

## LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into this 17 day of September, 2012, by and between the CITY OF CLEARWATER, FLORIDA, a municipal corporation, hereinafter referred to as "Lessor" and Marina Cantina, LLC, a Florida limited liability company, d/b/a Marina Cantina Restaurant, 25 Causeway Boulevard, Clearwater, Florida 33767, hereinafter referred to as "Lessee":

### WITNESSETH:

That in consideration of the covenants herein contained of the granting of this lease and the sums paid and to be paid hereunder, the Lessor hereby leases to the Lessee and the Lessee hereby leases from the Lessor according to the terms, conditions and covenants herein contained the following described premises in the City of Clearwater, Pinellas County, Florida, to wit:

See attached Exhibit "A."

### NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. This lease shall be for a five (5) year lease term, with the option to renew for five additional five (5) year terms, beginning, October 1st, 2012, and ending either September 30th, 2017 or five years after the last option is exercised, and such option(s) shall only be exercised with the written consent of both parties. An "agreement year" commences on the 1st day of October of each year and terminates on the 30<sup>th</sup> day of September of the following year. This lease agreement shall supersede all prior leases with this Lessee for this property. If the Lessor does not consent to renewing for an additional term or terminates the lease for municipal need, the Lessor agrees to pay Lessee an amount equal to the unamortized construction cost incurred by Lessee, as detailed in Exhibit E, to be calculated as detailed in Exhibit F on the date after the conclusion of the previous lease term or as of the "termination for municipal need" date, such unamortized construction costs to be determined by amortizing on a straight line basis over a twelve (12) year period commencing on the Lease Commencement Date. If

this Agreement is terminated during the span of an agreement year, the amount of the refund will be prorated for that particular agreement year.

2. The Lessor may cancel this agreement at any time by giving thirty (30) days prior written notice to the Lessee, or any of its agents or its attorney, when in the opinion of the Lessor inferior service is being offered, or for any other good and valid reason that in the opinion of the Lessor might detract from the City of Clearwater and is not in the best interest of the public. Such written notice shall state in particular any and all complaints and Lessee shall have thirty (30) days within which to reasonably correct such complaints to the satisfaction of the City Manager.

3. Lessor, in addition to any other right of termination set forth in this agreement, may terminate this Lease for any municipal need as determined by the City Council on sixty (60) days written notice.

4. The Premises shall be used only for the purpose of conducting the business of a full service restaurant with full liquor bar and service; otherwise, this lease becomes null and void.

5. The Lessee hereby covenants and agrees to pay rent for the leasehold, which will eventually comprise 9,285 square feet of interior space and 11,237 square feet of exterior/seasonal patio space as follows:

a. Once the restaurant is open for business, the Lessee shall, at the beginning of the following month, pay an amount equivalent to eight (8) percent of monthly gross alcoholic beverage sales for the preceding, calculable month throughout the term of this lease, and any extension thereof. The percentage of alcohol sales remittance shall be made along with the Lessee's payment of the monthly rent, which is detailed in subsections (b) through (h) below. The Lessee shall provide the Lessor within 15 days after the end of each month during the term of this lease a statement showing the amount of alcohol beverage gross sales accounted separately during the month. The statement used by the Lessee to report such sales will be in form satisfactory to the City Manager or his designee. Such statement should be accompanied with a copy of the monthly State Sales Tax return paperwork accounting the amount of gross sales for the preceding month. The term "gross sales" as used in this paragraph means the entire amount of the actual sales receipts, whether for cash or

otherwise, for all sales conducted in, on or from the premises. The term "alcohol beverage" means all beverages containing alcohol. No deduction shall be allowed for uncollected or uncollectible credit accounts. Such term shall not include, however, any sums collected and paid out for any sales or excise tax imposed by a governmental authority wherein Lessee is regarded as the collecting agent.

**b. Year 1 – Lessee shall:**

- i. Pay \$9.00/sq. ft. for 7,761 sq. ft. of leasehold for the first three (3) months of year 1.
- ii. Pay \$9.00/sq. ft. when Lessee's leasehold expands to 9,285 sq. ft. for the remaining nine (9) months of year 1.
- iii. Pay the total sum of \$80,136.00 plus tax for this year of the lease, which shall be paid in equal monthly payments of \$6,678.00 plus tax through September 30, 2013. Each monthly payment shall be due and payable on the first day of each month.

**c. Years 2 through 5 – Lessee shall:**

- i. Pay \$9.00/sq. ft. for 9,285 sq. ft. per year during years 2 through 5 of the lease.
- ii. Pay the total sum of \$334,260.00 plus tax during the span of years 2 through 5 of the lease, which shall be paid in equal monthly payments of \$6,963.75 plus tax through September 30, 2017. Each monthly payment shall be due and payable on the first day of each month.

**d. Years 6 through 10 (if applicable, from October 1, 2017 to September 30, 2022) – Lessee shall:**

- i. Pay \$9.00/sq. ft. for 9,285 sq. ft. per year during years 6 and 7 of the lease, at a total sum of \$167,130.00 plus tax, which shall be paid in equal monthly payments of \$6,963.75 plus tax through September 30, 2019.
- ii. Pay \$17.50/sq. ft. for 9,285 sq. ft. per year during years 8 through 10 of the lease, at a total sum of \$487,462.68 plus tax, which shall be paid in equal monthly payments of \$13,540.63 plus tax through

September 30, 2022.

iii. Each monthly payment shall be due and payable on the first day of each month.

**e. Years 11 through 15 (if applicable, from October 1, 2022 to September 30, 2027) – Lessee shall:**

i. Pay \$17.50/sq. ft. for 9,285 sq. ft. per year during years 11 and 12 of the lease, at a total sum of \$324,975.12 plus tax, which shall be paid in equal monthly payments of \$13,540.63 plus tax through September 30, 2024.

ii. Pay \$20.00/sq. ft. for 9,285 sq. ft. per year during years 13 through 15 of the lease, at a total sum of \$557,100.00 plus tax, which shall be paid in equal monthly payments of \$15,475.00 plus tax through September 30, 2027.

iii. Each monthly payment shall be due and payable on the first day of each month.

**f. Years 16 through 20 (if applicable, from October 1, 2027 to September 30, 2032) – Lessee shall:**

i. Pay \$20.00/sq. ft. for 9,285 sq. ft. per year during years 16 and 17 of the lease, at a total sum of \$371,400.00 plus tax, which shall be paid in equal monthly payments of \$15,475.00 plus tax through September 30, 2029.

ii. Pay \$22.50/sq. ft. for 9,285 sq. ft. per year during years 18 through 20 of the lease, at a total sum of \$626,737.68 plus tax, which shall be paid in equal monthly payments of \$17,409.38 plus tax through September 30, 2032.

iii. Each monthly payment shall be due and payable on the first day of each month.

**g. Years 21 through 25 (if applicable, from October 1, 2032 to September 30, 2037) – Lessee shall:**

i. Pay \$22.50/sq. ft. for 9,285 sq. ft. per year during years 21 and 22 of the lease, at a total sum of \$417,825.12 plus tax, which shall be

paid in equal monthly payments of \$17,409.38 plus tax through September 30, 2034.

ii. Pay \$25.00/sq. ft. for 9,285 sq. ft. per year during years 23 through 25 of the lease, at a total sum of \$696,375.00 plus tax, which shall be paid in equal monthly payments of \$19,343.75 plus tax through September 30, 2037.

iii. Each monthly payment shall be due and payable on first day of each month

**h. Years 26 through 30 (if applicable, from October 1, 2037 to September 30, 2042) – Lessee shall:**

i. Pay \$25.00/sq. ft. for 9,285 sq. ft. per year during years 26 and 27 of the lease, at a total sum of \$464,250.00 plus tax, which shall be paid in equal monthly payments of \$19,343.75 plus tax through September 30, 2039.

ii. Pay \$27.50/sq. ft. for 9,285 sq. ft. per year during years 28 through 30 of the lease, at a total sum of \$766,012.68 plus tax, which shall be paid in equal monthly payments of \$21,278.13 plus tax through September 30, 2042.

iii. Each monthly payment shall be due and payable on the first day of each month.

i. Any amount due from Lessee to Lessor under this agreement that is not paid when due, shall bear interest at the maximum rate allowable by law, plus a late charge of ten dollars (\$10.00) to cover Lessor's administrative expenses in collecting such delinquency.

j. In addition to paying the first month's rent of \$6,678.00, the Lessee shall pay an additional \$6,963.75 as a deposit to secure the faithful performance of the Lessee's obligations hereunder. If options to extend the lease are exercised, then the Lessee must provide the Lessor a deposit equaling the highest monthly payment of that respective lease term. Lessee's failure to maintain the appropriate deposit amount with the Lessor may result in Lessor declaring this failure an Event of Default. The Lessor may deduct from the deposit any amount, which might become due from the Lessee to

the Lessor for damage to the premises or for any reason or cause whatsoever except rent. At the end of the term of this lease, the deposit amount or the balance thereof, if any, shall be credited to Lessee's last monthly rental payment.

k. If Lessee defaults in the payment of any installment of rent, Frank Chivas, individually, as Guarantor under the Guaranty of Payment of Rent Under Lease Agreement (Exhibit "C", attached hereto and incorporated herein), shall pay the amount of such installment(s) due and owed within thirty (30) days after receipt of notice of default and demand for payment as provided for therein. Frank Chivas will not be personally liable for any accelerated rental payments in the event Lessor exercises its right to accelerate rental payments pursuant to paragraph 15(f)(1) below.

6. The Lessee hereby covenants and agrees to make no unlawful, improper, or offensive use of the Premises. Lessee shall not permit any business to be operated in or from the Premises by any concessionaire of Lessee without the written consent of Lessor. Lessee further covenants and agrees not to assign, pledge, hypothecate, or sublet this agreement in whole or in part without the prior written consent of Lessor. The consent of Lessor to any assignment, pledging, hypothecating, or subletting shall be at Lessor's sole discretion, and shall not constitute a waiver of the necessity for such consent to any subsequent assignment, pledging, hypothecating, or subletting. This paragraph shall be construed to include a prohibition against any assignment or subletting by operation of law. If this agreement is assigned, or if the Premises or any part thereof is sublet or occupied by anybody other than Lessee, Lessor may collect rent from the assignee, subtenant or occupant, and apply the net amount collected to the payments to be made herein by Lessee, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Lessee from the further performance by Lessee of covenants on the part of Lessee herein contained.

If at any time during the term of this Agreement, any or all of Lessee's interests in the demised premises are transferred by sale, assignment, bequest, inheritance, operation of law or disposition, Lessee shall notify Lessor in writing of such transfer and shall provide to Lessor the name, address, financial statement and business experience resume for the immediate preceding five (5) years of the proposed assignee. This



information shall be in writing and shall be received by Lessor no less than thirty (30) days prior to the effective date of such transfer. Lessor at its sole discretion shall have the option of accepting the proposed assignee and can charge a reasonable fee to Lessee for processing such request. Lessee can request a transfer under this provision no more than once in an agreement year unless otherwise approved to in writing by Lessor.

7. Lessee agrees that it will promptly pay all ad valorem real property taxes and personal property taxes that may be assessed against the Premises during the term of this agreement. Lessee further agrees that it will pay any state sales tax due on the rental payment made by the Lessee to the Lessor and that it will pay all other taxes, including but not limited to, business tax receipt, beverage license, and permits relating to the operation of the business conducted on the Premises, which are required by law.

8. The Lessee hereby covenants and agrees to pay all bills for electrical service and water usage to the premises when due. The electrical service shall be provided by Progress Energy Corporation, or other similarly situated franchisee with the capacity to provide such utility, in accordance with the company's rates and billing, and water service provided by the City of Clearwater, in accordance with its standard rates and billing.

9. Lessee will use biodegradable materials whenever feasible.

10. Lessee will provide all equipment and merchandise necessary for the operation of the restaurant. In addition, the Lessee will pay all normal day-to-day repair, maintenance, and replacement costs, being certain that any material used will be equal to or better than that originally provided.

11. Lessee will be responsible for collecting and disposing of all trash, garbage, and other debris upon or about the leased premises including the decks and all exterior patio space.

12. The Lessee further covenants and agrees to operate the business authorized to be conducted on the premises three hundred sixty five (365) days a year during the term of this lease, except for any period of time involved in natural disasters, including governmental orders or requirements such as evacuation for hurricane

preparations, and any time necessary to repair or replace any damage caused to the demised premises by natural disasters.

13. Lessee agrees to indemnify and hold Lessor and its employees harmless from and against any and all claims, demands, and causes of action or lawsuits of whatever kind or character arising directly or indirectly out of this agreement and/or performance hereof. This indemnity clause includes, but is not limited to, claims, demands, causes of action or lawsuits for damages or injuries to goods, wares, merchandise and property and/or for any bodily or personal injury or loss of life in, upon or about the leased Premises or the surrounding premises the Lessee is required to maintain or which the Lessee uses in connection with the business operated at, on or from the leased Premises. Damage to all personal property, including trade fixtures, in the Premises shall be at the risk of Lessee, and Lessor shall not be liable for any damage to such property arising from any cause including, but not limited to, bursting, leaking or accidental operation of water or sewer pipes; roof leaks or flooding. Lessee agrees to investigate, handle, provide defense for and defend any such claims, demands, causes of action or lawsuits at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claim, demand, cause of action or lawsuit is groundless, false or fraudulent.

Lessee shall at his own expense purchase or maintain during the term of this agreement, the insurance coverage conforming to the requirements in Exhibit "B" attached hereto. Nothing contained herein shall be construed as a waiver of any immunity from or limitation of liability the Lessor may be entitled to under the doctrine of sovereign immunity or section 768.28, Florida Statutes.

14. If at any time during the term of this agreement, the buildings or Premises or any part, system, or component thereof, (hereinafter, the "demised premises") shall be damaged, said demised premises and any additions or improvements thereto, shall be promptly repaired or rebuilt or restored by the Lessee to the condition as good as the same was immediately prior to such damage or destruction at the Lessee's risk and expense, and in accordance with plans and specifications mutually agreed upon at the time; or if none can be agreed upon, then in accordance with the original plans and specifications and any subsequent plans and specifications for any additions or



improvements constructed prior to the damage. The work of restoration or rebuilding shall be in full compliance with all laws and regulations and government ordinances applicable thereto. The insurance proceeds shall be paid to the Lessor, and such proceeds will be used for the repair or restoration. Any cost of repairs or restoration in excess of the insurance proceeds shall be borne by the Lessee. Any insurance proceeds in excess of the cost of repairs or restoration shall belong to the Lessee.

During the period of such damage or destruction, whether in whole or in part, the monthly guaranteed rent shall abate for no more than 120 days or until commencement of business, after receipt of all building permits, whichever is sooner. Lessor shall not withhold unreasonably building permits Lessee applies for and are necessary to repair such damage or destruction.

If the demised premises shall be destroyed or so damaged as to render it practically useless during the term of this agreement, then and in that event, the Lessee may terminate this agreement as of the date of such damage with thirty (30) days written notice to the Lessor. In the event of such termination, the insurance proceeds provided for under this agreement shall be paid to the Lessor. In the event of such destruction, and except as otherwise specifically provided under this agreement, both parties waive any and all rights of recovery against each other for any direct or indirect loss occurring to the demised premises.

In the event of major renovation to the Marina or demolition and subsequent construction of a new Marina that causes the legal termination of this Lease, the Lessee may be provided, at the Lessor's discretion, the first opportunity to bid for similar space, provided that space for Lessee's type of business is available in the renovated or new Marina.

15. Lessor, at its option, may exercise any one of the remedies provided in subsection (f) of this section, except as otherwise provided herein, upon the happening of any one or more of the following events (Events of Default):

- a. Lessee's default in the payment of any rental or other sums due for a period of five (5) days after the due date or written notification of sums due;
- b. There shall be filed by or against Lessee in any event pursuant to any statute either of the United States or of any state, a petition in bankruptcy or

insolvency or for reorganization or arrangement, or for the appointment of a receiver or trustee of all or a portion of Lessee's property, or if the Lessee makes an assignment by operation of law, or if execution, seizure, or attachment occurs to the demised premises for a period of 120 days. Failure to remove the levy, seizure or attachment within the 120-day period shall actuate the default provided by this paragraph and the bond posted shall be forfeited.

c. Lessee's vacating or abandoning the Premises;

d. Lessee's understating gross sales by more than three (3%) percent in sales reports given to Lessor. An error occurring by reason of computer malfunction, typing, or other similar clerical error shall not be considered a default within the meaning of this paragraph.

e. Or due to any other occurrence, or lack thereof, constituting an Event of Default, as provided elsewhere in this Lease.

f. Lessor, at its option, may exercise any one or more of the following remedies, which shall be cumulative.

(1) Terminate Lessee's right to possession under this agreement and reenter and take possession of the Premises, reletting or attempt to relet shall only involve a prospective tenant capable of providing comparable or better type services, at such rent and under such terms and conditions as Lessor may deem best under the circumstances for the purpose of reducing Lessee's liability, and Lessor shall not be deemed to have thereby accepted a surrender of the Premises, and Lessee shall remain liable for all rents and additional rents due under this agreement and for all damages suffered by Lessor because of Lessee's breach of any of the covenants of this agreement. Said damages shall include, but not be limited to, charges for removal and storage of Lessee's property, remodeling and repairs, leasing, commissions and legal fees, and loss of prospective percentage rentals by Lessor. Said prospective percentage rents shall be calculated on the basis of Lessee's gross sales for the immediately preceding twelve (12) month period or for the period, adjusted on an annualized basis, commencing with the first day of this agreement if

this agreement has not been in effect for twelve (12) months. In addition to its remedies hereunder, Lessor may accelerate all fixed rentals due for the present term under this agreement, in which event the Lessee shall be liable for all past due rent, accelerated rent and damages as described above; however with respect to the accelerated rent, Lessor shall receive only the present value of such accelerated rent. At any time during repossession and reletting pursuant to this subsection, Lessor may, by delivering written notice to Lessee, elect to exercise its option under the following subsection to accept a surrender of the Premises, terminate and cancel this lease, and retake possession and occupancy of the Premises on behalf of Lessor.

(2) Declare this agreement to be terminated, whereupon the term hereby granted and all right, title and interest of Lessee in the Premises shall end and Lessor may re-enter upon and take possession of the Premises. Such termination shall be without prejudice to Lessor's right to collect from Lessee any rental or additional rental which has accrued prior to such termination together with all damages, including, but not limited to the loss of prospective percentage rentals suffered by Lessor because of Lessee's breach of any covenant under this agreement.

(3) Exercise any and all rights and privileges that Lessor may have under the laws of the State of Florida and/or the United States of America.

16. This lease is predicated upon two main conditions that directly benefit the Lessor. First, Lessee shall underwrite the total direct and incidental cost of relocating the Marina Operations/Department offices from its current location on the 2<sup>nd</sup> floor of the Premises to the 1<sup>st</sup> floor. Second, Lessee endeavors to invest, as specifically detailed in "Exhibit E," and such investment will include capital improvements that will modernize and enhance the marina building, inside and out, so that the marina building's architectural theme is brought back to a more vintage appearance, similar to when the marina building was first constructed, and so that portions of the internal infrastructure of the marina building are restored. It is estimated that this investment will cost the Lessee \$2.5 million dollars, with a permissible deviation of fifteen (15%) percent,

whichever is the lesser amount after the investment has been made, as such, Lessor has agreed to amortize the cost of such investment by reducing the rental rate below the current market rate for commercial space in the marina for the first twelve (12) years of this lease, if exercised, as detailed in paragraphs 4(b) – (e)(i) above. These conditions must be accomplished to the sole satisfaction of the Lessor; otherwise, Lessee's failure to do so shall constitute an Event of Default. Lessee understands that it will not be reimbursed for such investment, except as provided in paragraph one (1) of this agreement.

Lessee shall secure prior written approval from Lessor for modifications or remodeling of existing facilities or for the construction of any new facilities, such approval not to be unreasonably withheld. The terms remodeling or modifications as used herein shall include only those events requiring the issuance of a building permit. It is agreed that the existing improvements, together with any improvements constructed by Lessee during the term of this agreement on the demised premises, shall become the property of the Lessor upon the expiration or termination of this agreement; provided, however, that said reference to improvements herein contemplates improvements to the real estate which become a part of the land as distinguished from personal property utilized by the Lessee. Lessee acknowledges that all proposed capital improvements are subject to local and federal regulation and approval. The Lessor will not reimburse Lessee for rent paid to maintain the leasehold, in the event that any of the capital improvements are not approved or completed. Lessee covenants to complete all contemplated investment, as detailed in Exhibit E, as expeditiously as possible and have the restaurant open soon thereafter or within three (3) years, whichever is shorter. Otherwise, this shall constitute an Event of Default.

17. Lessee shall, at his expense, at all times during the terms of this agreement keep the Premises and all improvements and facilities thereon in good order, condition, and repair. It is specifically understood by Lessee that the Lessor has the right to inspect the Premises and improvements at any time to ensure that the Premises and improvements are indeed in good order, condition, and repair. Upon the termination or expiration of this agreement, Lessee shall repair any and all damages to the Premises caused by the removal by Lessee of personal property.

18. Upon the termination or expiration of the agreement for whatever cause, the Lessee shall have the privilege at his own expense of removing its equipment, signs, insignia, and other indicia of its tenancy or use. All improvements and fixtures remain the property of the Lessor and shall not be removed by the Lessee.

19. Lessee agrees to indemnify and save harmless the Lessor by reason of any mechanic's lien which may be asserted as a claim against the property, and to furnish Lessor a good and sufficient bond signed by a reputable bonding company doing business in Florida, which bond shall be in an amount equal to one hundred 100 percent (100%) of the cost of construction of the contemplated improvements to the demised premises. This bond shall be obtained prior to any work being conducted at the Marina.

20. The Lessee hereby covenants and agrees to promptly and continuously comply with all regulations and orders of the Florida Department of Business and Professional Regulation and officers of the local, state, and national governments; and Lessee hereby covenants and agrees to keep, operate, and maintain the restaurant in such a manner as to avoid any warnings, violations or notices to show cause being issued by any regulatory agency authorized to inspect the Premises under Florida Statute 509 as it presently exists or as it may be amended. In addition, Lessee agrees to forward to Lessor a copy of each inspection report issued in accordance with Florida Statute 509 as it presently exists or as it may be amended within five (5) days of receiving any such reports.

21. Lessor covenants and agrees that upon payment by Lessee of the rents herein provided, and upon observance and performance by Lessee of all the covenants, terms, and conditions required of the Lessee by the agreement, Lessee shall peaceably and quietly hold and enjoy the Premises for the term of the agreement without hindrance or interruption by Lessor.

22. Notices hereunder shall be given only by certified mail and shall, unless otherwise expressly provided, be deemed given when the letter is deposited in the mail, postage prepaid, addressed to the party for who intended at such party's address first herein specified or to such other address as may be substituted therefore by proper notice hereunder. Notice to be provided to Lessor and Lessee as stated below:

As to Lessor:

City Attorney's Office

City of Clearwater

Post Office Box 4748

Clearwater, Florida 33758-4748

As to Lessee:

Marina Cantina, LLC

c/o Frank Chivas

18395 Gulf Blvd., Suite 204

Indian Shores, FL 33785

Brian J. Aungst, Jr.

Macfarlane, Ferguson & McMullen, P.A.

625 Court St., Suite 200

Clearwater, FL 33556

23. No sign of any type will be posted, erected, hung or otherwise placed in view of the general public so as to advertise any product or identify the restaurant unless permitted by the City of Clearwater Code of Ordinances, as they now exist or as they may be amended, and unless authorized and approved by the City. The Lessee, at its own cost, may place only window, wall or canopy signs on the demised premises, provided said signs are approved as to color, style and letter size by the Harbormaster of the Lessor, and additionally conform to the sign ordinance of Lessor presently in force or as may be amended from time to time during the term of the lease. No other signs shall be placed or maintained by the Lessee on the premises. Any nonconforming sign now on the premises shall be removed by the Lessee within 30 days of approval of the lease. The Lessee shall, upon expiration or termination of the lease, completely remove any and all signs that have been placed on the leased premises by the Lessee.

24. Lessee shall not advertise any business not operated at, on, or from the Premises without the prior written consent of the City.

25. In the event that either party retains an attorney to enforce any of the provisions of this agreement or renewals of or addenda to this agreement, or to effect the enforcement of any legal right hereunder, the prevailing party shall be paid by the other for all costs of said enforcement reasonably incurred, including court costs and reasonable attorney's fees.



IN WITNESS WHEREOF, this agreement is executed as of the date first above written.

Countersigned:

CITY OF CLEARWATER, FLORIDA

-george n. cretekos

George N. Cretekos, Mayor

By William B. Horne II

William Horne, City Manager

Approved as to form:

Attest:

[Signature]

Camilo Soto, Assistant City Attorney

Rosemarie Call

Rosemarie Call, City Clerk



Marina Cantina, LLC

By: FRANK R CHIVAS

Print: FRANK R CHIVAS

Its: President

By: FRANK R CHIVAS

Print: FRANK R. CHIVAS

Personal Guarantor for Lessee

## Exhibit "A"

### Legal Description of Premises:

Those certain portions of the first floor of the Clearwater Beach Marina Building depicted in Exhibit "D" attached hereto and by this reference made a part hereof, containing 1,300 square feet on the easternmost portion of the building, more or less, and 1,524 square feet of the westernmost portion of the building, more or less, of interior floor area, measured to the unfinished interior surfaces of its perimeter walls; and the entire second floor containing 6,088 square feet, more or less, measured to the unfinished interior surfaces of its perimeter walls together with outdoor patio areas totaling 5,522 square feet, more or less, measured to the exterior surfaces of the second floor perimeter walls and the interior surfaces of the perimeter railings; and the entire third floor containing 373 square feet, more or less, measured to the unfinished interior surfaces of its perimeter walls together with outdoor patio areas totaling 5,715 square feet, more or less, measured to the exterior surfaces of the third floor perimeter walls and the interior surfaces of the perimeter railings, all together being a portion of:

Lots 11 and 12, City Park Sub according to the map or plat thereof as recorded in Plat Book 23, Page 37, of the public Records of Pinellas County, Florida.

Exhibit "B"

1. Liability Insurance. Lessee shall maintain:
  - a. Comprehensive General Liability Insurance to include premises/operator liability and electrical liability in an amount \$1,000,000 combined single limit Bodily Injury Liability and Property Damage Liability.
  - b. Coverage for liability resulting from the dispensing of alcoholic beverages in an amount not less than \$500,000.
  - c. Worker's Compensation Insurance applicable to its employees for statutory coverage limits in compliance with Florida laws.
2. Additional Insurance. The City is to be specifically included as an additional insured on all liability coverage described above.
3. Notice of Cancellation or Restriction - All policies of insurance must be endorsed to provide the City with thirty (30) days notice of cancellation or restriction.
4. Certified Copies of Policies/Certificate of Insurance. Upon specific written request of the City, the Lessee shall provide the Lessor with certified copies of all policies of insurance as required above. In the absence of a specific written request, the Lessee shall provide the Lessor with Certificates of Insurance showing the Lessee has, at all times, the insurance coverage required by the Lease. Unless notice is given to Lessee otherwise, such Certificates of insurance shall be provided to the Marine & Aviation Director. The first Certificate of Insurance required by the lease shall be provided to the Marine & Aviation Director before occupancy of the demised premises by the Lessee.

Exhibit "C"

GUARANTY OF PAYMENT OF RENT UNDER LEASE AGREEMENT

Guaranty is made this 17 day of September, 2012, by Frank Chivas, individually, City of Clearwater, County of Pinellas, State of Florida, herein referred to as "Guarantor(s)" on behalf of the Lessee, Marina Cantina, LLC, d/b/a Marina Cantina, herein referred to as "Obligor," to the CITY OF CLEARWATER, C/O CITY ATTORNEY, P.O. BOX 4748, CLEARWATER, FLORIDA 33758, herein referred to as "Obligee."

RECITALS

1. Obligor has leased the Premises that is the subject of this lease from Obligee, and Guarantor, whose business address is 25 Causeway Blvd., City of Clearwater, County of Pinellas, State of Florida, has a personal and individual interest in utilizing the Premises for conducting business—a restaurant;
2. The lease is conditioned upon Guarantor providing security for payment of rent hereunder in the form of a personal guaranty on behalf of the Lessee.

SECTION ONE

STATEMENT OF GUARANTY

Guarantors guarantee payment of rent under the attached lease agreement pursuant to the terms thereof. If obligor defaults in the payment of any installment of rent, guarantors shall pay the amount of such installment within 30 days after receipt of notice of default and demand for payment. Guarantor's liability hereunder shall not be affected by reason of any extension of time for payment of any installment granted by obligee to obligor.

## SECTION TWO

### DURATION

This guaranty shall not be revoked during the five year term of the lease, or any subsequent extension thereof. Thereafter, if the lease is renewed, this guaranty shall remain in force until receipt by obligee of written notice of revocation from guarantors, or until terminated pursuant to Section three hereof.

## SECTION THREE

### LIMITATION OF LIABILITY

The maximum amount recoverable by obligee from guarantors pursuant to this guarantee is the total amount of rent due and owed the obligee for the present term. If the aggregate of payments made by guarantors hereunder reaches the above-mentioned amount, this guaranty shall terminate immediately. Frank Chivas will not be personally liable for any accelerated rental payments in the event Lessor exercises its right to accelerate rental payments pursuant to the default provisions of the lease.

## SECTION FOUR

### WAIVER NOTICE OF ACCEPTANCE

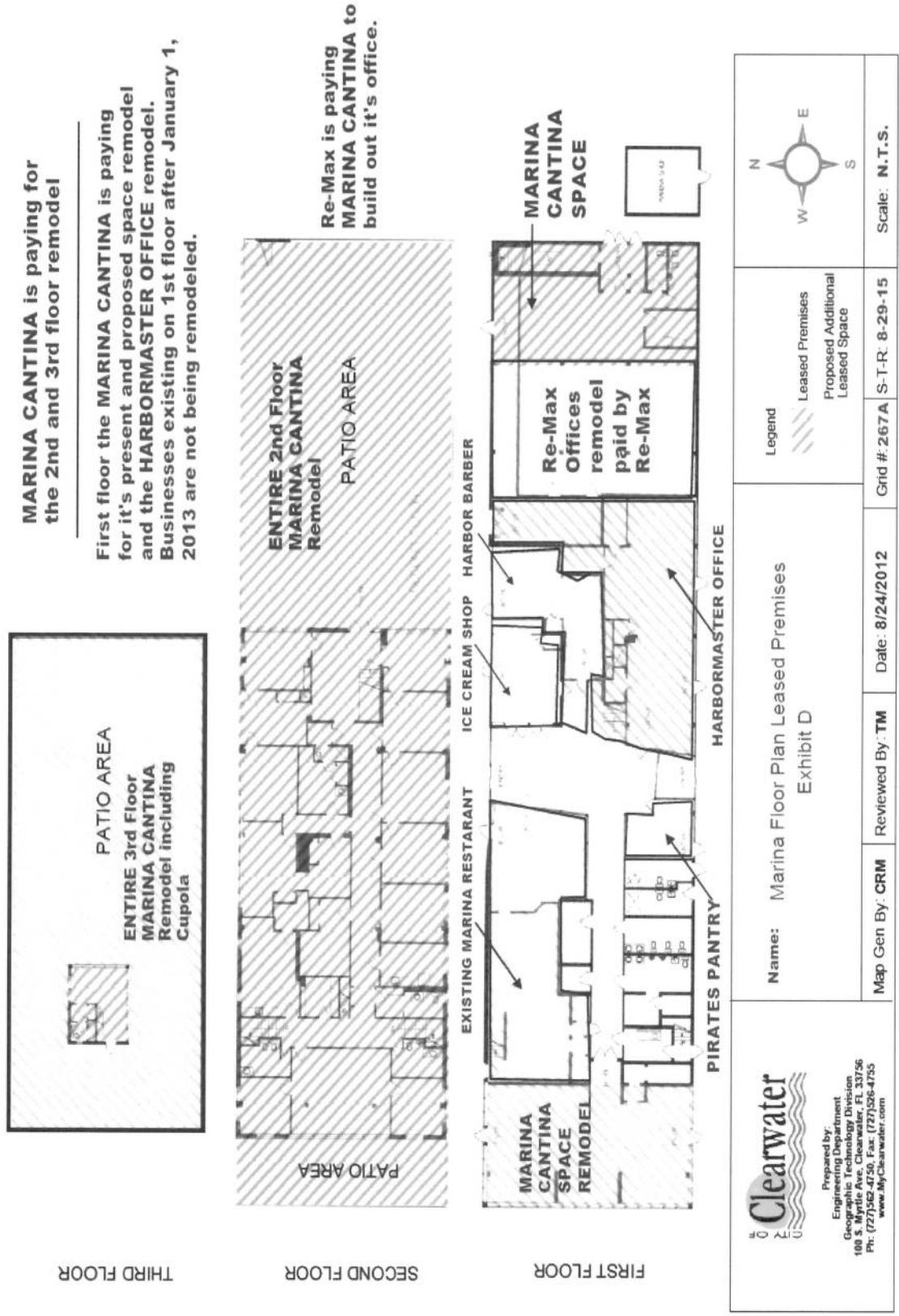
Notice of acceptance of this guaranty is expressly waived.

IN WITNESS WHEREOF, guarantors have executed this guaranty at Clearwater Municipal Marina the day and year above written.

FRANK R CHIVAS

Guarantor – Frank Chivas, individually,  
on behalf of Marina Cantina, LLC





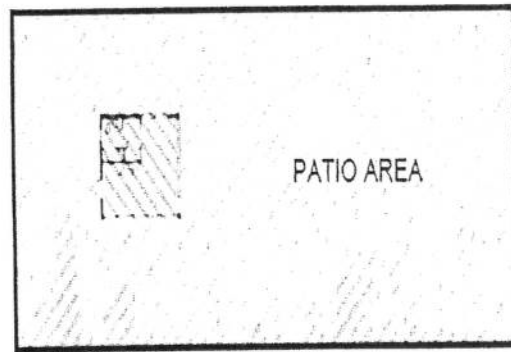
MARINA CANTINA is paying for the 2nd and 3rd floor remodel

First floor the MARINA CANTINA is paying for it's present and proposed space remodel and the HARBORMASTER OFFICE remodel. Businesses existing on 1st floor after January 1, 2013 are not being remodeled.

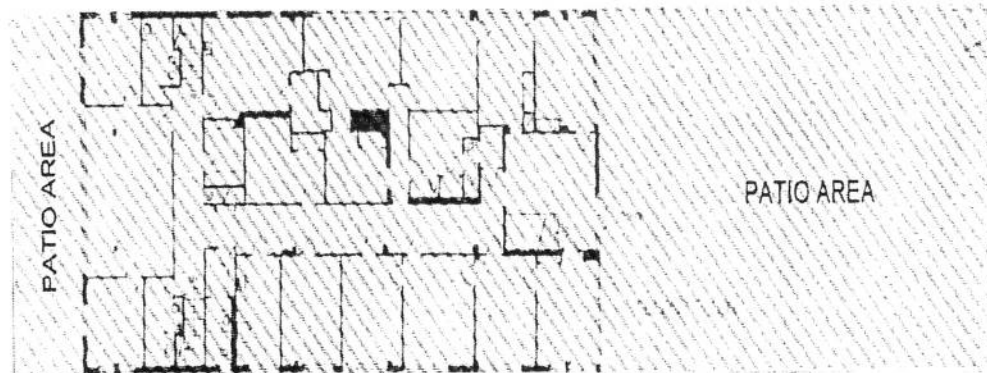
Re-Max is paying MARINA CANTINA to build out it's office.



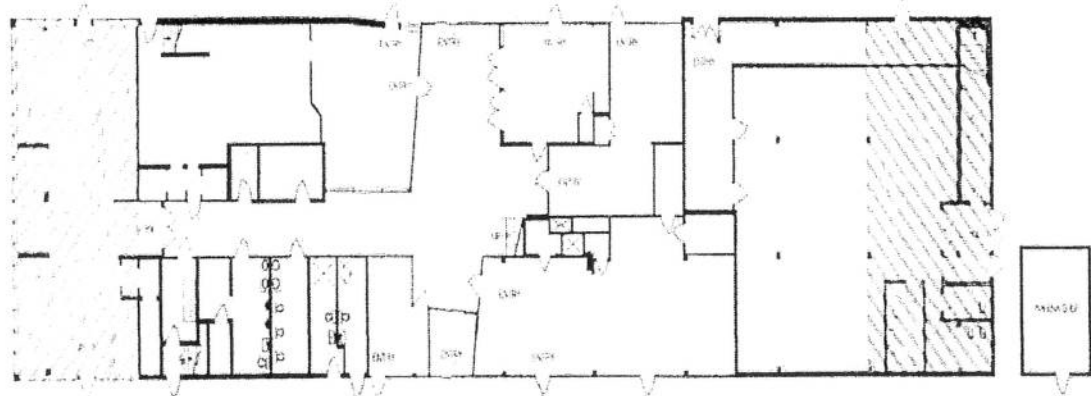
THIRD FLOOR



SECOND FLOOR



FIRST FLOOR



 <p>Prepared by: Engineering Department Geographic Technology Division 100 S. Myrtle Ave., Clearwater, FL 33756 Ph: (727)562-4750, Fax: (727)526-4755 www.MyClearwater.com</p>	<p>Name: Marina Floor Plan Leased Premises Exhibit D</p>			<p>Legend</p> <p> Leased Premises</p> <p> Proposed Additional Leased Space</p>		
	Map Gen By: CRM	Reviewed By: TM	Date: 8/20/2012	Grid #: 267A	S-T-R: 8-29-15	



Exhibit E

Marina Cantina Pre-opening budget

		BUDGET	ACTUAL
<b>1.-CONSTRUCTION</b>			
<b>COST</b>			
Construction contract		0	
Architects and engineers		39500	
First floor construction cost		120000	
Windows/ Doors	1st floor	155000	
	2nd floor	85500	
Permits and Licenses		12000	
Water heater		12000	
Water softener		3600	
Flooring	kitchen and bar	17500	
	dinning	29000	
Masonry		30000	
Drywall/ framing	kitchen	53750	
	dining	42500	
Insulation		12000	
Acoustical Ceiling		18000	
Stucco		13800	
Fire Alarm		22000	
Restroom	male 3 stall	18000	
	female 3 stall	18000	
	unisex	6000	
Painting		48000	
Plumbing		52500	
Coolers/ freezers		47600	
Hoods/fire suppressions systems		49500	
Electric		45000	
Grease traps		27250	
Hvac system		57900	
Railing		42000	
Deck pavers		55000	
Sprinkler system		57500	
Demo		37500	
Roof		55000	
Elevators		93300	
<b>CONSTRUCTION COST</b>		<b>\$1,376,200</b>	

## **2.FURNITURE AND FIXTURES**

Chairs, barstools, tables inside and out	397000
Light fixtures	23700
Signage	5500
Safe	850
Office furniture	600
Blinds	18000
<b>FURNITURE AND FIXTURE COST</b>	<b>\$445,650</b>

## **3.-EQUIPMENT AND SMALLWARES**

Smallwares	85000
Equipment	325000
Stainless steel	
fabrication	20000
<b>EQUIPMENT AND SMALLWARES COST</b>	<b>\$430,000</b>

## **4.-COMPUTERS**

Pos systems	42000
Office computer	4000
Software	3600
Cash drawers	2000
Phone	5000
Tv's	8000
Sound system	9800
Security system	12000
Pagers	4200
Cable	1200
Modem	500
<b>COMPUTERS COST</b>	<b>\$92,300</b>

## **5.-DÉCOR**

\$40,000

## **6.-PRE OPENING CHARITY NIGHT**

Meat	890
Fish	1400
Shrimp	800
Produce	800
Dairy	400
Food other	1400



Beverages	200	
Lobster		
Public relations	4000	
Liquor	1000	
Beer	1000	
Wine	1000	
<b>CHARITY EVENT COST</b>	<b>\$12,890</b>	Clearwater Community Sailing Center

#### **7.-PRE OPENING LABOR TAXES AND BENEFITS**

Mp	25000
Managers	12000
Kitchen manager	6000
Boh	5000
Foh	2500
Suta/futa	600
Taxes	1414
<b>PRE OPENING LABOR COST</b>	<b>\$52,514</b>

#### **8.-PRE OPENING SUPPLIES**

Menus	250
Ecolab	1500
Training supplies	200
Cleaning supplies	500
Bar supplies	1200
Kitchen supplies	1200
R&M	1700
Misc supplies	1450
<b>PRE OPENING SUPPLIES COST</b>	<b>\$8,000</b>

#### **9.-PRE OPEN**

Linen	500
Hotel ads	600
Hiring expense	400
Postage supplies	100
First aid kits	150
Office supplies	200
Assoc. chamber fees	300
Customer relations	500
Utilities prior	
Rent prior	
<b>PRE OPEN COST</b>	<b>2750</b>

**10.- LEGAL**

LEGAL EXPENSES

2500

\$2,462,804

Exhibit F

Leasehold Improvements	Annual Rate	Months per Year	Rate per Month	Months	Years	Monthly P & I
\$ 1,376,200	0.00%	12	0.00%	144	12	(9,556.94)

Amortization Schedule

Year	Month	P & I	Principal Amortization	Interest Payment	Remaining Principal
1	1	(9,556.94)	(9,556.94)	-	1,366,643.06
1	2	(9,556.94)	(9,556.94)	-	1,357,086.11
1	3	(9,556.94)	(9,556.94)	-	1,347,529.17
1	4	(9,556.94)	(9,556.94)	-	1,337,972.22
1	5	(9,556.94)	(9,556.94)	-	1,328,415.28
1	6	(9,556.94)	(9,556.94)	-	1,318,858.33
1	7	(9,556.94)	(9,556.94)	-	1,309,301.39
1	8	(9,556.94)	(9,556.94)	-	1,299,744.44
1	9	(9,556.94)	(9,556.94)	-	1,290,187.50
1	10	(9,556.94)	(9,556.94)	-	1,280,630.56
1	11	(9,556.94)	(9,556.94)	-	1,271,073.61
1	12	(9,556.94)	(9,556.94)	-	1,261,516.67
2	13	(9,556.94)	(9,556.94)	-	1,251,959.72
2	14	(9,556.94)	(9,556.94)	-	1,242,402.78
2	15	(9,556.94)	(9,556.94)	-	1,232,845.83
2	16	(9,556.94)	(9,556.94)	-	1,223,288.89
2	17	(9,556.94)	(9,556.94)	-	1,213,731.94
2	18	(9,556.94)	(9,556.94)	-	1,204,175.00
2	19	(9,556.94)	(9,556.94)	-	1,194,618.06
2	20	(9,556.94)	(9,556.94)	-	1,185,061.11
2	21	(9,556.94)	(9,556.94)	-	1,175,504.17
2	22	(9,556.94)	(9,556.94)	-	1,165,947.22
2	23	(9,556.94)	(9,556.94)	-	1,156,390.28
2	24	(9,556.94)	(9,556.94)	-	1,146,833.33
3	25	(9,556.94)	(9,556.94)	-	1,137,276.39
3	26	(9,556.94)	(9,556.94)	-	1,127,719.44
3	27	(9,556.94)	(9,556.94)	-	1,118,162.50
3	28	(9,556.94)	(9,556.94)	-	1,108,605.56
3	29	(9,556.94)	(9,556.94)	-	1,099,048.61
3	30	(9,556.94)	(9,556.94)	-	1,089,491.67
3	31	(9,556.94)	(9,556.94)	-	1,079,934.72
3	32	(9,556.94)	(9,556.94)	-	1,070,377.78
3	33	(9,556.94)	(9,556.94)	-	1,060,820.83
3	34	(9,556.94)	(9,556.94)	-	1,051,263.89
3	35	(9,556.94)	(9,556.94)	-	1,041,706.94
3	36	(9,556.94)	(9,556.94)	-	1,032,150.00
4	37	(9,556.94)	(9,556.94)	-	1,022,593.06
4	38	(9,556.94)	(9,556.94)	-	1,013,036.11
4	39	(9,556.94)	(9,556.94)	-	1,003,479.17

4	40	(9,556.94)	(9,556.94)	-	993,922.22
4	41	(9,556.94)	(9,556.94)	-	984,365.28
4	42	(9,556.94)	(9,556.94)	-	974,808.33
4	43	(9,556.94)	(9,556.94)	-	965,251.39
4	44	(9,556.94)	(9,556.94)	-	955,694.44
4	45	(9,556.94)	(9,556.94)	-	946,137.50
4	46	(9,556.94)	(9,556.94)	-	936,580.56
4	47	(9,556.94)	(9,556.94)	-	927,023.61
4	48	(9,556.94)	(9,556.94)	-	917,466.67
5	49	(9,556.94)	(9,556.94)	-	907,909.72
5	50	(9,556.94)	(9,556.94)	-	898,352.78
5	51	(9,556.94)	(9,556.94)	-	888,795.83
5	52	(9,556.94)	(9,556.94)	-	879,238.89
5	53	(9,556.94)	(9,556.94)	-	869,681.94
5	54	(9,556.94)	(9,556.94)	-	860,125.00
5	55	(9,556.94)	(9,556.94)	-	850,568.06
5	56	(9,556.94)	(9,556.94)	-	841,011.11
5	57	(9,556.94)	(9,556.94)	-	831,454.17
5	58	(9,556.94)	(9,556.94)	-	821,897.22
5	59	(9,556.94)	(9,556.94)	-	812,340.28
5	60	(9,556.94)	(9,556.94)	-	802,783.33
6	61	(9,556.94)	(9,556.94)	-	793,226.39
6	62	(9,556.94)	(9,556.94)	-	783,669.44
6	63	(9,556.94)	(9,556.94)	-	774,112.50
6	64	(9,556.94)	(9,556.94)	-	764,555.56
6	65	(9,556.94)	(9,556.94)	-	754,998.61
6	66	(9,556.94)	(9,556.94)	-	745,441.67
6	67	(9,556.94)	(9,556.94)	-	735,884.72
6	68	(9,556.94)	(9,556.94)	-	726,327.78
6	69	(9,556.94)	(9,556.94)	-	716,770.83
6	70	(9,556.94)	(9,556.94)	-	707,213.89
6	71	(9,556.94)	(9,556.94)	-	697,656.94
6	72	(9,556.94)	(9,556.94)	-	688,100.00
7	73	(9,556.94)	(9,556.94)	-	678,543.06
7	74	(9,556.94)	(9,556.94)	-	668,986.11
7	75	(9,556.94)	(9,556.94)	-	659,429.17
7	76	(9,556.94)	(9,556.94)	-	649,872.22
7	77	(9,556.94)	(9,556.94)	-	640,315.28
7	78	(9,556.94)	(9,556.94)	-	630,758.33
7	79	(9,556.94)	(9,556.94)	-	621,201.39
7	80	(9,556.94)	(9,556.94)	-	611,644.44
7	81	(9,556.94)	(9,556.94)	-	602,087.50
7	82	(9,556.94)	(9,556.94)	-	592,530.56
7	83	(9,556.94)	(9,556.94)	-	582,973.61
7	84	(9,556.94)	(9,556.94)	-	573,416.67
8	85	(9,556.94)	(9,556.94)	-	563,859.72
8	86	(9,556.94)	(9,556.94)	-	554,302.78
8	87	(9,556.94)	(9,556.94)	-	544,745.83

8	88	(9,556.94)	(9,556.94)	-	535,188.89
8	89	(9,556.94)	(9,556.94)	-	525,631.94
8	90	(9,556.94)	(9,556.94)	-	516,075.00
8	91	(9,556.94)	(9,556.94)	-	506,518.06
8	92	(9,556.94)	(9,556.94)	-	496,961.11
8	93	(9,556.94)	(9,556.94)	-	487,404.17
8	94	(9,556.94)	(9,556.94)	-	477,847.22
8	95	(9,556.94)	(9,556.94)	-	468,290.28
8	96	(9,556.94)	(9,556.94)	-	458,733.33
9	97	(9,556.94)	(9,556.94)	-	449,176.39
9	98	(9,556.94)	(9,556.94)	-	439,619.44
9	99	(9,556.94)	(9,556.94)	-	430,062.50
9	100	(9,556.94)	(9,556.94)	-	420,505.56
9	101	(9,556.94)	(9,556.94)	-	410,948.61
9	102	(9,556.94)	(9,556.94)	-	401,391.67
9	103	(9,556.94)	(9,556.94)	-	391,834.72
9	104	(9,556.94)	(9,556.94)	-	382,277.78
9	105	(9,556.94)	(9,556.94)	-	372,720.83
9	106	(9,556.94)	(9,556.94)	-	363,163.89
9	107	(9,556.94)	(9,556.94)	-	353,606.94
9	108	(9,556.94)	(9,556.94)	-	344,050.00
10	109	(9,556.94)	(9,556.94)	-	334,493.06
10	110	(9,556.94)	(9,556.94)	-	324,936.11
10	111	(9,556.94)	(9,556.94)	-	315,379.17
10	112	(9,556.94)	(9,556.94)	-	305,822.22
10	113	(9,556.94)	(9,556.94)	-	296,265.28
10	114	(9,556.94)	(9,556.94)	-	286,708.33
10	115	(9,556.94)	(9,556.94)	-	277,151.39
10	116	(9,556.94)	(9,556.94)	-	267,594.44
10	117	(9,556.94)	(9,556.94)	-	258,037.50
10	118	(9,556.94)	(9,556.94)	-	248,480.56
10	119	(9,556.94)	(9,556.94)	-	238,923.61
10	120	(9,556.94)	(9,556.94)	-	229,366.67
11	121	(9,556.94)	(9,556.94)	-	219,809.72
11	122	(9,556.94)	(9,556.94)	-	210,252.78
11	123	(9,556.94)	(9,556.94)	-	200,695.83
11	124	(9,556.94)	(9,556.94)	-	191,138.89
11	125	(9,556.94)	(9,556.94)	-	181,581.94
11	126	(9,556.94)	(9,556.94)	-	172,025.00
11	127	(9,556.94)	(9,556.94)	-	162,468.06
11	128	(9,556.94)	(9,556.94)	-	152,911.11
11	129	(9,556.94)	(9,556.94)	-	143,354.17
11	130	(9,556.94)	(9,556.94)	-	133,797.22
11	131	(9,556.94)	(9,556.94)	-	124,240.28
11	132	(9,556.94)	(9,556.94)	-	114,683.33
12	133	(9,556.94)	(9,556.94)	-	105,126.39
12	134	(9,556.94)	(9,556.94)	-	95,569.44
12	135	(9,556.94)	(9,556.94)	-	86,012.50

12	136	(9,556.94)	(9,556.94)	-	76,455.56
12	137	(9,556.94)	(9,556.94)	-	66,898.61
12	138	(9,556.94)	(9,556.94)	-	57,341.67
12	139	(9,556.94)	(9,556.94)	-	47,784.72
12	140	(9,556.94)	(9,556.94)	-	38,227.78
12	141	(9,556.94)	(9,556.94)	-	28,670.83
12	142	(9,556.94)	(9,556.94)	-	19,113.89
12	143	(9,556.94)	(9,556.94)	-	9,556.94
12	144	(9,556.94)	(9,556.94)	-	(0.00)

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(1,376,200.00)	(1,376,200.00)	-
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