

FOURTH AMENDMENT TO LEASE DATED SEPTEMBER 17, 2012

BETWEEN

THE CITY OF CLEARWATER, FLORIDA

AND

MARINA CANTINA, LLC

THIS FOURTH AMENDMENT TO THE LEASE AGREEMENT DATED September 17, 2012 (the "Amendment") is made as of this 8<sup>th</sup> day of March, 2016 (the "Effective Date"), by and between THE CITY OF CLEARWATER, FLORIDA, a Florida municipal corporation (the "Lessor") and MARINA CANTINA, LLC, a Florida limited liability company (the "Lessee").

WHEREAS, the Lessor and Lessee agree to this Fourth Amendment to Lease Agreement modifying the terms of the Lease dated September 17, 2012 to modify the terms and conditions resulting from a construction delay caused by improvements that were not initially contemplated in the Lease Agreement and to specify additional allowable uses of the leasehold to accommodate additional restaurant services.

NOW, THEREFORE it is mutually agreed as follows:

1. Paragraph 4 is hereby replaced in its entirety as follows:

The Premises shall be used only for the purpose of conducting the following businesses: (1) a full service restaurant with full liquor bar, bar service, and outside seating referred to herein as "Marina Cantina;" (2) a full service restaurant with full liquor bar, bar service, and outside seating referred to herein as "Salt Cracker;" (3) and a pizza restaurant with outside seating referred to herein as "Roundabout Pizza." Roundabout Pizza's kitchen may also be used as a prep kitchen for Marina Cantina and Salt Cracker. Roundabout Pizza may also be used for deliveries and storage of items necessary to conduct the permissible business activities. Any unauthorized use of the Premises will constitute an event of default.

2. Paragraph 5(a), subparagraphs (c) through (h), and subparagraph (j) are hereby replaced in their entirety as follows, and the remaining subparagraphs are unaffected by this Amendment:

The Lessee hereby covenants and agrees to pay rent for the leasehold, which will eventually comprise 10,141 square feet of interior space and 15,578 square feet of exterior/seasonal patio space as follows:

- a. Once each 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 for each restaurant comprising the leasehold. 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.

...

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

- i. Pay \$9.00/sq. ft. for 9,285 sq. ft. per year during the span from year 2 through January 31, 2016 of the lease.
- ii. Pay the total sum of \$194,985.00 plus tax during the span of year 2 through January 31, 2016 of the lease, which shall be paid in equal monthly payments of \$6,963.75. Each monthly payment shall be due and payable on the first day of each month.
- iii. As of February 1, 2016, the leasehold expands to 10,141 sq. ft., and Lessee must pay the total sum of \$152,115.00 plus tax during the span of the aforementioned date through year 5 of the lease, which shall be paid in equal monthly payments of \$7,605.75 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 10,141 sq. ft. per year during years 6 and 7 of the lease, at a total sum of \$182,538.00 plus tax, which shall be paid in equal monthly payments of \$7,605.75 plus tax through September 30, 2019.
- ii. Pay \$17.50/sq. ft. for 10,141 sq. ft. per year during years 8 through 10 of the lease, at a total sum of \$532,402.50 plus tax, which shall be paid in equal monthly payments of \$14,788.96 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 10,141 sq. ft. per year during years 11 and 12 of the lease, at a total sum of \$354,935.00 plus tax, which shall be paid in equal monthly payments of \$14,788.96 plus tax through September 30, 2024.

ii. Pay \$20.00/sq. ft. for 10,141 sq. ft. per year during years 13 through 15 of the lease, at a total sum of \$608,460.00 plus tax, which shall be paid in equal monthly payments of \$16,901.67 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 10,141 sq. ft. per year during years 16 and 17 of the lease, at a total sum of \$405,640.00 plus tax, which shall be paid in equal monthly payments of \$16,901.67 plus tax through September 30, 2029.

ii. Pay \$22.50/sq. ft. for 10,141 sq. ft. per year during years 18 through 20 of the lease, at a total sum of \$684,517.50 plus tax, which shall be paid in equal monthly payments of \$19,014.38 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 10,141 sq. ft. per year during years 21 and 22 of the lease, at a total sum of \$456,345.00 plus tax, which shall be paid in

equal monthly payments of \$19,014.38 plus tax through September 30, 2034.

ii. Pay \$25.00/sq. ft. for 10,141 sq. ft. per year during years 23 through 25 of the lease, at a total sum of \$760,575.00 plus tax, which shall be paid in equal monthly payments of \$21,127.08 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 10,141 sq. ft. per year during years 26 and 27 of the lease, at a total sum of \$507,050.00 plus tax, which shall be paid in equal monthly payments of \$21,127.08 plus tax through September 30, 2039.

ii. Pay \$27.50/sq. ft. for 10,141 sq. ft. per year during years 28 through 30 of the lease, at a total sum of \$836,632.50 plus tax, which shall be paid in equal monthly payments of \$23,239.79 plus tax through September 30, 2042.

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

...

j. In addition to paying the first month's rent of \$6,678.00, the Lessee shall pay an additional \$7,605.75 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.

3. Paragraphs 15(f)(4) and (5) are hereby added to the Lease Agreement as follows:

...

(4) If the Lessee shall violate any of the covenants of this lease and fail to correct such default within thirty (30) days after a written request by the Lessor to do so, then the Lessor may, at its option, deem this lease terminated, accelerate all rents and future rents called for hereunder and Lessee shall become a tenant at sufferance, and the Lessor shall be entitled to obtain possession of the premises as provided by law.

(5) In case the leased property shall be abandoned, as such term is defined by Florida Statutes, the Lessor, after written notice as provided by Florida Statutes to the Lessee, Lessor may (i) re-enter the premises as the agent of the Lessee, either by force or otherwise, without being liable to any prosecution or claim therefore, and may relet the leased property as the agent of the Lessee and receive the rent therefore and apply the same to the payment of such expenses as Lessor may have incurred in connection with the recovery of possession, reduction, refurbishing or otherwise changing or preparing for reletting, including brokerage and reasonable attorneys fees. Thereafter, it shall be applied to the payment of damages and to the cost and expenses of performance of the other covenants of Lessee as provided herein; or (ii) the Lessor may, at its option, terminate this lease by giving the Lessee thirty (30) days' written notice of such intention served upon the Lessee or left upon the leased property, and the term hereof shall absolutely expire and terminate immediately upon the expiration of said thirtieth (30) day period.

4. Paragraph 16 is hereby amended as follows:

...Lessee covenants to complete all contemplated capital improvements, as detailed in Exhibit E, as expeditiously as possible and have the restaurant Marina Cantina and Salt Cracker open by ~~January 1~~ April 1, 2016. Lessee covenants to have Roundabout Pizza open by Labor Day 2016. Otherwise, this shall constitute an Event of Default.

5. All of the terms and conditions of the Lease Agreement are incorporated herein by reference and shall continue in full force and effect throughout the remaining term of this Lease Agreement.

[EXECUTION PAGE FOLLOWS]

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

Countersigned:

CITY OF CLEARWATER, FLORIDA

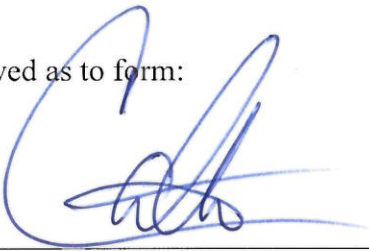
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George N. Cretekos, Mayor

By William Horne

William Horne, City Manager

Approved as to form:



Camilo Soto, Assistant City Attorney

Attest:

Rosemarie Call

Rosemarie Call, City Clerk



Marina Cantina, LLC

By:

Frank P. Chivas pres.

Frank Chivas, President