time when red tide related odor or health considerations substantially impaired the gross revenues of the Lessee. The Lessee may, with the prior written approval of the City Manager, temporarily suspend or curtail all or a portion of the ticket collecting, concession or restaurant operations during a period of serious red tide outbreak.

(d) In the event that the fishing pier is closed for more than six (6) months by action of the Lessor or because of damage or destruction caused by an act of God or the elements, including wind or storm, Lessee may at its option:

(1) Notify the Lessor of its intent to consider this lease still binding upon both parties as to all terms except for rent which shall abate for that period of time, if any, which Lessee is required by Lessor to suspend its concession and/or restaurant operations to allow for repair or dismantling of the fishing pier or adjacent property, including Harbor Drive.

(2) Notify Lessor of its intention to terminate this Lease whereupon all obligations between the parties shall cease except that the Lessor shall pay Lessee a sum equal to the fair market value of the permanent improvements (not including the land or income from the business). In the event the

Lessee elects to terminate the lease pursuant to this provision during the last four years of the lease term or any exercised option extension thereof, then the sum due Lessee shall be prorated according to the unexpired term. For example, if the fishing pier is destroyed and not replaced with two years remaining in the leasehold, then the Lessee may elect to receive fifty percent (50%) (2/4) of the fair market value of the permanent improvements.

25. OBLIGATION AND SUBORDINATION TO OBEY THE LAW. The Lessee at all times shall obey and promptly comply with all present and future laws and ordinances of the Federal government, the State of Florida, and the City of Venice respecting the condition of the premises; the use made thereof; and the business conducted thereon or in connection therewith, and with all lawful orders, regulations and requirements of all government authorities or agencies which may have jurisdiction. The Lessee shall not use the premises demised hereunder, or permit the same to be used, for any unlawful or immoral purpose, or do in or upon or about said premises, or permit the doing therein or thereon or thereabout, of anything which tends to create a nuisance; and the Lessee further covenants that it will, at all times obey and promptly comply with the lawful rules and regulations, as promulgated, from time to time, by the Lessor or the Federal Aviation Administration and its successors, which regulate and apply to the use of this demised premises for governmental aviation purposes or governmental aviation uses. The provisions of this Lease shall be subordinate and subject to the terms of any agreement required as a condition precedent in obtaining federal aid for airport development, operation or maintenance. This Lease is also subject in all respects to the terms and conditions under which the Lessor holds the above-described property from the United States of America, and shall be cancelled if and when the Lessor's tenure is thereby terminated without further obligation on the part of either party to the other except as to past performance hereunder, provided, however, that in the event the Lessor's tenure is terminated due to the fault of the Lessor, then Lessee shall be entitled to compensation as provided in paragraph 24(d)(2) above.

26. NON-DISCRIMINATION.

(a) Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that:

(1) No person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination in the use of the Lessor's facilities;

(2) In the construction of any improvement on, over, or under such Leased Premises, and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied benefits of, or otherwise be subject to discrimination; and

(3) Lessee shall use all Lessor's areas in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation Subtitle A, Office of the Secretary, Part 21, non-discrimination in Federally assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as those Regulations may be amended.

(4) Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity cover by this subject. Lessee assures that it will require that its covered by this subject. Lessee assures that it will require that its covered suborganizations provide assurances to the Lessor and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

(b) In the event of a breach of any of the above non-discrimination covenants, Lessor shall have the right to terminate this Lease and Agreement. This subsection (b) shall not be effective until the procedures of 49 CFR 21 are followed and completed, including exercise or expiration of appeal rights.

27. NOTICES. Any notice under this Lease shall be in writing and shall be delivered personally or by certified mail, return receipt requested, to the address of the party designated in this Lease or to such other address as either party may from time to time designate by giving notice. The Lessor hereby designates its address as 401 West Venice Avenue, Venice, Florida 33595. The Lessee

hereby designates its address as 25 Gulf Manor Drive, Venice, Florida 33595.

28. ASSIGNMENT. Lessee shall not assign this Lease, or an interest therein, without the prior written consent of Lessor, which shall not be unreasonably withheld, and a consent to an assignment shall not be deemed to be a consent to any subsequent assignment. It is anticipated that the Lessee may sublease or assign this lease to a corporation or other legal entity owned and controlled by the Lessee or principals of the Lessee. Neither this Lease nor the leasehold estate of Lessee nor any interest of Lessee hereunder in the demised premises or any buildings or improvements thereon shall be subject to involuntary assignment, transfer or sale, or to assignment, transfer or sale by operation of law in any manner whatsoever, and any such attempted involuntary assignment, transfer or sale shall be void and of no effect and shall, at the option of Lessor, terminate this Lease.

29. SURRENDER UPON TERMINATION. Lessee, on the expiration or the sooner termination of the Lease term, shall surrender to Lessor the premises, including all buildings, replacements, changes, additions and improvements constructed or placed by the Lessee thereon, with all equipment in or appurtenant thereto, free of subleases, and in good condition and repair, reasonable wear and tear excepted. Lessee may remove all movable fixtures, including equipment. Any fixtures, furniture, or personal property belonging to the Lessee or to any sublease, if not removed at such termination and if the Lessor shall so elect, shall be deemed abandoned and become the property of the Lessor without any payment or offset therefor. Lessee shall have thirty (30) days after the termination or expiration of this Lease to remove its property.

30. LESSEE'S RIGHT TO TERMINATE. Lessee shall have the right to terminate this lease, upon thirty (30) days advance written notice to Lessor, and thereupon Lessee shall be released and discharged of any and all further liability hereunder due to the inability of Lessee, after good faith effort, to procure necessary approvals for the intended construction of improvements, including the decking as set forth in paragraph 8(b) herein, from those governmental authorities having jurisdiction. Lessor agrees to assist Lessee in obtaining any governmental permits necessary to construct the improvements called for under the terms of this Lease. The Lessee shall also have the right to terminate this

lease if, within the first 120 days of the lease, the Lessee is unable to obtain adequate insurance.

31. LESSOR'S RIGHT TO TERMINATE. This Lease is expressly contingent upon, and Lessor shall have the right to terminate this Lease in the event that the terms of this Lease are unacceptable to the Federal Aviation Administration, whereupon, after written notice to the Lessee, the Lessor shall be released and discharged of any and all further liability hereunder.

32. RIGHTS AND REMEDIES CUMULATIVE. The rights and remedies provided by this Lease are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to sue any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

33. QUIET POSSESSION. The Lessee, so long as it shall not be in default hereunder, shall peaceably and quietly hold and enjoy the premises for the term aforesaid and any extensions therefor.

34. ATTORNEY'S FEES. In the event Lessor or Lessee breaches any of the terms of this agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the others reasonable attorney's fees, costs and expenses so incurred by such other party including any attorney's fees, costs and expenses incurred in appellate proceedings.

35. ENTIRE AGREEMENT. This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing signed by the parties.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above written.

Approved As To Form

City Attorney

ATTEST:

R. J. Simmonds
Venice City Clerk

John E. Williams
Robert L. Brown

LESSOR

CITY OF VENICE

By: *Jeffrey W. [Signature]*

LESSEE

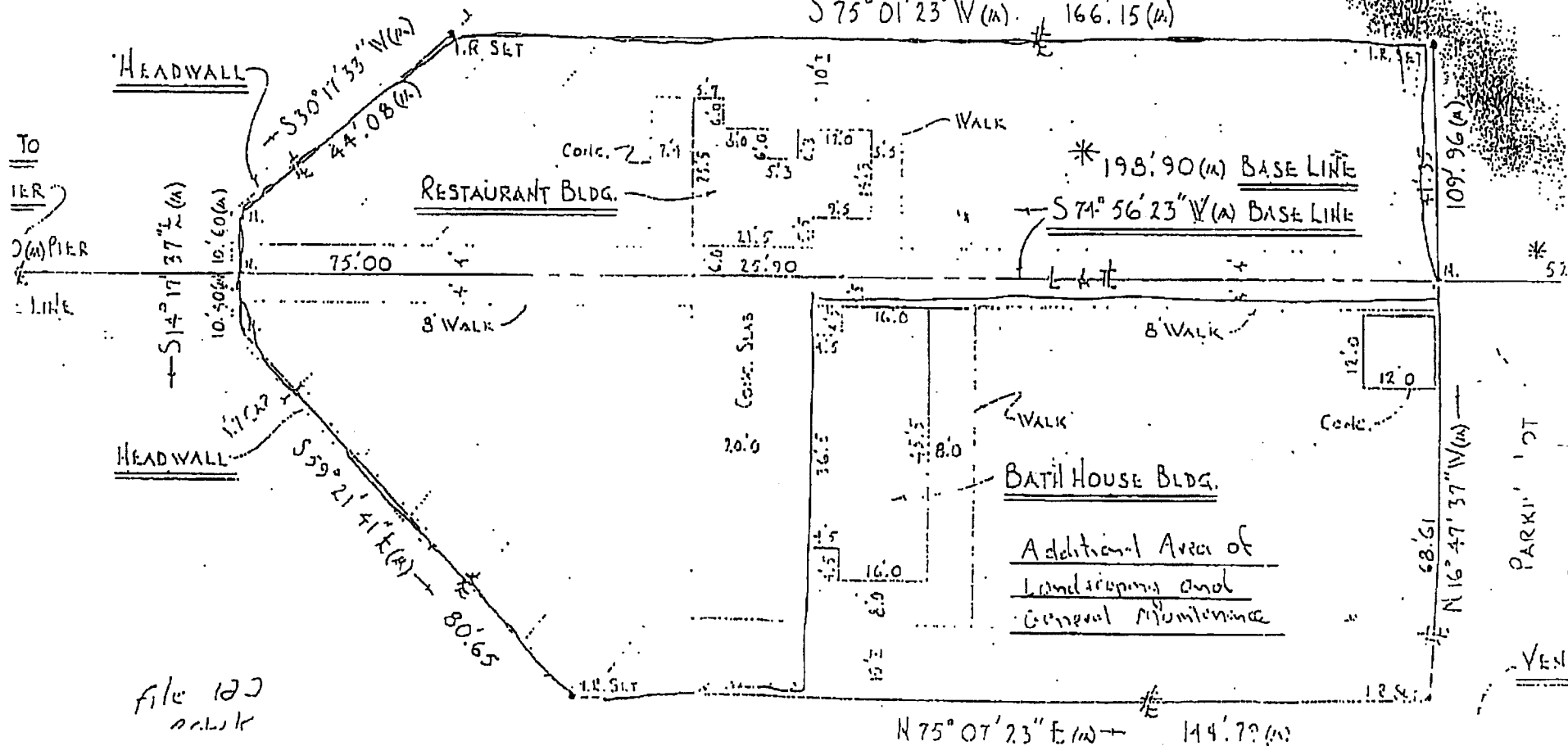
PIER GROUP, INC.

By: *By Nouns*

President

B. N. Samir

S 75° 01' 23" W (M). 166' 15" (M)



2015
K. A. A.

9