

SECOND AMENDMENT TO ACQUISITION AGREEMENT

This Second Amendment to Acquisition Agreement (herein referred to as the "Second Amendment") is made this 22nd day of August, 2018, by and between CITY OF PUNTA GORDA, FLORIDA, a Florida Municipal corporation (herein referred to as the "City"), and ATA FISHVILLE FL, LLC, an Arizona limited liability company (herein referred to as the "Buyer"), parties to that certain Acquisition Agreement dated September 2, 2015, and that certain First Amendment to Acquisition Agreement dated December 16, 2016 (herein collectively referred to as the "Agreement").

WITNESSETH:

WHEREAS, the parties have entered into and subsequently amended the Agreement; and

WHEREAS, the parties have closed on the property described in the Agreement on December 6, 2016; and

WHEREAS, the easement area for the Harbor Walk segment has been conveyed to the City; and

WHEREAS, the Twentieth Judicial Circuit Court Case No. 16-2152-CA, Robert Berry Trabue and MCCO, Inc. vs. City of Punta Gorda (the "Litigation"), was filed challenging the legal sufficiency of the street and park vacations required under the Agreement; and

WHEREAS, the Litigation has been resolved by that certain settlement among the parties dated August 22, 2018; and

WHEREAS, under the Agreement, the Buyer has certain design, permitting and construction obligations with respect to certain improvements which must be completed within specific time-frames; and

WHEREAS, the Buyer has completed the Phase One Improvements; and

WHEREAS, due to the pendency of the Litigation, it would have been imprudent for Buyer to proceed with planning, designing and permitting the Additional Phased Improvements; and

WHEREAS, the parties are desirous of amending the Agreement to provide additional time for the Buyer to complete the Additional Phased Improvements as described in the Agreement.

NOW, THEREFORE, it is agreed between the parties as follows:

1. The Phase One Improvements have been fully completed within the meaning and requirements of the Agreement as follows:
 - a. The new entry;
 - b. The Center Court Deck;
 - c. The Center Court Bar;

- d. The Harbor Walk; and
 - e. Public restrooms.
2. The City acknowledges that Buyer has satisfied its obligations under the Agreement with respect to the Phase I Improvements.
3. Paragraph 5.c. (v) of the Agreement is hereby amended and restated as follows:

Time/Deadlines. All of the Additional Phased Improvements shall be substantially completed within five (5) years of the full execution of this Second Amendment ("Additional Phased Improvements Completion Date"). Said timing shall be extended for a commercially reasonable period in the event that an act of God, act of war, or financial and economic conditions will not allow for the construction to commence or be substantially completed, but in no event shall substantial completion of the Additional Phased Improvement extend beyond eight (8) years from the full execution of this Second Amendment.

Except as modified by this Amendment, the parties confirm and acknowledge the terms and conditions of the Agreement shall and do remain in full force and effect, and the parties shall remain bound thereby.

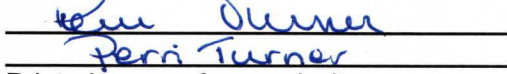
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[SIGNATURES ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties have set their hands and seals.



Printed name of first witness



Printed name of second witness

08/22/2019

CITY:

CITY OF PUNTA GORDA, FLORIDA,
a Florida Municipal corporation

By: 

Printed Name: Nancy Prapke

Title: Mayor

Date

of

Execution:



Printed name of first witness



Printed name of second witness

BUYER:

ATA FISHVILLE FL, LLC,
an Arizona limited liability company

By: ARCITERRA STRATEGIC RETAIL ADVISOR, LLC
an Arizona limited liability company, as Manager

By: ARCITERRA COMPANIES, LLC,
an Arizona limited liability company, its Manager

By: 

Printed Name: Blayne Rice

Title: Vice-President

Date

of

Execution:

1/8/19

Acquisition Agreement

THIS AGREEMENT is made this day 2nd day of September 2015, by and between, CITY OF PUNTA GORDA, FLORIDA, a Florida Municipal corporation, herein referred to as "City", and ATA FISHVILLE FL, LLC, an Arizona limited liability company, herein referred to as "Buyer".

WITNESSETH:

WHEREAS, City is the fee-simple owner of that real property which is described more particularly on Exhibit "A" attached hereto and made a part hereof, said real property being referred to in this Agreement as "Land Lease Property"; and

WHEREAS, the Land Lease Property is the subject of that Land Lease dated July 17, 1978 and recoded July 19, 1978 in O.R. Book 580, Pages 499 through 538, inclusive, amended by First Amendment to Land Lease dated April 16, 1993 and recorded on April 20, 1993 in O.R. Book 1273, Pages 343 through 348, inclusive, all of the Public Records of Charlotte County, Florida (herein referred to as "Land Lease"); and

WHEREAS, the term of the Land Lease was scheduled to expire on July 16, 2028; however, the Lessee under the Land Lease renewed the term of same in accordance with the provisions of Section 15.I; and

WHEREAS, Buyer is now the Lessee under the Land Lease pursuant to that Assignment and Assumption of Lease bearing date the 3rd day of August, 2012, and recorded on the same day in O.R. Book 3679, Pages 2175 through 2181, inclusive, of the Public Records of Charlotte County, Florida; and

WHEREAS, Buyer and its predecessors have developed and operated Fishermen's Village on the Land Lease Property, a mixed use facility consisting of a timeshare resort, retail stores, restaurants, a sport marina, and other uses; and

WHEREAS, Buyer is also the Lessee under that Sovereignty Submerged Lands Lease for the submerged lands consisting of the docking and marina areas of Fishermen's Village, which Lease was recorded on November 1, 2012 in O.R. Book 3705 at Pages 2114 through 2126, inclusive, of the Public Records of Charlotte County, Florida; and

WHEREAS, Buyer is committed to making substantial improvements to Fishermen's Village in conjunction with its purchase of the underlying fee-simple ownership interest in the Land Lease Property; and

WHEREAS, the initial improvements will include, but not be limited to, a new entrance, the extension of the Harbor Walk, a Center Court Bar, improvements to the Center Court Deck, a new restaurant and renovation of the public restrooms hereafter the "Phase One Improvements"; and

WHEREAS, Buyer shall also design, permit and construct other improvements to Fishermen's Village which conceptually include a new mixed use building, a recreation area, additional parking and new yacht club facilities hereafter the "Additional Phased Improvements"; and

WHEREAS, Buyer's ability to make both the Phase One and Additional Phased Improvements will be greatly enhanced by its acquisition of the fee-simple title to the Land Lease Property; and

WHEREAS, Buyer has agreed to purchase the Land Lease Property for the appraised value of \$3,510,000.00 and has also agreed to make the Phase One Improvements and the Additional Phased Improvements to Fishermen's Village; and

WHEREAS, while City believes that upon Buyer's purchase of the Land Lease Property, the value of said property will significantly exceed the purchase price, the City is willing to sell the Land Lease Property for \$3,510,000.00 in reliance upon Buyer's representation that it will design, permit and construct the "Additional Phase Improvements"; and

WHEREAS, the City would not have agreed to sell and convey the Land Lease Property to Buyer for \$3,510,000.00 in the absence of Buyer's commitments with respect to the Phase One and Additional Phased Improvements; and

WHEREAS, City has agreed to sell and convey fee-simple title to the Land Lease Property to Buyer in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth and in the further considerations of the sum of ten dollars (\$10.00) and other good and valuable consideration, each to the other in hand paid, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Purchase and Sale.** City agrees to sell and Buyer agrees to purchase the following described property located in Charlotte County, Florida, according to the terms and conditions herein set forth:

a. Land Lease Property referenced above, including all improvements and fixtures thereon, together with all easements and rights appurtenant thereto.

b. Any and all personal property including, without limitation, equipment, supplies, water and sewer facilities and all other personal property associated with and used in connection with the land. Prior to the expiration of the Inspection Period, the parties must prepare and agree to a detailed list of the said personal property.

c. All contracts, permits, leases, and other authorizations pertaining to the Land Lease Property and use thereof.

d. All rights to leases and tenancies pertaining to the said Land Lease Property.

All of the above-described real and personal property may be collectively referred to in this Agreement as the "Property" or "Subject Property".

2. **Purchase Price and Payment.** The total purchase price for the Property is THREE MILLION FIVE HUNDRED TEN THOUSAND AND NO/100 DOLLARS (\$3,510,000.00). The said purchase price shall be paid as follows:

- | | | |
|----|---|--------------|
| a. | Initial escrow deposit to be paid to Wotitzky, Wotitzky, Ross & McKinley, P.A. (Escrow Agent) on or before the expiration of three (3) business days after the Effective Date of this Agreement | 10,000.00 |
| b. | Balance to close (U.S. Currency, locally drawn cashiers' or certified check or wire transfer) subject to adjustments and prorations | 3,500,000.00 |

The foregoing deposits shall be held in escrow by the Escrow Agent. The deposits shall be placed in a non-interest-bearing account or accounts.

3. **Financing Contingency.** This Agreement and Buyer's obligations under this Agreement are contingent on Buyer obtaining a written loan commitment which confirms underwriting loan approval for a loan to purchase the Property ("Loan Approval") on or before the Closing Date in an amount and on such terms as are acceptable to Buyer. In the event Buyer has not obtained the Loan Approval or in the event any conditions of the Loan Approval, including, but not limited to appraisals, are not satisfied on or before the Closing Date, Buyer shall have the right to cancel this Agreement and obtain a full and complete refund of all earnest money deposits.

4. **Additional Contingencies.** The closing of the transaction contemplated by this Agreement, and the obligations of Buyer hereunder are contingent upon Buyer obtaining or accomplishing the following conditions:

a. **Street and Park Vacation.** The vacation of that portion of West Retta Esplanade lying between Maud Street and the tidal creek along the northeastern boundary of the Subject Property. The vacation of that portion of Maud Street lying north of the existing entrance to the Merrill Lynch property. The vacation of such park or parks, as depicted on the original plat for the City of Punta Gorda, as may be included within the boundaries of the Subject Property.

b. **Land Use and Zoning.** The final approval by the City and all applicable governmental agencies of any land use plan or zoning amendments which shall be required to allow the existing uses and structures to be conforming, and to allow the construction of the planned improvements to Fishermen's Village. The parties contemplate the zoning designation will be as a Planned Development within the meaning of the zoning code for the City. For purposes hereof, "final approval" shall mean the expiration of any periods of time which shall be allowed to appeal such land use and zoning approvals, or, if an appeal is filed, the date of a final, non-appealable Order approving same.

City shall, within its legal parameters, cooperate with Buyer to meet the foregoing contingencies. Nothing contained herein shall obligate the City to grant all required approvals unless such approvals are consistent with the requirements of all applicable City Codes.

5. **Affirmative Covenants and Commitments.** Buyer hereby agrees and covenants as follows:

a. Phase One Improvements. Buyer has made certain commitments to City regarding improvements which will be made to the Subject Property and to the adjacent properties owned by Buyer which will be of general benefit to the public. Buyer hereby agrees, at its sole cost and expense, to make the following improvements to Fishermen's Village which Buyer has roughly estimated (without the assistance of final plans, specifications, or bids) at approximately \$4,500,000, which shall be referred to in this Agreement as the "Phase One Improvements":

(i) New Entry. The construction and installation of a new covered entrance to Fishermen's Village.

(ii) Center Court Deck. Raising the center court deck and adding decking around the Village Fish Market. Installation of palm trees and additional seating.

(iii) Center Court Bar. The construction of the new "Center Court Bar" located in the center court area.

(iv) Restrooms. The renovation, modernization, and expansion of the public restrooms in Fishermen's Village.

(v) Harbor Walk Segment. The construction and installation of a segment to the City Harbor Walk around the Fishermen's Village property in the location generally depicted on the sketch which is attached hereto as Exhibit "B". At the closing of the transaction contemplated by this Agreement, Buyer shall convey and grant to City a non-exclusive public pedestrian easement for the Harbor Walk segment. The legal description of the easement shall be determined by a survey of the location of the Harbor Walk Segment which shall be generally consistent with the sketch attached hereto as Exhibit "B". The Easement shall allow the relocation of the easement area in the event such a relocation is required in connection with Buyer's future development and improvements to Fishermen's Village, so long as the character and quality of public access via the Harbor Walk is substantially preserved. The Buyer will coordinate the design of the Harbor Walk segment with the Punta Gorda History Center Board of Directors to create practicable elements that support the history of Charlotte Harbor.

(vi) Plans and Specifications. The Phase One Improvements shall be constructed according to Plans and Specifications prepared by Buyer. Buyer shall provide all Plans and Specifications for the Phase One Improvements to City. City shall make reasonable efforts to review and approve Buyer's Plans and Specification within thirty (30) days from City's receipt of a complete set of Plans and Specifications from Buyer. Any revisions, changes or amendments to previously approved Plans and Specifications shall be subject to like approval by City, which approval shall not be unreasonably withheld. Any unreasonable or unusual delay by City in reviewing or approving such Plans and Specifications shall toll the Phase One Completion Date for a like period of time.

(vii) Permits and Approvals. Buyer shall make applications for permits and approvals required to construct the Phase One Improvements with the City and any other applicable governmental agencies. In the event Buyer is unable, after reasonable diligence, to obtain any or all of the permits and approvals required to construct any of the Phase One Improvements, the obligation of Buyer to construct any such improvements shall be terminated.

(viii) Time/Deadlines. Buyer is currently undertaking the planning and permitting of the Phase One Improvements. Plans and Specifications, to the extent same shall not have been submitted prior to the Effective Date of this Agreement, shall be submitted to City on or before the expiration of one hundred twenty (120) days from and after the Effective Date of this Agreement. All of the Phase One Improvements for which Buyer shall have obtained permits and approvals shall be substantially completed on or before sixteen (16) calendar months after closing or December 31, 2016, whichever last occurs ("Phase One Completion Date").

(ix) Buyer's Failure to Complete the Phase One Improvements. In the event that, for any reason other than force majeure, as described in Paragraph 24 below, Buyer fails to complete the Phase One Improvements on or before the Phase One Completion Date in conformity with the permits issued by the City and other governmental agencies having jurisdiction, the Seller may issue, in its sole discretion, a "Notice of Failure to Complete Required Improvements" to Buyer. If Buyer has not completed the required improvements within one hundred twenty (120) days of the receipt of such Notice from the City, then Buyer shall be obligated to pay to the City a sum equal to the current monthly payment to City of the lease amounts payable under the Lease Agreement for each calendar month until the Phase One Improvements are completed. In no event shall the monthly payments due under this provision be considered a reinstatement of the Lease Agreement.

b. Market Study / Master Planning.

(i) Planning. The Buyer's architect shall work cooperatively with the Seller's planning and design staff in developing a Master Plan for the area of Fishermen's Village known as the Marina area and integrating such Master Plan with other plans for the City. Although the plans currently are conceptual, the Buyer intends to develop the Property for its best and highest use under the City's Land Development Regulations with the intent that it will be operated as a for-profit commercial enterprise.

(ii) Character Retention. The general character and community aspects of Fishermen's Village and the Subject Property shall be retained. The Subject Property shall be operated by Buyer and its successors as a mixed use facility. A minimum of 70,000 square feet of the improvements shall be maintained or developed for community, and commercial uses.

c. Additional Phased Improvements. Buyer hereby agrees, at its sole cost and expense, to make the following improvements to Fishermen's Village which Buyer has roughly estimated (without the assistance of any plans, specifications, or bids) at approximately \$30,000,000, which shall be referred to in this Agreement as the "Additional Phased Improvements":

(i) Construct a new building or buildings of not less than 50,000 square feet, which will provide for Harbor Master's office, marina amenities, retail, condominium, hotel, and food and beverage service space.

(ii) Revise the existing parking on the Subject Property to add not less than 75 additional parking spaces.

(iii) Construct a new swimming pool and recreational areas. Although not designed, it is the intent of the Buyer to reconfigure and enlarge this amenity.

(iv) Before the submission of a Building Permit application for the "Additional Phased Improvements, the City's planning and urban design staff will review the proposed Additional Phased Improvements for consistency with the intent of the parties pursuant to the Agreement. Should the City's planning and urban design staff find that any of the proposed Additional Phased Improvements are not consistent with the intent of the Agreement, the Buyer and City Staff will work together to resolve the inconsistency. If the matter cannot be resolved between the Buyer and City Staff, the matter shall be brought to the City Council for a final determination of consistency with the intent of the Agreement. Following the resolution of any disagreement between the City Staff and Buyer, the Building Permits issued by the City for the Additional Phased Improvements will be the benchmark for determining whether or not the Buyers failed to complete the Additional Phased Improvements.

(v) Time/Deadlines. All of the Additional Phased Improvements shall be completed within five (5) years from the Closing Date ("Additional Phased Improvements Completion Date"). Said timing shall be extended for a commercially reasonable period in the event that an act of God, act of war, or financial and economic conditions will not allow for the construction to commence or be completed, but in no event shall completion of the Additional Phased Improvement extend beyond eight (8) years from the Closing Date.

(vi) Buyer's Failure to Complete the Additional Phased Improvements. In the event that, for any reason other than force majeure, as described in Paragraph 24 below, Buyer fails to complete all of the Additional Phased Improvements in conformity with the permits issued by the City and other governmental agencies having jurisdiction, on or before the Additional Phased Improvements Completion Date, or any extension thereof as provided herein, the City may issue, in its sole discretion, a "Notice of Failure to Complete Required Improvements" to Buyer. Prior to the issuance of a "Notice of Failure to Complete Required Improvements", the City shall schedule a meeting with the Buyer to discuss the reasons for the Buyer's failure to complete the required improvements and how much additional time the Buyer will require to fulfill its obligations under this Paragraph 5. After the Buyer has been afforded an opportunity to meet with the City, the City may, in its sole discretion, extend the Additional Phased Improvements Completion Date, or issue a "Notice of Failure to Complete Required Improvements" to Buyer. If Buyer has not completed all of the Additional Phased Improvements within one hundred twenty (120) days of the receipt of such Notice from the City, then the Reverter Parcels, except as otherwise provided in this Paragraph 5(c)(vi), shall automatically revert to the City. In order to effectuate this reversionary interest, the deed conveyed to Buyer pursuant to this Agreement shall include the following statement, "This conveyance is made on the condition that if Grantee, or Grantee's successors or assigns, fail to complete the improvements to the real property described herein within the time and manner required in that certain Agreement between the Grantor and Grantee dated _____, 2015, the Reverter Parcels described herein shall automatically revert to the Grantor, or the Grantor's successors or assigns, without the necessity of taking any affirmative action to effectuate this reverter." In addition, the Buyer hereby agrees that it will execute a Quit Claim Deed in the form provided in Exhibit "D", attached hereto and incorporated herein, and deliver the same to the City on the Closing Date, which will be held by the City Clerk in escrow on behalf of the City. The Buyer hereby agrees that if Buyer has not completed all of the Additional Phased Improvements within one hundred twenty (120) days of the receipt of a "Notice of Failure to Complete Required Improvements" from the City, the City shall have the right, and the Buyer hereby authorizes the City to fill in the then current date on the escrowed Quit Claim Deed and

to record the same in the Public Records of Charlotte County, Florida reconveying the Reverter Parcels. The Buyer hereby further agrees that upon City's exercise of the reverter provided in this Paragraph 5(c)(vi), the Buyer will take all necessary actions so that the title conveyed by the Quit Claim Deed will be free, clear, and unencumbered. The Buyer acknowledges that the City's reversionary right is a material provision of this Agreement, without which, City would not have entered into this transaction. Upon the timely completion of all of the Additional Phased Improvements, which includes the successful passing of all required governmental inspections, the City shall issue to the Buyer a "Certificate of Completion" which shall be a conclusive determination of the completion of the Additional Phased Improvements and a termination of the City's reversionary interest as provided in this Paragraph 5(c)(vi). Said "Certificate of Completion" shall be in such form as will enable it to be recorded by the Buyer. Should it be necessary for the City to exercise its reversionary rights as provided in this Paragraph 5(c)(vi), the Buyer shall have the right to lease the Reverter Parcels, pursuant to a Ground Lease with a term for ninety-nine (99) years and an initial annual lease payment of Two Hundred Three Thousand One Hundred Dollars (\$203,100.00). Said Ground Lease shall be in the form attached hereto and incorporated herein as Exhibit "E". The Ground Lease shall be patterned after the Crab House Lease, an excerpt of which pertaining to escalation of rents is attached hereto as Exhibit "E". The above-referenced rent shall be adjusted annually for years two (2) through five (5) based on increases in the Consumer Price Index ("CPI"). The annual rent payable in year six (6) will be adjusted to the fair market rental value for the land comprising the Reverter Parcels appraised as unimproved property. The fair market rental value for the said sixth (6th) year shall be determined by a MAI real estate appraiser acceptable to City and Buyer. In the event an appraiser cannot be agreed upon, the annual fair market rental value shall be an amount equal to the average of three appraisals. Said appraisers shall be MAI appraisers; one selected by the City, one selected by the Buyer, and the third one to be selected by those two appraisers. If the third appraiser cannot be agreed upon, both appraisers shall submit the names of two appraisers and the four names shall be put into a hat and one name drawn by the City Manager in front of the Buyer as the third appraiser. Thereafter, the annual rent shall be adjusted in the manner set forth above for years two (2) through five (5) of the Ground Lease. For purposes hereof, the Reverter Parcels are those portions from Subject Property identified in red and noted as such on the aerial which is attached hereto as Exhibit "C". The exact legal descriptions for the Reverter Parcels will be determined by a survey in substantial conformance with Exhibit "C".

d. Survival. The terms, provisions, covenants and agreements of this Section 5 shall survive the closing of this transaction.

6. Representations and Warranties. City hereby represents and warrants as of the date of City's execution of this Agreement, and through and including the closing of the transaction contemplated by this Agreement as follows:

a. All of the documents to be executed by City which are to be delivered to Buyer at the closing will be duly authorized, executed, and delivered by City, and at the time of closing will be the legal, valid, and binding obligations of City and such documents will not violate any provisions of any agreement to which City is a part or to which it is subject.

b. At the time of closing, there will be no outstanding contracts made by City for any improvements to the Property which have not been fully paid for and City shall cause to be discharged all construction or materialmen's liens arising from any labor or materials furnished to the Property prior to the time of closing.

c. City has no existing contracts or commitments extending beyond the execution date hereof.

d. To the best of City's actual knowledge, neither the execution and delivery of this Agreement, nor the consummation by City of any of the transactions contemplated hereby will result in a breach of any applicable statute or regulation, or of any administrative or court order or decree; nor will such compliance conflict with or result in the breach of any term, provision, covenant or condition of any agreement or other instrument to which City is a party or by which the City may be bound or, which with the giving of notice or lapse of time, or both, constitute an event of default thereunder.

e. No suit, action, or legal, administrative, arbitration, or other proceeding or governmental investigation is pending, or to City's knowledge is threatened against City or the Property, which might materially or adversely affect the Property. There is no outstanding judgment, decree, or order against City which affects City in any way which might materially or adversely affect the Property.

f. To the best of City's actual knowledge, as of the date hereof, the Property is not in violation of any federal, state, or local law, ordinance, or regulation relating to the environmental conditions on, under, or about the Property, including, but not limited to, soil and ground water conditions. City further represents and warrants that during the time in which the City owned the Property, neither the City nor to the best of City's knowledge, any third party has used, generated, manufactured, stored, or disposed of on, under, or about the Property or transported to or from the Property any flammable, explosive, or radioactive materials, hazardous waste, toxic substances, or related materials (hereinafter *Hazardous Materials*). Hazardous Materials shall include, but not be limited to, substances defined as "hazardous substances" in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601-9657; the Hazardous Material Transportation Act of 1975, 49 U.S.C. Sections 1801-1812; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901-6987; and those substances defined as "Hazardous Wastes", under the laws of the State of Florida, and in the regulations adopted pursuant to said laws.

g. During the period of the City's ownership of the Property, there has been, to the best of City's actual knowledge, no disposal, release, or threatened release of hazardous substances or hazardous wastes on, from, or under the Property. City further represents and warrants it has no knowledge of any presence, disposal, release, or threatened release of hazardous substances or hazardous wastes on, from, or under the Property that may have occurred prior to City's acquisition of title to the Property. For purposes of this agreement the terms "disposal", "release", "threatened release", "hazardous substances", and "hazardous waste" shall mean and include any hazardous, toxic, or dangerous waste, substance, or material, or disposal, discharge, release, or threatened release, or any defined as such in (or for purposes of) the Federal Comprehensive Environmental Response, Compensation and Liability Act, or any other federal, state, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material, as are now or at any time hereafter shall be in effect.

h. To the best of City's actual knowledge, during the period of City's ownership of the Property, there have been no litigation or administrative enforcement actions or proceedings brought or threatened to be brought, nor have any settlements been reached by or with any party or parties, public or private, alleging the presence, disposal, release, or threatened release of any hazardous waste or hazardous substance on, from, or under the Property.

i. City has and shall transfer to Buyer at closing good and marketable title to City's assets being sold and transferred hereunder, free and clear of all security interests, encumbrances or liens.

j. To the best of City's actual knowledge, no representation or warranty by City in this Agreement or any documents provided hereunder contains or will contain any untrue statement or omits or will omit to state any material fact necessary to make the statements contained herein not misleading. All representations and warranties made by City in this Agreement and all documents provided hereunder shall be true and correct as of the date of closing with the same force and effect as if they had been made on and as of such date.

k. City has in all material respects performed all obligations required to be performed by City under, and is not in default in any material respect under, or in violation in any material respect of, any agreement, lease, mortgage, note, bond, indenture, license, or other documents or undertaking, oral or written, to which it is a party or by which it is bound, or by which any of its properties or assets may be materially affected. City is not in violation or default in any material respect of any judicial, administrative, or governmental order, writ, rule, regulation, injunction, or decree which affects City in any way which might materially or adversely affect the Property.

l. The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, will not result in any violation or default referred to in this paragraph.

m. Except as otherwise expressly represented herein, Buyer agrees that: (1) the Subject Property shall be sold, and Buyer shall accept possession of the Property at closing on an "As-Is-Where-Is" basis; (2) The City has made no representations or warranties whether express or implied regarding the Property, the condition, merchantability or fitness for a particular purpose of the Property or any amenities or improvements thereon (including without limitation any warranty relating to the value, nature or condition of the Property, or the subsurface of the Property, its suitability for Buyer's purposes or the status of the Property under locally applicable law). The City hereby disclaims any and all representations and warranties, written or oral, express or implied, including, without limitation, warranties as to condition, fitness, fitness for a particular purpose, the water, structural integrity, soil, geology, the income to be derived from the Property, the manner or quality of the construction or materials incorporated into the Property, the state of repair or lack of repair of the Property, governmental approvals, merchantability, or environmental status, except as specifically stated in this Agreement.

7. Failure to Meet Conditions. The failure of any of the conditions precedent set forth in Paragraphs 3 and 4 above shall entitle Buyer to terminate this Agreement by giving written notice to City prior to the Closing Date or extended Closing Date. Upon such termination, the Escrow Agent shall return the principal of the earnest money deposit to Buyer, and the parties shall be released from further obligations under this Agreement.

8. Inspection Period. Buyer shall have a period beginning on the Effective Date of this Agreement and ending at midnight 60 days thereafter ("Inspection Period") within which to inspect the Property and improvements which constitute the subject matter of this Agreement. The inspections may include, but shall not be limited to environmental assessments and audits, engineering assessments and investigations concerning the stormwater system, soil and water tests and inspections, surveys, inspections, appraisals, and any other tests and inspections

which Buyer deems reasonable and prudent. Buyer shall pay all costs associated with the foregoing tests and inspections.

9. **Buyer's Cancellation Rights.** In the event Buyer's inspections of the Subject Property reveal conditions which are unacceptable to Buyer in Buyer's sole and exclusive discretion, Buyer shall have the right and option to cancel this Agreement and obtain a full and complete refund of the deposits by giving written notice to City. The said written notice must be mailed or delivered to City on or before the expiration of the Inspection Period or prior to the Closing Date or Extended Closing Date with respect to a failure to meet the conditions as set forth in Paragraph 7 of this Agreement. Upon such cancellation, all deposit monies shall be refunded to Buyer, and each party shall be released from other and further liability hereunder. Failure to timely deliver the written notice hereby required shall constitute a waiver of the foregoing cancellation right.

10. **Title Insurance.** On or before the expiration of fifteen (15) days after the expiration of the Inspection Period, a title insurance commitment shall be provided to Buyer agreeing to issue to Buyer, upon recording the deed, an Owner's Policy of title insurance in the amount of the purchase price. The policy must insure Buyer's title to the Subject Property, subject only to the liens, encumbrances, exceptions or qualifications set forth in Paragraph 11 of this Agreement (which may be referred to herein as "Permitted Exceptions") and those which will be removed at closing.

Buyer shall have fifteen (15) days from receipt of the title insurance commitment to examine same. If title is found defective, or subject to any easements, liens or encumbrances other than the Permitted Exceptions, Buyer shall, within five (5) days thereafter, notify City in writing specifying defects. City shall, in such an event, have one hundred twenty (120) days from receipt of notice within which to remove said defects or encumbrances, and if City is unsuccessful in removing them within the said time, Buyer shall have the option of either (1) accepting title as it then is, or (2) cancelling this Agreement whereupon all deposit monies shall be refunded to Buyer and Buyer and City shall be released, as to one another, of all further obligations under this Agreement. City agrees that if title is found defective, City will use and make diligent effort to correct the defects in title within the time provided therefor, including the bringing of necessary suits. Marketable title shall be determined in accordance with applicable title standards adopted by the Florida Bar and in accordance with Florida law.

The closing agent and issuing agent for the title insurance commitment and policy shall be Edward L. Wotitzky, Esq. of Wotitzky, Wotitzky, Ross & McKinley, P.A. which firm is also Buyer's attorneys.

11. **Delivery of Title and Approved Exceptions.** City, at closing, shall deliver to Buyer a marketable title, including all easements and subsurface, air and surface rights held by City evidenced by a good and sufficient statutory warranty deed subject only to the following exceptions:

a. Taxes for the year of the closing, which taxes shall be prorated to the date prior to the closing as set forth in this Agreement.

b. Zoning and other restrictions imposed by governmental authority so long as same do not preclude or restrict Buyer from using the Subject Property for its existing and intended purposes.

c. Matters appearing on the plat affecting or pertaining to any portions of the Subject Property which are subject to a subdivision plat.

d. The lien of any mortgage and security agreements obtained by Buyer to finance the acquisition of the Subject Property.

12. Survey. Buyer shall have the right to have the subject real property surveyed by a registered Florida surveyor. The survey shall be obtained on or before 30 days after the expiration of Inspection Period. If the survey shows encroachments on the Subject Property or that improvements, if any, encroach upon lands of others, same shall constitute a title defect and shall be dealt with in the same fashion as a title defect shall be pursuant to Paragraph 10 of this Agreement. The survey shall locate the boundaries of the Property and locate all improvements located thereon and shall be prepared in accordance with all applicable State regulations. The cost of the survey shall be the responsibility of Buyer.

13. Closing. This transaction shall be closed and the warranty deed and other closing papers delivered on or before the earlier of (a) twenty (20) business days after the contingencies set forth in Paragraph 4 of this Agreement have been satisfied, or (b) a date twelve (12) months from and after the Effective Date of this Agreement. Buyer shall have the right to obtain a six (6) month extension of the Closing Date in the event the contingencies have not been satisfied within twelve (12) months from the Effective Date. In the event Buyer desires to obtain the extension, Buyer shall provide written notice of its election to extend the Closing Date together with an additional earnest money deposit in the amount of \$20,000.00 payable to Escrow Agent on or prior to the expiration of the said twelve (12) month period. The closing shall take place at the offices of Wotitzky, Wotitzky, Ross & McKinley, P.A., who shall be the title and closing agent for this transaction.

14. Documents for Closing. At the closing of the transaction contemplated by this Agreement, City shall deliver the following:

a. A statutory warranty deed to the Subject Property conveying the land and improvements located thereon, subject only to the exceptions set forth in Paragraph 11 of this Agreement.

b. An affidavit attesting to the absence, unless otherwise provided herein, of any financing statements, claims of lien or potential lienors known to City.

c. An affidavit that no person or entity is in possession of the Subject Property except Buyer and tenants of Buyer.

d. A "Gap" affidavit affirming no matters are pending which could give rise to a lien that would attach to the Property prior to the recordation of the deed to Buyer. The said affidavit will also affirm City has not executed and will not execute any instrument that would adversely affect the interest to be insured, and that there are no judgments against City which could affect the Property. The said affidavit will also affirm the subject property is free and clear of all liens, taxes, encumbrances and claims of every kind and nature except taxes for the year of closing and the approved or permitted exceptions herein set forth as well as any other matter which may be acceptable to Buyer.

e. An assignment of all leases, contracts, permits, development orders and licenses which Buyer shall elect to assume.

f. A closing statement itemizing the dollar amounts of all financial matters related to the closing, including adjustments and prorations as provided for herein.

Buyer shall deliver at closing the following:

a. The closing payment.

b. A closing statement itemizing the dollar amounts of all financial matters related to the closing, including adjustments and prorations provided for herein.

c. The Easement to the City of the Harbor Walk Segment as described in Paragraph 5.a of this Agreement.

d. Such other documents as may be required, necessary or useful in consummating the transaction contemplated by this Agreement.

15. Expenses. Buyer shall pay the following closing expenses:

a. Recording costs of the deed.

b. Title insurance premium for the title insurance commitment and policy required pursuant to this Agreement.

c. All costs associated with any loan obtained for the purpose of financing Buyer's acquisition of the Property, which costs and expenses will include recording fees, documentary stamps on mortgage and intangible tax, and additional title insurance premiums.

d. Documentary stamps on the deed, if any.

City shall pay the following closing expenses:

a. Recording corrective instruments, if required.

16. Prorations; Credits. Taxes, assessments, rent, interest, insurance and other expenses and revenue of the Subject Property shall be prorated through the day before closing. Buyer shall have the option of taking over any existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at closing shall be increased or decreased as may be required by prorations. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and the prior year's millage. If current year's assessment is not available, then taxes will be prorated on the prior year's tax. If there are completed improvements on the Real Property by January 1st of the year of closing which improvements were not in existence on January 1st of the prior year, then taxes shall be prorated based upon the prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request will be made to the County Property Appraiser for an informal assessment taking into consideration available exemptions. Any tax proration based on an estimate shall, at request of either Buyer or City, be subsequently readjusted upon receipt of tax or other bill. This paragraph shall survive the closing of this transaction.

17. **Special Assessment Liens.** Certified, confirmed and ratified special assessment liens as of the date of closing (not as of Effective Date) are to be paid by City. Pending liens as of date of closing shall be assumed by Buyer. If the improvement has been substantially completed as of Effective Date, such pending lien shall be considered certified, confirmed or ratified and City shall, at closing, be charged an amount equal to the last estimate of assessment for the improvement by the public body.

18. **Condemnation and Risk of Loss.**

a. In the event all or any substantial portion of the Property shall be taken for condemnation or under the right of eminent domain by any agency or entity other than the City, before the Closing Date, Buyer may, at Buyer's option, either (a) terminate this Agreement by delivering written notice thereof to City and receive an immediate refund of the Escrow Deposit, or (b) proceed to close the transaction contemplated herein pursuant to the terms hereof, in which event City shall deliver to Buyer at the closing, or as soon as available, any proceeds actually received by City attributable to the Property from such condemnation or eminent domain proceedings, shall assign to Buyer any right City may have to receive proceeds attributable to the Property from such condemnation or eminent domain proceeding, and there shall be no reduction in the Purchase Price. In no event shall the City initiate any such condemnation or eminent domain proceeding during the pending of this Agreement

b. If the Subject Property is damaged by fire or other casualty before closing and cost of restoration does not exceed 10% of the assessed valuation of the Property so damaged, cost of restoration shall be an obligation of the Insured party and closing shall proceed pursuant to the terms of Agreement with restoration costs escrowed at closing. If the cost of restoration exceeds 10% of the assessed valuation of the improvements so damaged, Buyer shall have the option of either taking Property AS IS, together with either a credit against the purchase price equal to 10% of the assessed value, or any insurance proceeds payable by virtue of such loss or damage, or of cancelling this Agreement and receiving a return of deposit(s).

19. **Default.** If Buyer fails to perform this Agreement within the time specified, the Deposits shall be retained by or for the account of City as liquidated damages, in consideration for the execution of this Agreement and in full settlement of any claims; whereupon all parties shall be relieved of all obligations under this Agreement. If, for any reason, City fails, neglects or refuses to perform this Agreement, Buyer may seek specific performance or elect to receive the return of its earnest money deposit plus interest, without thereby waiving any action for damages resulting from City's breach.

20. **Attorney's Fees.** In connection with any litigation, including appellate proceedings, arising out of this Agreement the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

21. **Notices.** All notices, requests, consents, instructions, and communications required or permitted under this Agreement shall be in writing (including telex, telecopy, and telegraphic communication), and shall be (as elected by the person giving such notice) hand-delivered by messenger or nationally recognized overnight courier service, telecommunicated, telecopied, or mailed (air mail if international) by registered or certified mail (postage prepaid), return receipt requested, and addressed to each party at their respective addresses as set

forth below or to such other addresses any party may designate by notice complying with the terms of this Paragraph.

If to Buyer: ATA Fishville FL, LLC
c/o Jonathan M. Larmore
2720 E. Camelback Road, Suite 220
Phoenix, Arizona 85016

with a copy to: Edward L. Wotitzky, Esq.
Wotitzky, Wotitzky, Ross & McKinley, P.A.
223 Taylor Street
Punta Gorda, Florida 33950
(941) 639-2171
Fax: (941) 639-8617

and to: Blaine D. Rice, Esq.
2720 E. Camelback Road, Suite 220
Phoenix, Arizona 85016
(602) 424-7557
Fax: (602) 956-4494
email: blaine_rice@me.com

If to City: City of Punta Gorda, Florida
c/o Howard Kunik
326 W. Marion Avenue
Punta Gorda, Florida 33950
email: citymgr@pgorda.us

with copy to: David Levin, Esq.
326 W. Marion Avenue
Punta Gorda, FL 33950
email: dlevin@icardmerrill.com

If to Escrow Agent: Edward L. Wotitzky, Esq.
WOTITZKY, WOTITZKY, ROSS & MCKINLEY,
P.A. 223 Taylor Street
Punta Gorda, FL 33950
Fax No. (941) 639-8617

Each such notice, request, or other communication shall be considered given and shall be deemed delivered (a) on the date delivered if by personal delivery or courier service; (b) on the date of transmission with confirmed answer back if by telex or telecopier if transmitted before 5:00 p.m. on a business day, and on the next business day if transmitted after 5:00 p.m. or on a nonbusiness day; or (c) on the date on which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed. Rejection, refusal to accept, or inability to deliver of which no notice was given shall be deemed to be receipt of such notice, request, or other communication.

22. Escrow Agent. Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement and no implied duties or obligations shall be read into this

Agreement against Escrow Agent. Escrow Agent is also the law firm representing Buyer. In the event of a dispute between the parties, the parties consent to Escrow Agent's continuing to represent Buyer, notwithstanding the fact that it also shall have the duties provided for in this Agreement.

Escrow Agent may act in reliance on any writing or instrument or signature that it, in good faith, believes to be genuine; may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument; and may assume that any person purporting to give any writing, notice, advice, or instructions in connection with the provisions of this Agreement has been duly authorized to so do. Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner, and execution, or validity of any instrument deposited in escrow, or as to the identity, authority, or right of any person executing the same; and its duties under this Agreement shall be limited to those provided in this Agreement.

Unless Escrow Agent discharges any of its duties under this Agreement in a grossly negligent manner or is guilty of willful misconduct with regard to its duties under this Agreement, the parties shall indemnify Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, lawsuits, or proceedings at law or in equity, or other expenses, fees, or charges of any character or nature, that it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this Agreement; and in such connection shall indemnify Escrow Agent against any and all expenses including reasonable attorneys' fees and the cost of defending any action, lawsuit, or proceedings or resisting any claim in such capacity. Escrow Agent shall be vested with a lien on all property deposited under this Agreement for indemnification, for reasonable attorneys' fees and court cost, for any lawsuit, interpleader, or otherwise, or any other expense, fees, or charges of any character or nature, that may be incurred by Escrow Agent in its capacity as escrow agent by reason of disputes arising between the parties to this Agreement as to the correct interpretation of this Agreement and instructions given to Escrow Agent under this Agreement, or otherwise, with the right Escrow Agent regardless of any instructions, to hold the property deposited in escrow until and unless such additional expenses, fees, and charges shall be fully paid.

If the parties (including Escrow Agent) shall be in disagreement about the interpretation of this Agreement, or about their respective rights and obligations, or the propriety of any actions contemplated by Escrow Agent, Escrow Agent may, but shall not be required to, file an action in interpleader to resolve the disagreement. Escrow Agent shall be indemnified for all costs and reasonable attorneys' fees in its capacity as escrow agent in connection with any such interpleader action and shall be fully protected in suspending all or part of its activities under this Agreement until a final judgment in the interpleader action is received.

Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection in accordance with the opinion of such counsel. Escrow Agent shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any act or omissions of any kind unless caused by its gross negligence or willful misconduct.

Escrow Agent may resign upon 30 days' written notice to City and Buyer. If a successor escrow agent is not appointed jointly by City and Buyer within the 30-day period, Escrow Agent may petition a court of competent jurisdiction to name a successor.

23. Further Assurance. Each party shall cooperate with the other and execute such instruments or documents and take such other actions as may reasonably be requested from

time to time in order to carry out, evidence or confirm their respective rights or obligations or as may be reasonably necessary or helpful to give effect to this Agreement. Similarly, the parties shall refrain from refusing to take any action which may be reasonably necessary to further and effectuate this Agreement.

24. Force Majeure. A party shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, the lack of financing on commercially reasonable terms assuming no extraordinary circumstances exist, government orders (excepting orders by the City) or any other force majeure event.

25. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors in interest, heirs and assigns.

26. Waiver of Conditions. Buyer, at Buyer's sole option, may elect to waive any or all of the contingencies herein, and close without satisfaction of any one or more of the said contingencies.

27. Governing Law. This contract and all matters pertaining hereto shall be governed by and construed in accordance with the laws of the State of Florida.

28. Construction. The parties acknowledge each has reviewed this Agreement, and further that each is represented by an attorney of his choice. The parties further acknowledge and agree that the terms and conditions of this Agreement are the product of mutual negotiations and shall be interpreted without regard to which party or which party's counsel drafted same. Except when otherwise expressly provided herein, reference to the "City" shall mean the City Council of the City of Punta Gorda, Florida.

29. Assignment. Buyer may assign this Agreement only to an affiliate of Buyer. For the purposes of this Paragraph 29, an "affiliate of Buyer" is any entity in which the Buyer owns fifty-one percent (51%) or more of the voting stock of the entity, if a corporation, or if the entity is other than a corporation, an entity from which the Buyer is entitled to fifty-one percent (51%) or more of the dividends, profits or similar economic benefit from the entity.

30. No Recordation. Neither this Agreement nor any notice or memorandum thereof shall be recorded in the Public Records of Charlotte County, Florida or any other jurisdiction. Notwithstanding the foregoing, this Agreement constitutes a Public Record and a copy of which shall be maintained as a Public Record of the City of Punta Gorda, available for public inspection under the requirements of Chapter 119, Florida Statutes.

31. Integration. This Agreement constitutes the entire agreement between the parties. Neither party shall be bound by any terms, conditions, statements, or representations, oral or written, which are not contained in this Agreement. The parties hereby acknowledge they have not been induced, persuaded, or motivated by any promise or representation made by the other party in entering this Agreement unless expressly set forth herein. All previous negotiations, statements, and preliminary instruments entered by the parties concerning the subject matter of the transaction herein contemplated are merged in this Agreement.

32. Brokerage Commission. The parties each represent and warrant that no real estate brokers, salesmen or finders are involved in this transaction. If a claim for a brokerage

commission in connection with this transaction is made by any other broker, salesman or finder claiming to have dealt through or on behalf of one of the parties hereto ("Indemnitor"), said Indemnitor shall indemnify, defend and hold the other party hereunder, and such other parties, officers, directors, agents and representatives (collectively, "Indemnitees") harmless from all liabilities, damages, claims, costs, fees and expenses whatsoever (including actual attorneys' fees and court costs) with respect to said claim for brokerage. The provisions of this Paragraph shall survive the closing of title.

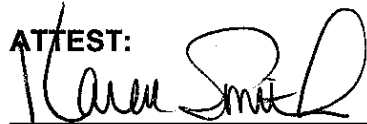
33. Effective Date, Facsimile, and Counterpart. A facsimile or electronic copy of this Agreement and any signatures hereon shall be considered for all purposes as originals. The "Effective Date" of this Agreement will be the date when the last one of the Buyer and City has executed this Agreement. Additionally, this Agreement may be executed in any number of counter parts, each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

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IN WITNESS HEREOF, the undersigned have hereunto set their hands and seals the dates set forth below.

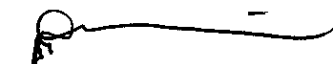
Signed, Sealed and Delivered in the Presence of:

ATTEST:



Karen Smith, City Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

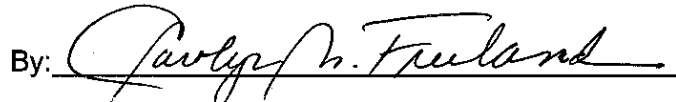


David M. Levin, City Attorney

CITY:

CITY OF PUNTA GORDA, FLORIDA, a Florida
Municipal corporation

By:



Carolyn M. Freeland, Mayor

Date of Execution:

September 2, 2015


BUYER:

ATA FISHVILLE FL, LLC, an Arizona limited liability
company

By: ARCITERRA STRATEGIC RETAIL ADVISOR,
LLC, an Arizona limited liability company, as
Manager

By: ARCITERRA GROUP, LLC, an Arizona limited
liability company, its Manager

First Witness


Blaine Rice

Printed Name

Second Witness


Jeremy Hamilton

Printed Name

By:



Jonathan M. Larmore, Manager

Date of Execution:

9/2/15

ESCROW AGENT:

WOTITZKY, WOTITZKY, ROSS & MCKINLEY,
P.A., a Florida corporation

By:

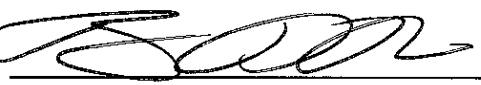


Name: Michael R. McKinley

Date of Execution:

9/2/15

First Witness


Blaine Rice

Printed Name

Second Witness


Jeremy Hamilton

Printed Name

EXHIBIT "A"

CITY LAND LEASE LEGAL DESCRIPTION

CITY LAND LEASE

LEGAL DESCRIPTION

(CITY DOCK AND ATTACHED LANDS)

A tract or parcel of land lying in Section 12, Township 41 South, Range 22 East, City of Punta Gorda, Charlotte County, Florida which tract or parcel is described as follows:

From the intersection of the centerlines of Retta Esplanade and Maud Street, as shown on the plat of Trabue recorded in Plat Book 1 at page 23 of the public records of Charlotte County, Florida, run S 47° 27' 50" W along said centerline of Retta Esplanade for 50 feet; thence run N 42° 33' 10" W, parallel with said centerline of Maud Street, for 33 feet to a concrete monument marking the easterlymost corner of Cosby Park, as shown on said Plat of Trabue, and the Point of Beginning.

From said Point of Beginning continue N 42° 33' 10" W along the northeasterly line of said Cosby Park and a northwesterly prolongation thereof for 455.21 feet to a steel pin on the southeasterly line of lands conveyed to Gulf Oil Corporation by deed recorded in Deed Book 50 at page 273 of said public records; thence run northeasterly along said southeasterly line for 31.6 feet to a concrete monument marking the easterlymost corner of said lands; thence run northwesterly along the northeasterly line of said land, parallel with a northwesterly prolongation of said centerline of Maud Street, for 203.05 feet; thence run southwesterly along the northwesterly line of said Gulf Oil Corporation land for 42.7 feet more or less to an intersection with a southeasterly prolongation of the outside edge of the concrete cap of a seawall; thence run northwesterly along said prolongation and said outer edge of said seawall cap, parallel with said prolonged centerline of Maud Street, for 350.9 feet to the northwesterly end of the property known as City Dock; thence run northeasterly, parallel with said centerline of Retta Esplanade, along the former alignment of a collapsed seawall for 152 feet to the northerlymost corner of said seawall; thence run southeasterly along said alignment, parallel with said prolonged centerline of Maud Street, for 352 feet more or less to the end of said seawall; thence continue southeasterly, easterly and northeasterly along the Mean High Tide Line of Charlotte Harbor to an intersection with the southwesterly line of Alice Park, as shown on said Plat of Trabue; thence southeasterly along said southwesterly line for 260 feet more or less to an intersection with the northwesterly line of said

CITY LAND LEASE

LEGAL DESCRIPTION

Retta Esplanade; thence run S 47° 27' 50" W

along said northwesterly line (33 feet from the centerline) for 483.12 feet to a concrete monument marking the southerlymost corner of Maud Park, as shown on said Plat of Trabue; thence continue S 47° 27' 50" W for 100 feet to the Point of Beginning.

Bearings hereinabove mentioned are derived from Plat of Gulf Oil Corporation Lease recorded in Plat Book 2 at page 66 of said public records.

The hereinabove described parcel consists of Maud Park as shown on the Plat of Trabue recorded in Plat Book 1 at page 23 of the public records of Charlotte County, Florida; the land between said Maud Park and Alice Park as shown on said plat; the land between Maud Park and Cosby Park as shown on said plat and all accretion and filled-in lands in the waters of Charlotte Harbor between said Alice Park and said Cosby Park, including property known as the City Dock of the City of Punta Gorda, Florida; LESS lands conveyed to Gulf Oil Corporation by deed recorded in Deed Book 50 at page 273, Charlotte County records.

Also including all riparian and littoral rights appertaining or belonging to the hereinabove described parcel.

(GULF OIL CORPORATION DOCK AREA)

A tract or parcel of land lying in Section 12, Township 41 South, Range 22 East, City of Punta Gorda, Charlotte County, Florida, which tract or parcel is described as follows: From the intersection of the centerlines of Retta Esplanade and Maud Street, as shown on the Plat of Trabue recorded in Plat Book 1 at Page 23 of the Public Records of Charlotte County, Florida, run S 47° 27' 50" W along said centerline of Retta Esplanade for 50 feet; thence run N 42° 33' 10" W, parallel with said centerline of Maud Street, for 33 feet to a concrete monument marking the easterlymost corner of Cosby Park, as shown on said Plat of Trabue; thence continue N 42° 33' 10" W along the Northeasterly line of said Cosby Park and a Northwesterly prolongation thereof for 455.21 feet to a steel pin on the Southeasterly line of lands conveyed to Gulf Oil Corporation by deed recorded in

CITY LAND LEASE

LEGAL DESCRIPTION

Deed Book 50 at Page 273 of said Public Records and the Point of Beginning. From said Point of Beginning run Northeasterly along said Southeasterly line for 31.6 feet to a concrete monument marking the Easterlymost corner of said lands;

thence run Northwesterly along the Northeasterly line of said land, parallel with the Northwesterly prolongation of said centerline of Maud Street, for 203.05 feet; thence run Southwesterly along the Northwesterly line of said Gulf Oil Corporation land for 103.80 feet, more or less, to the corner of the outside edge of the concrete cap of a seawall; thence run Southeasterly along the outside edge of the cap of said seawall, parallel with the Northwesterly prolongation of said centerline of Maud Street for 207.12 feet to the corner of the outside edge of said concrete cap; thence Northeasterly along the outside of said cap, 73.34 feet, more or less, to Point of Beginning.

The land above described is that land conveyed by the City of Punta Gorda to Gulf Oil Corporation by deed recorded in Deed Book 50, Page 273, Charlotte County Records.

(A PORTION OF THE LARGE PAVED PARKING LOT)

Lots 7 and 8, of Block 15, City of Punta Gorda, according to the Plat thereof recorded in Plat Book 1, Page 1, of the Public Records of Charlotte County, Florida.

The above described property is a leasehold estate arising and existing by virtue of that certain land lease between the City of Punta Gorda, a municipal corporation organized and existing under the laws of the State of Florida as Lessor, and Fishermen's Village, Inc., Lessee, dated July 17, 1978, and recorded in Official Records Book 850, Page 499, public records of Charlotte County, Florida; the interest of the Lessee was assigned to Fishermen's Village, Ltd. by Assignment dated August 29, 1978.

EXHIBIT "B"

HARBORWALK SKETCH

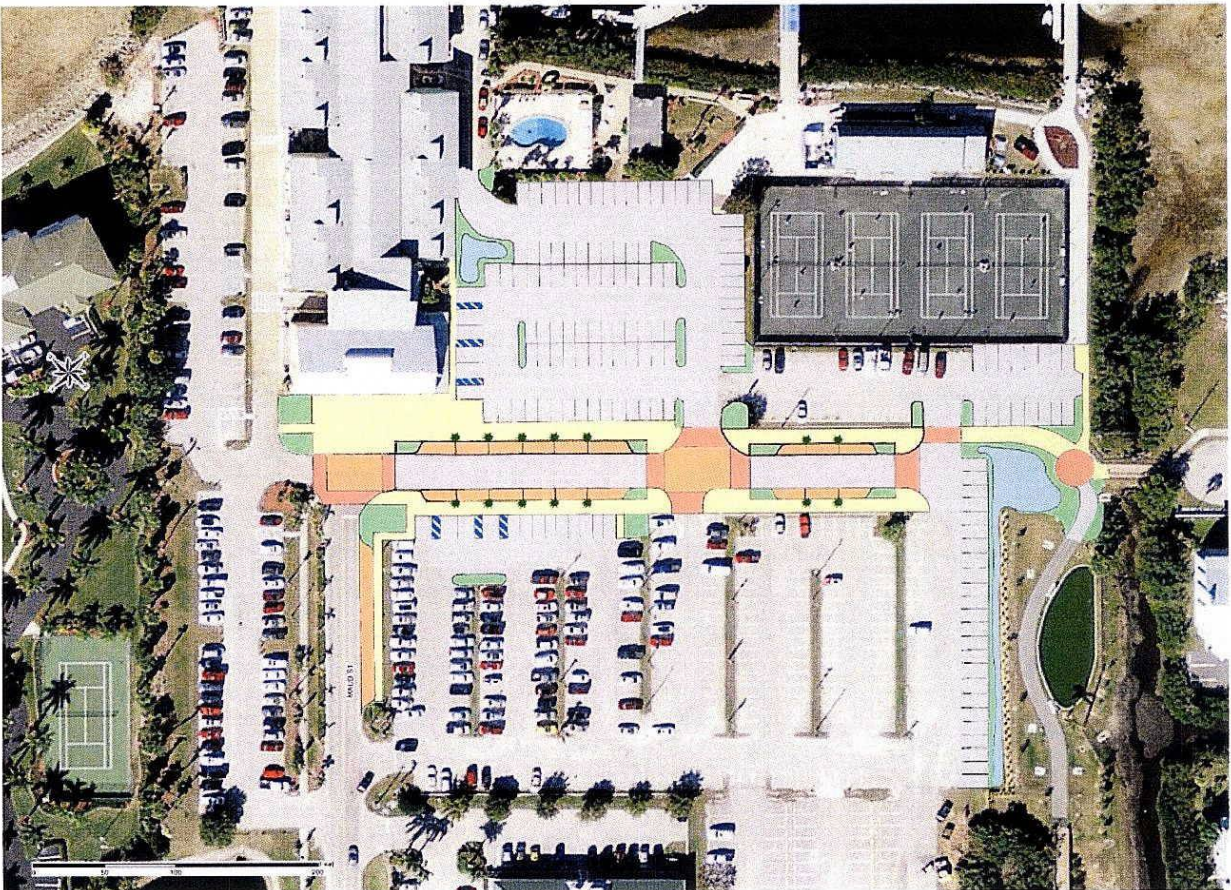
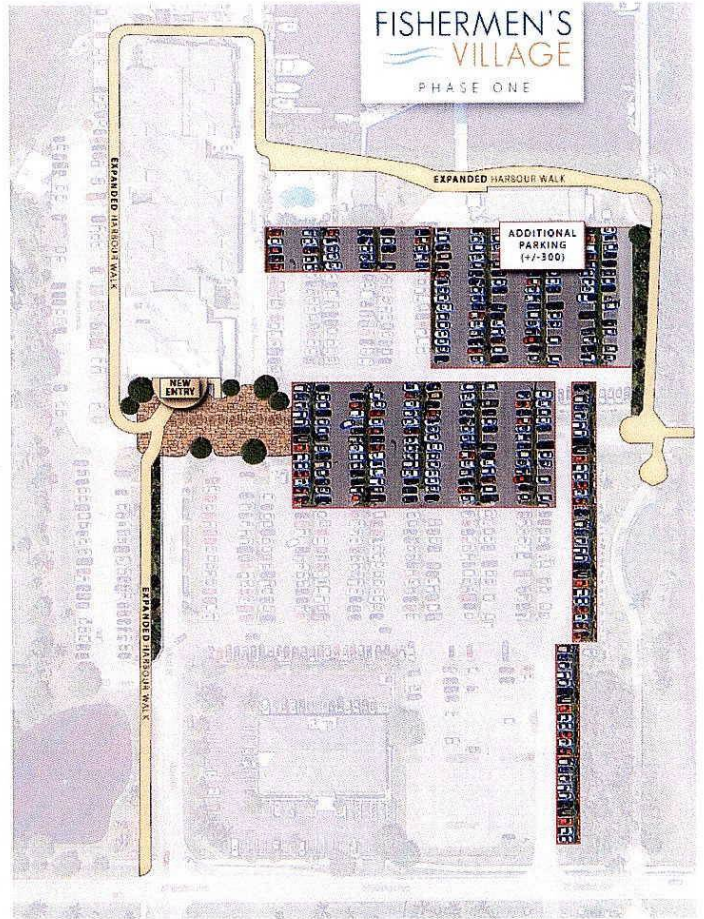
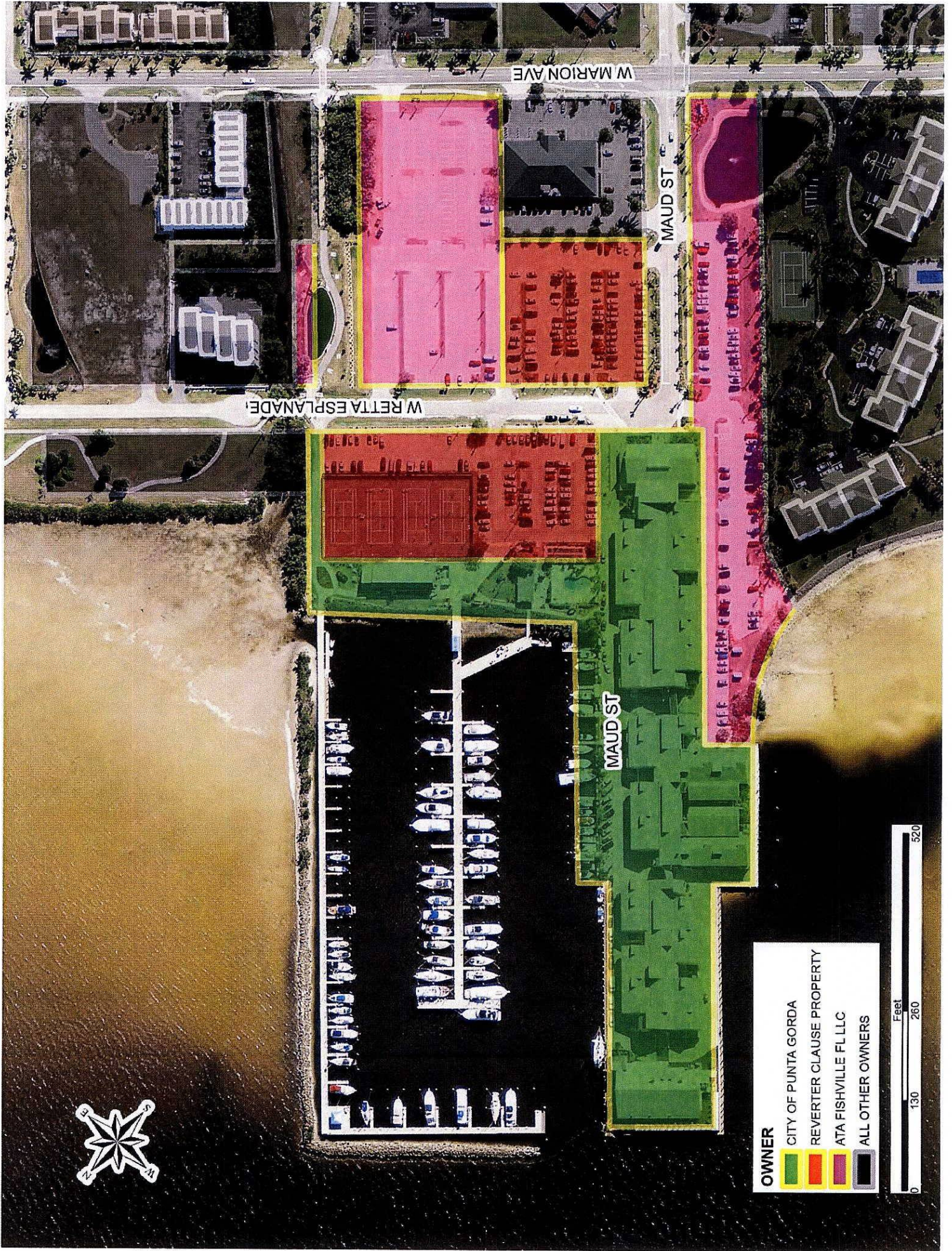


EXHIBIT "C"

REVERTER PARCELS



OWNER	
	CITY OF PUNTA GORDA
	REVERTER CLAUSE PROPERTY
	ATA FISHVILLE FL LLC
	ALL OTHER OWNERS



EXHIBIT "D"

QUIT CLAIM DEED

This instrument prepared by:
Edward L. Wotitzky, Esq.
Wotitzky, Wotitzky, Ross & McKinley, P.A.
223 Taylor Street
Punta Gorda, FL 33950

Parcel ID No.: _____

Reverter Quit-Claim Deed

THIS QUIT-CLAIM DEED, executed this ____ day of _____, 2____, by ATA FISHVILLE FL, LLC, an Arizona limited liability company, herein referred to as "Grantor", to CITY OF PUNTA GORDA FLORIDA, a Florida Municipal corporation, whose post office address is 326 W. Marion Avenue, Punta Gorda, Florida 33950, herein referred to as "Grantee":

(Whenever used herein the terms "Grantor" and "Grantee" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

WITNESSETH:

The Grantor, for and in consideration of Ten Dollars (\$10.00) in hand paid by the said Grantee, the receipt and sufficiency whereof is hereby acknowledged, does hereby remise, release and quit-claim unto the said Grantee forever, all the right, title, interest, claim and demand which the said Grantor has in and to the following-described lot, piece or parcel of land, situate, lying and being in Charlotte County, Florida, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

TO HAVE and TO HOLD the same together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said Grantor, either in law or equity, to the said Grantee forever.

IN WITNESS WHEREOF, the Grantor has signed and sealed these presents the day and year first above written.

Signed, Sealed and Delivered in the Presence of:

**ATA FISHVILLE FL, LLC,
an Arizona limited liability company**

Printed name of first witness

By: **ArciTerra Strategic Retail Advisor, LLC,**
its Manager

Printed name of second witness

By: **ArciTerra Group, LLC,**
an Arizona limited liability company,
its Manager

By: _____
Jonathan M. Larmore, Manager

State of _____
County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2015
by JONATHAN M. LARMORE, as Manager of ARCITERRA GROUP, LLC, an Arizona limited liability company, as Manager of
ARCITERRA STRATEGIC RETAIL ADVISOR, LLC, an Arizona limited liability company, as Manager of ATA FISHVILLE FL, LLC, an
Arizona limited liability company, on behalf of the said companies. He is personally known to me or who produced
_____ as identification.

My commission expires:

Notary Public

EXHIBIT "E"

GROUND LEASE

GROUND LEASE

THIS GROUND LEASE ("Lease") made as of the _____ day of _____, 2015, between **THE CITY OF PUNTA GORDA, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, created pursuant to Section 163.356 Florida Statutes ("*Landlord*") and **ATA FISHVILLE FL, LLC**, an Arizona limited liability company ("*Tenant*") who agree as follows:

RECITALS:

For the purposes of this Lease, the following terms shall have the following definitions:

1. **Commencement Date** shall mean the Reversion Date.
2. **Effective Date** shall mean the date on which the last party to this Lease signed.
3. **Land** shall mean that certain parcel of real property, including any appurtenances, described in Exhibit "A" attached hereto and incorporated herein by reference, but shall not mean the Improvements thereon or Tenant's Trade Fixtures therein.
4. **Improvements** shall mean all buildings, structures, and improvements now existing or hereafter constructed upon the Land during the term of the Lease, notwithstanding that any such improvements may or shall be construed as affixed to and as constituting part of the Land, and any restoration, addition to, or replacement thereof, but excluding therefrom the Land and Tenant's Trade Fixtures.
5. **Trade Fixtures** shall mean all items located in, attached or affixed to, or used in connection with the Improvements, or the operation thereof, and located on the Land, but not including the Improvements.
6. **Project** shall mean the marina, retail and residential project commonly known as "Fishermen's Village" of which the Land is part. The entire Project, including the Land, is depicted on Exhibit "B".
7. **Lease Year.** For purposes of this Lease, the term "Lease Year" means each consecutive twelve-month (12-month) period during the Term as long as:
 - (a) The first Lease Year commences on the Lease Commencement Date and ends on the last day of the twelfth (12th) calendar month thereafter;
 - (b) The second (2nd) and each succeeding Lease Year commences on the first day of the next calendar month; and
 - (c) The last Lease Year ends on the Lease Expiration Date or earlier date of termination.

8. **Leasehold Mortgagee** shall mean the mortgagee of any mortgage which encumbers Tenant's interest under this Lease.

9. **Mortgage** shall mean the mortgage encumbering Tenant's leasehold interest in this Lease and/or Improvements, in favor of the Leasehold Mortgagee, as the same may be amended or supplemented from time to time.

10. **Acquisition Agreement** shall mean that certain Acquisition Agreement dated September ____, 2015 between Landlord, as seller and Tenant, as buyer with respect to the Property and certain other real property.

11. **Reversion Date** shall mean the date upon which the quitclaim deed reconveying the Land from Tenant to Landlord as contemplated in the Acquisition Agreement is recorded in the real property records of Charlotte County, Florida.

NOW, THEREFORE, Landlord and Tenant hereby agree as follows:

1. **Land, Term,**

A. **Land.** Landlord, in consideration of the rents hereinafter reserved and the terms, covenants, conditions, and agreements set forth in this Lease to be kept and performed by Tenant, does hereby demise and let unto Tenant, and Tenant does hereby hire and take from Landlord, the Land, subject to all matters affecting title to the Land on the date hereof.

B. **Term.** To have and to hold the Land unto Tenant, its permitted successors and assigns, upon and subject to all of the terms, covenants, conditions, conditional limitations, and agreements herein contained for a term of ninety-nine (99) years commencing on the Commencement Date of this Lease and ending ninety-nine (99) years thereafter (Expiration Date), or until said term is sooner terminated pursuant to any of the conditional limitations or other provisions of this Lease.

2. **Rent.** Tenant hereby agrees to pay and Landlord hereby agrees to accept as rent hereunder the following:

A. **Initial Rent.** From the Commencement Date of this Lease, through and until the last day of the fifth (5th) Lease Year, Tenant shall pay Landlord the sum of \$203,100 per annum, payable in twelve equal monthly installments due on the first day of each month.

B. **Initial Consumer Price Adjustment.** Commencing the second (2nd) Lease Year through and until the last day of the of the fifth (5th) Lease Year and again in the seventh (7th) Lease Year until the last day of the ninety-ninth (99th) Lease Year, on the first day of each calendar year ("Adjustment Date"), the Rent shall annually be adjusted by one hundred percent (100%) of the percentage of increase, or decrease, if any, shown by the Consumer Price Index for All Urban Consumers, Southern Region, All Items (base years 1982-1984 = 100) (Index), published by the United States Department of Labor, Bureau of Labor Statistics, for the month immediately preceding the Adjustment Date, as compared with the Index for the same month in

the immediately preceding calendar year. Landlord shall calculate the amount of this increase, or decrease, in Rent after the United States Department of Labor publishes the statistics on which the amount of the increase or decrease, in Rent after the United States Department of Labor publishes the statistics on which the amount of the increase or decrease will be based. Landlord shall give written notice of the amount of the increase or decrease, multiplied by the number of installments of rent due under this Lease since the Adjustment Date. Tenant shall pay this amount, together with the monthly rent next becoming due under this Lease, and shall thereafter pay the monthly rent due under this Lease at this increased, or decreased, rate except for the Fair Market Rental Value Adjustment Years, which shall constitute Rent. Landlord's failure to make the required calculations promptly shall not be considered a waiver of Landlord's rights to adjust the monthly rent due, nor shall it affect Tenant's obligations to pay the increased or decreased Rent. If the Index is changed so that the base year differs from that in effect on the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, the government index or computation with which it is replaced shall be used to obtain substantially the same result as if the Index had not been discontinued or revised.

C. Fair Market Rental Value Adjustment. At the commencement of the sixth (6th), fiftieth (50th), and seventy fifth (75th) Lease Years ("Fair Market Value Adjustment Years"), Tenant agrees to pay Rent equal to the fair market rental value in the City of Punta Gorda, Florida for equivalent commercial property, excluding Improvements or Fixtures, as determined in Article 2(D) of this Lease.

D. Value Adjustment Methodology.

(1) No less than three (3) months before the commencement of each Fair Market Value Adjustment Year, Landlord shall deliver to Tenant a Notice of Intent to Establish New Rent (each a "Landlord's Notice"). Said Notice shall specify a date when Landlord and Tenant shall meet to attempt to mutually agree upon a Rent based on a determination of the fair market rental value of the Land ("Fair Market Rent").

(2) If Landlord and Tenant are unable to reach an agreement on the Fair Market Rent within ten (10) days after receipt of Landlord's Notice (each a "Resolution Date"), Landlord and Tenant shall each retain the services of a disinterested real estate appraiser familiar with commercial values within the City of Punta Gorda to determine the Fair Market Rent for the leased Land. The Landlord and Tenant shall each be responsible for the cost of their retained appraiser.

(3) Within thirty (30) days after the applicable Resolution Date, Landlord and Tenant shall deliver to each other the opinions of their respective real estate appraisers. If Landlord or Tenant fail to deliver to the other party an opinion of the Fair Market Rent within the time specified herein, such failure shall be conclusively considered as that party's approval of the Fair Market Rental Value as submitted by the other party, and said Fair Market Rental Value shall be the new Rent.

(4) If the respective opinions of the selected real estate appraisers are no more than twenty (20) percent apart, the Landlord and Tenant hereby agree that the new Rent shall be the average of the two opinions of the Fair Market Rent of the leased Land.

(5) If the respective opinions of the selected real estate appraisers are more than twenty (20) percent apart, the Landlord and Tenant hereby agree that a third disinterested real estate appraiser familiar with commercial values within the City of Punta Gorda shall be selected by the President of the Association of Realtors whose jurisdiction includes the City of Punta Gorda, Florida. The sole function of the third real estate appraiser shall be to determine which of the prior two opinions most closely reflects the Fair Market Value of the leased Land. The Landlord and Tenant shall equally share the compensation of the third real estate appraiser. The third real estate appraiser shall be required to render his/her opinion within thirty (30) days after Landlord's receipt of Landlord's Notice. The opinion found by the third real estate appraiser to most closely reflect the Fair Market Value of the leased Land shall be used to set the new Rent. The new Rent shall be the Fair Market Value of the leased Land as determined in accordance with this subsection.

3. Tenant Improvements.

A. Future Tenant Improvements. Tenant shall be permitted, but has no obligation, to construct, complete or renovate any Improvements on the Land. Any Tenant Improvements to the Land shall be in conformance with the City of Punta Gorda's Land Development Regulations then in effect.

B. Cooperation. If Tenant elects to, at Tenant's sole cost, Landlord agrees to cooperate reasonably with Tenant (including by timely signing applications) in obtaining any necessary governmental approvals for any work (including sign installation) that Tenant is permitted to perform under this Lease.

4. Title to Improvements and Trade Fixtures.

A. Title to Improvements and Tenant's Trade Fixtures are and shall be the sole and exclusive property of Tenant during the term of this Lease. Landlord acknowledges and understands that it shall have no right, title, or interest in or to Tenant's Trade Fixtures upon the expiration or termination of this Lease.

B. Landlord acknowledges and agrees that Tenant shall have the right to encumber, sell, or hypothecate Improvements and Tenant's Trade Fixtures, to remove them from the Land, or to otherwise deal with all or any portion of such Improvements and Tenant's Trade Fixtures, at Tenant's sole discretion.

C. All Improvements presently on the Land and all Improvements hereafter constructed on the Land are and shall be the property of Tenant or any party taking title thereto through Tenant by means of mesne conveyance or foreclosure, during, and only during, the continuance of the term of this Lease and no longer. At all times during the term of this Lease, the Improvements which are owned by Tenant shall not be conveyed, transferred, or assigned unless such conveyance, transfer, or assignment shall be to a person, corporation or other entity to

whom this Lease is being transferred or assigned simultaneously therewith in compliance with the provisions of Article 17 hereof (Assignment; Subletting), and at all such times the holder of the leasehold interest of Tenant under this Lease shall be the owner of said Improvements. Any attempted conveyance, transfer, or assignment of the Improvements, whether voluntarily or by operation of law or otherwise, to any person, corporation, or other entity shall be void and of no effect whatever unless such conveyance, transfer, or assignment shall be to a person, corporation, or other entity to whom this Lease is being transferred or assigned simultaneously therewith in compliance with the provisions of Article 17. Similarly, so long as the Improvements or any part thereof shall remain on the Land, any attempted transfer or assignment of the leasehold interest of Tenant under this Lease shall be void and of no effect whatever unless such transfer or assignment shall be to a person, corporation, or other entity to whom the Improvements are being conveyed, transferred, or assigned simultaneously therewith. Upon any termination of this Lease, whether by reason of the normal expiration of the term hereof, or by reason of the provisions of Article 13 (Insurance), or Article 19 (Default; Termination) hereof, or by reason of any other cause whatsoever, if the Improvements or any part thereof shall then be on the Land, all of Tenant's right, title, and interest therein or any entity or person acquiring title thereto through Tenant shall cease and terminate, and title to the Improvements shall vest in Landlord, and the Improvements or the part thereof then upon the Land shall be surrendered by Tenant to Landlord as provided in Article 35 hereof (Surrender). No further deed or other instrument shall be necessary to confirm the vesting in Landlord of title to the Improvements. However, upon any termination of this Lease, Tenant, upon request of Landlord, shall execute, acknowledge, and deliver to Landlord a deed confirming that all of Tenant's right, title, and interest in or to the Improvements has expired, and that title to the Improvements has vested in Landlord. Tenant shall pay the cost of recording said deed.

D. Notwithstanding anything to the contrary contained above, and except as limited by Article 10 (Use) hereof, Tenant shall have the right, at its option, during the term of this Lease, to use the Improvements and Land in any reasonable and lawful manner consistent with Tenant's business practices, including the right to operate, by itself or through third parties by means of sublease or license, any facility, concession, or franchise for the sale or rental of goods or services typical and customary in Tenant's business.

5. Leasehold Mortgagees

A. Landlord understands and acknowledges that concurrently upon the execution of this Lease, a Leasehold Mortgagee may enter into the Mortgage with Tenant. Said Mortgage shall be limited to Tenant's interest in the Improvements and this Lease. The Leasehold Mortgagee shall be bound by the terms of this Lease. Landlord hereby consents and approves of such assignments to the Leasehold Mortgagee.

B. Tenant shall have the right to further mortgage its leasehold interest in the Improvements hereunder; provided that the holder of said mortgage shall forward to Landlord an executed counterpart of said mortgage in form proper for record, together with a written notice setting forth the name and address of said new or additional leasehold mortgagee.

C. Landlord and Tenant agree that so long as the Mortgage, or any other mortgage, is a lien on Tenant's estate in the Improvements, the Leasehold Mortgagee or any other leasehold

mortgagee shall have all of the rights set forth below (for purposes of the matters set forth in this Article 5(C), the term Leasehold Mortgagee shall include all further or other leasehold mortgagees):

(1) If Landlord shall give any notice, demand, election, or other communication (hereafter referred to as Messages) to Tenant hereunder, it shall be the Tenant' duty to deliver a copy of each such Message to the Leasehold Mortgagee at the address theretofore designated by the Leasehold Mortgagee.

(2) In the event of any default by Tenant under the provisions of this Lease, the Leasehold Mortgagee will have the same concurrent grace periods as are given Tenant for remedying such default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days after the expiration thereof. Landlord agrees to provide Lender with written notice of any default or claimed default under the Lease sent to the address in the Lender's security documents of record, and, prior to bringing any legal proceedings, will permit Lender the same opportunity to cure or cause to be cured, such default as is granted to Borrower under the Lease; provided; however, Lender is under no obligation to cure the default.

(3) In the event that Tenant shall default under any of the provisions of this Lease, the Leasehold Mortgagee, without prejudice to its rights against Tenant, shall have the right to make good such default within the applicable grace periods provided for in the preceding section of this Article whether the same consists of the failure to pay rent or the failure to perform any other matter or thing which Tenant is hereby required to do or perform, and Landlord shall accept such performance on the part of the Leasehold Mortgagee as though the same had been done or performed by Tenant. For such purpose, Landlord and Tenant hereby authorize the Leasehold Mortgagee to enter upon the Land and Improvements and to exercise any of the Tenant's rights and powers under this Lease, and subject to the provisions of this Lease.

(4) Tenant may delegate irrevocably to said Leasehold Mortgagee the authority to exercise any or all of Tenant's rights hereunder, but no such delegation shall be binding upon Landlord unless and until either Tenant or said Leasehold Mortgagee shall give to Landlord a true copy of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Mortgage, or any other mortgage, itself, in which case the service upon Landlord of an executed counterpart or certified copy of the Mortgage, or any other mortgage, in accordance with this Article 6, together with a written notice specifying the provisions therein which delegate such authority to said Leasehold Mortgagee, shall be sufficient to give Landlord notice of such delegation.

(5) The term incurable default as used herein means any default which cannot be reasonably cured by the Leasehold Mortgagee. The term curable default means any default under this Lease which can be cured by the Leasehold Mortgagee. In the event of any curable default under this Lease, and if prior to the expiration of the applicable grace period specified in this Article, the Leasehold Mortgagee shall give Landlord written notice that it intends to undertake the curing of such default, or to cause the same to be cured, then Landlord will not terminate or take any action to effect a termination of this Lease or re-enter, take possession of, or relet the Land and Improvements or similarly enforce performance of this Lease, so long as the Leasehold

Mortgagee is, with all due diligence and in good faith, engaged in the curing of such default, or effecting such foreclosure; provided, however, that the Leasehold Mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if such default shall be cured.

(6) In the event that this Lease is terminated by Landlord on account of any incurable default, or in the event Tenant's interest under this Lease shall be sold, assigned, or transferred pursuant to the exercise of any remedy of the Leasehold Mortgagee, or pursuant to judicial proceedings, and if (i) no rent or other charges shall then be due and payable by Tenant under this Lease, or (ii) the Leasehold Mortgagee shall have arranged with Landlord to cure any curable default of Tenant under this Lease, then Landlord, within 30 days after receiving a written request therefor, which shall be given within 60 days after such termination or transfer and upon payment to it of all expenses, including attorney's fees, incident thereto, will execute and deliver a new lease of the Land and Improvements to the Leasehold Mortgagee or its nominee or to the purchaser, assignee, or transferee, as the case may be, for the remainder of the term of this Lease, containing the same covenants, agreements, terms, provisions, and limitations as are contained herein. Upon the execution and delivery of such new lease, the lessee, in its own name or in the name of Landlord, may take all appropriate steps as shall be necessary to remove Tenant from the Land and Improvements. The provisions of this subparagraph (6) shall survive the termination of this Lease.

(7) In the event a default under the Mortgage shall have occurred, the Leasehold Mortgagee may exercise, with respect to the Land and Improvements, any right, power, or remedy under the Mortgage.

(8) This Lease may not be assigned, without the consent of Landlord, to or by the Leasehold Mortgagee or its nominee, pursuant to foreclosure or similar proceedings, or the sale, assignment, or other transfer of this Lease in lieu thereof, or the exercise of any other right, power, or remedy of the Leasehold Mortgagee. The Landlord shall not unreasonably withhold its consent. The Leasehold Mortgagee shall be liable to perform the obligations herein imposed on Tenant only during the period it is in possession or ownership of the leasehold estate created hereby.

(9) No mortgage now or hereafter shall extend to or affect the reversionary interest and estate of Landlord in and to the Land and Improvements or in any manner attach to or affect the Land and Improvements from and after any expiration or termination of this Lease.

6. Taxes.

A. Tenant will, at Tenant's own cost and expense, bear, pay, and discharge prior to delinquency, all taxes, real estate taxes, sales taxes, assessments, sewer rents, water rents and charges, duties, impositions, license and permit fees, charges for public utilities of any kind, payments and other charges of every kind and nature whatsoever, ordinary or extraordinary, foreseen or unforeseen, general or special (all of which are hereinafter sometimes collectively referred to as Impositions), which shall, pursuant to present or future law or otherwise, prior to or during the term hereby granted, have been or be levied, charged, assessed, or imposed upon, or

grown or become due and payable out of or for, or become or have become a lien on the Land, the Improvements, or the sidewalks, streets, or vaults adjacent thereto; it being the intention of the parties hereto that the rents reserved herein shall be received and enjoyed by Landlord as a net sum free from all of such Impositions, except income taxes assessed against Landlord, franchise, estate, succession, inheritance, excess profits, revenue, or any other tax, assessment, charge, or levy upon the rent payable by Tenant under this Lease or transfer taxes of Landlord, or any tax or charge in replacement or substitution of the foregoing or of a similar character. The obligation imposed pursuant to this Article shall also include the requirement that Tenant shall pay any sales taxes imposed upon the value of Initial Improvements. Provided, however, that if at any time during the term of the Lease the then prevailing method of taxation or assessment shall be changed so that the whole or any part of the Impositions theretofore payable by Tenant as above provided, shall instead be levied, charged, assessed, or imposed wholly or partially on the rents received by the Landlord from the Land and Improvements, or shall otherwise be imposed against Landlord in the form of a franchise tax or otherwise, then Tenant shall pay all such levies, charges, assessments, impositions, taxes, and other substituted charges to the extent that the same shall be directly related to and assessed against the Land and Improvements or the rent thereon; provided, however, that Tenant shall be required to make such payments only to the extent that the same would be payable if the Land and Improvements were the only property of Landlord.

B. Tenant shall use Tenant's best efforts to cause the Land and the Improvements to be assessed and taxed separate and apart from all other premises. If, however, any Imposition payable by Tenant as aforesaid shall also be levied, charged, assessed, or imposed upon, or grow or become due and payable out of or for, or become a lien on, or be based upon the value of, any other premises owned or leased by Tenant not constituting a part of the Land and Improvements, then Tenant shall pay or cause to be paid the full amount of said Imposition, notwithstanding that all or a portion thereof is allocable to such other premises, but Tenant reserves all rights which Tenant may have, whether pursuant to law or agreement or otherwise, to recover all or a portion of said Imposition from the owner or owners of such other premises.

C. Tenant shall pay all interest and penalties imposed upon the late payment of any Impositions which Tenant is obligated to pay hereunder. Impositions shall be apportioned between Tenant and Landlord as of the date of termination of the term of this Lease and shall be paid within thirty (30) days after such termination, but shall not be apportioned at the commencement of the term of this Lease.

D. Tenant may take the benefit of the provisions of any law or regulations permitting any tax or assessment imposed upon the Land and Improvements prior to the expiration of the term of this Lease to be paid in installments; provided, further, that the amount of all installments of any such assessment which are to become due and payable after the expiration of the term of this Lease shall be paid by Landlord when and as the same shall become due and payable. Upon the termination or expiration of this Lease, Tenant shall accelerate all payments of taxes or other assessments being paid in installments prior to the expiration or termination of this Lease.

E. If Tenant shall fail, for ten (10) days after notice and demand given to Tenant, to pay any Imposition on or before the last day upon which the same may be paid without the

imposition of interest or penalties for the late payment thereof, then Landlord may pay the same with all interest and penalties lawfully imposed upon the late payment thereof, and the amounts so paid by Landlord shall thereupon be and become immediately due and payable by Tenant to Landlord hereunder.

F. Tenant at Tenant's own cost and expense may, if it shall in good faith so desire, contest the validity or amount of any Imposition, in which event Tenant may defer the payment thereof for such period as such contest shall be actively prosecuted and shall be pending undetermined, so long as such proceedings and any appeals shall operate to legally prevent the collection of such payments and the sale of the Land and Improvements to satisfy any lien arising out of the non-payment of the same.

G. Landlord shall execute and deliver to Tenant whatever documents may be necessary or proper to permit Tenant to so contest any such Imposition or which may be necessary to secure payment of any refund which may result from any such proceedings.

H. An official certificate or statement issued or given by a sovereign or municipal authority, or any agency thereof, or any public utility, showing the existence of any Imposition, or interest or penalties thereon, the payment of which is the obligation of Tenant as herein provided, shall be prima facie evidence for all purposes of this Lease of the existence, amount, and validity of such Imposition.

I. Any obligation of Tenant under the provisions of this Article shall survive the termination or expiration of this Lease.

8. Repairs. Subject to the provisions of Articles 15 and 16 below, Tenant shall at all times during the term of this Lease, at Tenant's own costs and expense, keep the Land and the Improvements thereon, and all sidewalks, and curbs adjoining the Land and Improvements, and all appurtenances to the Land and Improvements, in good order, condition, and repair, and in such condition as may be required by law and by the terms of the insurance policies furnished pursuant to this Lease, whether or not such repair shall be interior or exterior, and whether or not such repair shall be of a structural nature, and whether or not the same can be said to be within the present contemplation of the parties hereto. The Landlord has the right to make repairs if the Tenant fails to do so within the time allowed, and Tenant shall reimburse the Landlord for the full costs of such repairs made by the Landlord.

9. Compliance with Law. Tenant shall at all times during the term of the Lease, at Tenant's own cost and expense, perform and comply with all laws, rules, orders, ordinances, regulations, and requirements now or hereafter enacted or promulgated, of every governmental authority and municipality having jurisdiction over the Land and Improvements, and of any agency thereof, relating to the Land, or the Improvements now or hereafter located thereon, or the facilities or equipment therein, or the streets, sidewalks, vaults, vault spaces, curbs, and gutters adjoining the Land and Improvements, or the appurtenances to the Land and Improvements, or the franchises and privileges connected therewith, whether or not such laws, rules, orders, ordinances, regulations, or requirements so involved shall necessitate structural changes, improvements, interference with use and enjoyment of the Land and Improvements, replacements, or repairs,

extraordinary as well as ordinary, and Tenant shall so perform and comply, whether or not such laws, rules, orders, ordinances, regulations, or requirements shall now exist or shall hereafter be enacted or promulgated, and whether or not such laws, rules, orders, ordinances, regulations, or requirements can be said to be within the present contemplation of the parties hereto.

Tenant shall have the right, provided it does so with due diligence and dispatch, to contest by appropriate legal proceedings, without cost or expense to Landlord, the validity of any law, rule, order, ordinance, regulation, or requirement of the nature hereinabove referred to in this Article 8. No provisions of this Lease shall be construed so as to permit Tenant to postpone compliance with such law, rule, order, ordinance, regulation, or requirement if any sovereign, municipal, or other governmental authority (other than Landlord or its agencies) shall threaten to carry out any work to comply with the same or to foreclose or sell any lien affecting all or any part of the Land and Improvements which shall have arisen by reason of such postponement or failure of compliance.

9. Alterations. Tenant shall have the right, at Tenant's expense, from time to time during the term of this Lease to make any alteration, addition, or modification to the Land or the Improvements thereon; provided that said alterations, additions, or modifications are approved by the Landlord and are compatible with the balance of the Project.

10. Use of Land.

A. Except as otherwise provided herein, Tenant may use and occupy the Land and the Improvements thereon for any lawful purpose, including, without limitation, restaurant, bar or lounge, residential, retail and office uses.

B. Tenant will not use or keep or allow the Land and Improvements, or any portion thereof or any buildings or other improvements thereon or any appurtenances thereto, to be used or occupied for any unlawful purpose or in violation of any certificate of occupancy, and will not suffer any act to be done or any condition to exist within the Land and Improvements or any portion thereof or in any improvement thereon, or permit any article to be brought therein, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance in force with respect thereto.

11. Liens.

A. Tenant shall keep all and every part of the Land and Improvements free and clear of any and all mechanics', material suppliers', and other liens for or arising out of or in connection with work or labor done, services performed, or materials and appliances used or furnished for or in connection with any operations of Tenant, any alteration, improvement, or repairs or additions that Tenant may make or permit or cause to be made, or any work or construction, by, for, or permitted by Tenant on or about the Land, or any obligations of any kind incurred by Tenant, and at all times promptly and fully pay and discharge any and all claims on which any such lien may or could be based, and to indemnify Landlord and all of the Land and Improvements from and against any and all such liens and claims of liens and suits or other proceedings pertaining to the Land and Improvements.

B. If Tenant desires to contest any lien, it shall notify Landlord of its intention to do so within seven (7) days after the filing of the lien. In that case, and provided that Tenant shall, on demand, protect Landlord by a good and sufficient surety bond against any lien and any cost, liability, or damage arising out of such contest, Tenant shall not be in default under this Lease until thirty (30) days after the final determination of the validity of the lien, within which time Tenant shall satisfy and discharge the lien to the extent held valid. However, the satisfaction and discharge of any lien shall not, in any case, be delayed until execution is had on any judgment rendered on the lien, and such delay shall be a default of Tenant under this Lease.

12. Net Lease. This is an absolute net lease and Landlord shall not be required to provide any services or do any act or thing with respect to the Land and Improvements or the appurtenances thereto, except as may be specifically provided herein, and the rent reserved herein shall be paid to Landlord without any claim on the part of Tenant for diminution, setoff, or abatement, and nothing shall suspend, abate, or reduce any rent to be paid hereunder, except as otherwise specifically provided in this Lease. Tenant shall be responsible for the payment of all fees and charges associated with utilities servicing the Land and Improvements.

13. Insurance.

A. Tenant will at all times during the term of this Lease maintain insurance on the Premises of the following character:

(1) Insurance against loss or damage by fire and other risks and perils from time to time included under standard extended coverage endorsements in an amount equal to not less than ninety percent (90%) of the replacement value of the Improvements, (exclusive of the costs of excavation, foundations, and footings below the lowest floor).

(2) General comprehensive public liability insurance (including coverage for elevators, if any, on the Property) against claims for bodily injury, death, or property damage occurring on, in, or about the Land and Improvements and the adjoining streets, sidewalks, and passageways, such insurance to afford protection of not less than \$1,000,000.00 with respect to bodily injury or death to all persons in any one accident, and not less than \$100,000.00 with respect to property damage in any one occurrence, or such other amounts in excess of the amounts set forth above as Landlord shall reasonably request.

(3) To the extent alcoholic beverages are sold on the Land, Liquor Liability Insurance in the amount of \$1,000,000 per occurrence for injury by reason of the selling, serving or furnishing of any alcoholic beverage.

(4) Such other insurance as Landlord may reasonably request.

B. Such insurance shall be written by companies of recognized financial standing which are well rated by a national rating agency and are legally qualified to issue such insurance in the State of Florida, and such insurance shall name as the insured parties thereunder, Landlord, or its assigns, and Tenant, as their interests may appear. Such insurance may be obtained by Tenant by

endorsement on its blanket insurance policies, provided that (i) such blanket policies satisfy the requirements specified herein and (ii) Landlord shall be furnished with the certificate of the insurer to the effect that (a) the amount of insurance allocable to the Land and Improvements is not less than the amount required by this Article and (b) the protection afforded Tenant and Landlord is not less than the protection which would have been afforded under a separate policy or policies relating only to the Land and Improvements. Landlord shall not be required to prosecute any claim against any insurer or to contest any settlement proposed by any insurer, provided that Tenant may, at its cost and expense, prosecute any such claim or contest any such settlement, and in such event Tenant may bring any such prosecution or contest in the name of Landlord, Tenant, or both, and Landlord shall cooperate with Tenant and will join therein at Tenant's written request upon receipt by Landlord of an indemnity from Tenant against all costs, liabilities, and expenses in connection with such cooperation, prosecution, or contest.

C. Tenant shall deliver to Landlord promptly after the execution and delivery of this Lease the original or duplicate policies or certificates of insurers satisfactory to Landlord evidencing all the insurance which is then required to be maintained by Tenant hereunder, and Tenant shall, within 30 days prior to the expiration of any such insurance, deliver other original or duplicate policies or other certificates of the insurers evidencing the renewal of such insurance. Should Tenant fail to effect, maintain, or renew any insurance provided for herein, or to pay the premium therefor, or to deliver to Landlord any of such policies or certificates, Landlord, at its option, but without obligation so to do, may procure such insurance, and any sums expended by it to procure such insurance shall be additional rent hereunder and shall be repaid by Tenant within 30 days following the date on which demand therefor shall be made by Landlord. Such insurance policy(ies) shall contain a provision that such policy(ies) shall not be canceled or reduced in scope without thirty (30) days prior written notice to Landlord.

14. Casualty.

A. If the Improvements on the Land and Improvements or any part thereof shall be damaged or destroyed by fire or other casualty, Tenant shall promptly notify Landlord of such destruction or damage. Tenant expressly waives the provisions of any present or future law relating to such damage or destruction and agrees that the provisions of this Lease shall control the rights of Landlord and Tenant. Provided further, that rent shall not abate hereunder by reason of any damage to or destruction of the Improvements, except as specifically provided for in this Lease.

B. If the Improvements on the Land are substantially damaged or destroyed in any single fire or by any single casualty so that they shall be economically unsuitable for restoration for Tenant's business operations, then in lieu of rebuilding, replacing, and repairing the Improvements as provided in this Lease, Tenant shall within 90 days after the occurrence of such damage or destruction, give notice to Landlord of Tenant's intention to terminate this Lease. The notice shall state a termination date and this Lease shall terminate effective on said termination date.

C. If a portion of the Land or the Improvements shall be damaged or destroyed by any fire or other casualty and this Lease is not terminated as provided for herein, then this Lease shall

continue in full force and effect and Tenant shall, promptly and diligently after any such damage or destruction and at its own cost and expense, repair or restore the Improvements as nearly as may be possible under the circumstances to the fair market value and condition thereof immediately prior to such damage or destruction irrespective of the availability or sufficiency of any fire or other insurance proceeds payable with respect thereto. The net proceeds shall immediately be paid over to Tenant to be used by Tenant for the purposes of repairing and restoring the Improvements.

15. Indemnity. Tenant will indemnify and save harmless Landlord from and against any and all liability, loss, damages, expenses, costs of action, suits, interest, fines, penalties, claims, and judgments (to the extent that the same are not paid out of the proceeds of any policy of insurance furnished by Tenant to Landlord pursuant to Article 13 hereof arising from injury, or claim of injury (collectively, "Claims"), during the term of this Lease to person or property of any and every nature, and from any matter or thing, growing out of the occupation, possession, use, management, improvement, construction, alteration, repair, maintenance, or control of the Land, the Improvements now or hereafter located thereon, the facilities and equipment thereon the appurtenances to the Land and Improvements, or the franchises and privileges connected therewith, or arising out of Tenant's failure to perform, fully and promptly, or Tenant's postponement of compliance with, each and every term, covenant, condition, and agreement herein provided to be performed by Tenant, except to the extent any Claims arise solely due to the negligence or willful misconduct of Landlord. Tenant, at Tenant's own cost and expense, will defend by counsel of Tenant's choosing any and all suits that may be brought and claims which may be made, against Landlord, or in which Landlord may be impleaded with others, whether Landlord shall be liable or not, upon any such above-mentioned liability, loss, damages, expenses, costs of action, suits, interest, fines, penalties, claims, and judgments and shall satisfy, pay, and discharge any and all judgments that may be recovered against Landlord in any such action or actions in which Landlord may be a party defendant (but excluding any liability arising solely due to Landlord's negligence or willful misconduct), or that may be filed against the Land, or the Improvements thereon, or the appurtenances, or any interest therein, and in the event of the failure of Tenant to pay the sum or sums for which Tenant shall become liable as aforesaid, then Landlord may pay such sum or sums, with all interest and charges which may have accrued thereon, and the amount so paid by Landlord shall be payable by Tenant to Landlord upon demand.

16. Condemnation.

A. Entire Condemnation. If at any time during the term of this Lease all or substantially all of the Land or the Improvements thereon shall be taken in the exercise of the power of eminent domain by any sovereign, municipality, or other public or private authority, then this Lease shall terminate on the date of vesting of title in such taking and any prepaid rent shall be apportioned as of said date. Substantially all of the Land and the Improvements thereon shall be deemed to have been taken if the remaining portion of the Land and Improvements shall not be of sufficient size to permit Tenant to operate its business thereon in a manner similar to that prior to such taking.

B. Any award for such taking of all or substantially all of the Land and Improvements shall be paid to the parties hereto in accordance with the following:

(1) To Landlord, the amount of the award attributable to the Land, determined as if this Lease was not in effect at the time of such award, excluding therefrom the amount of the award attributable to the Improvements, and all other sums not directly attributable to the value of the Land.

(2) To Tenant, the entire award except that portion allotted to Landlord above, including but not limited to, the value of the Improvements and this Lease, plus any other amount assessed for Tenant.

C. Partial Condemnation. If less than all or substantially all of the Land or the Improvements thereon shall be taken in the exercise of the power of eminent domain by any sovereign, municipality, or other public or private authority, then Tenant, at its option, may elect to continue this Lease in full force and effect or terminate this Lease. If Tenant shall elect to maintain this Lease in full force and effect, that portion of the award attributable to the Improvements shall be paid over to Tenant, and Tenant shall proceed with reasonable diligence to carry out any necessary repair and restoration so that the remaining Improvements and appurtenances shall constitute a complete structural unit or units which can be operated on an economically feasible basis under the provisions of this Lease. All of such repair and restoration shall be carried out by Tenant in accordance with the provisions of Article 13 hereof. In the event Tenant elects to continue this Lease in full force and effect after a partial condemnation, there shall be no abatement in the Base Rent Tenant is required to pay hereunder.

Should Tenant elect to terminate this Lease upon a partial condemnation, Tenant shall provide Landlord with written notice of such election within thirty (30) days after the date of vesting of title for such taking. Tenant shall specify in such written notice the date on which this Lease shall terminate, which date shall be not less than 60 days nor more than 360 days after delivery of such notice to Landlord (the Termination Date). In the event Tenant terminates this Lease, as provided for in this subparagraph C, Tenant shall be entitled to that portion of the award for such partial taking attributable to the Improvements.

D. Temporary Taking. If the temporary use of the whole or any part of the Land or the Improvements thereon or the appurtenances thereto shall be taken at any time during the term of this Lease in the exercise of the power of eminent domain by any sovereign, municipality, or other authority, the term of this Lease shall not be reduced or affected in any way, and Tenant shall continue to pay in full the rent, additional rent, and other sum or sums of money and charges herein reserved and provided to be paid by Tenant, and that portion of the award for such temporary taking of the Improvements shall be paid to Tenant. Tenant shall repair and restore any and all damage to the Land and the Improvements as soon as reasonably practicable after such temporary taking.

17. Assignment; Subletting.

A. Restrictions on Transfer. Neither the Tenant nor Tenant's legal representatives or successors in interest by operation of law or otherwise shall transfer this Lease except as provided in this Article and Article 5. For the purposes of this Article, a "transfer" shall mean any of the following: (a) an assignment of this Lease; (b) a collateral assignment, mortgage, or other encumbrance involving this Lease; (c) a sublease, license agreement, or other agreement permitting all or any portion of the Land and Improvements to be used by others; (d) a change or conversion in the form of entity of Tenant or any transferee or any entity controlling any of them which has the effect of limiting the liability of any of the partners, members, or other owners of the entity; or (e) any transfer of control of Tenant, which shall be defined as any issuance or transfer of stock or any interest in Tenant's entity by sale, exchange, merger, consolidation, operation of law, or otherwise, by which an aggregate of 50% or more of Tenant's stock or equity interests shall be vested in one or more parties who are not stockholders or interest holders of Tenant as of the Effective Date of this Lease, or any transfer of power to direct the operations of any entity (by equity ownership, contract or otherwise), to one or more parties who are not stockholders or interest holders of Tenant as of the Effective Date of this Lease, however accomplished, and whether in a single transaction or in a series of related or unrelated transactions. Tenant agrees that it will not permit a transfer of control of Tenant during the first ten (10) years of the Lease Term.

B. Request for Consent To Transfer. Should Tenant desire to transfer this Lease, as the term "transfer" is defined in this Article, Tenant shall request in writing Landlord's consent to the Transfer at least 60 days before the proposed effective date of the Transfer, and such request shall contain the following information: (1) the name and address of the proposed transferee; (b) a duly executed counterpart of the proposed transfer agreement; (c) reasonably satisfactory information as to the nature and character of the business of the proposed transferee, as to the nature and character of its proposed use of the Land and Improvements; (d) banking, financial, or other credit information relating to the proposed transferee reasonably sufficient to enable Landlord to determine the financial responsibility and character of the proposed transferee, including balance sheets and profit and loss statements for the transferee covering the three years before the proposed transfer, certified by the transferee, and a list of personal, banking, business and credit references for the transferee; and (e) any further information relevant to the proposed transfer that Landlord shall reasonably request after receipt of Tenant's request for consent.

C. Landlord has retained the right of consent to transfer of this Lease in recognition of its fiduciary responsibility to use the Land, which are public lands, to foster the public's interest. Towards that end, Landlord reserves the right to grant or withhold its consent to a transfer in its discretion. The Landlord's consent shall not unreasonably be withheld, conditioned or delayed.

D. Any attempted or purported transfer in violation of this Article shall be null and void, and shall not confer any rights on the purported transferee. Furthermore, any attempted or purported transfer in violation of this Article shall be deemed a default under this Lease.

E. Should the Landlord grant its consent to a transfer of this Lease, said transfer shall be subject to the following conditions:

(1) The transferee shall assume all the covenants and conditions to be performed by Tenant pursuant to this Lease after the date of such transfer by execution of an instrument in form and substance reasonably satisfactory to Landlord. Upon consummation of any assignment, the assignee shall cause to be recorded in the Official Records an appropriate instrument reflecting such assignment.

(2) No uncured Event of Default shall exist hereunder on the date of transfer.

(3) Tenant shall have paid, or caused to be paid, to Landlord all reasonable costs and expenses incurred by Landlord in connection with the disposition, if any, including without limitation all recording fees, transfer and other taxes, attorneys' fees, escrow fees and fees for title insurance and similar charges.

F. Permitted Subleases.

(1) Tenant's Right to Sublease. Tenant may, without the prior consent of the Landlord, sub-ground lease or sub-space lease portions of the Improvements during the Term of this Lease pursuant to Subleases with Subtenants who will occupy all or any portion of the Land and Improvements for the conduct of business consistent with the uses permitted herein subject to the requirements set forth in this Article 17(F). Tenant may sub-ground lease or sub-space lease the Land and Improvements used for restaurant purposes only with the prior written consent of the Landlord. Tenant shall submit a written request for consent in a manner similar to that provided in Article 18(B) of this Lease. Landlord has retained the right of consent to sub-ground lease or sub-space lease of the Land and Improvements used for restaurant purposes only in recognition of its fiduciary responsibility to use the Land, which are public lands, to foster the public's interest. Towards that end, Landlord reserves the right to grant or withhold its consent to a sub-ground lease or sub-space lease in its discretion. The Landlord's consent shall not unreasonably be withheld.

(2) Required Sublease Terms. Each Sublease shall contain the following terms and conditions:

(a) The Sublease shall incorporate the terms, conditions and covenants set forth in, and state that it is subject and subordinate to this Lease and to any extension, modifications or amendments of, this Lease, unless Landlord specifically requires that such Sublease be prior and superior to this Lease;

(b) That rents due Tenant under the Sublease (i) have been assigned to Landlord (and Tenant hereby assigns such rents to Landlord), subject to the provisions of any Mortgage, to support the performance of Tenant's covenants under this Lease, which assignment shall be effective only upon the occurrence of any Event of Default, (ii) shall not be paid more than six (6) months in advance and (iii) shall, upon receipt of written notification from Landlord that an Event of Default has occurred, be paid by the Subtenant directly to Landlord until the Subtenant receives written notice from Landlord that Tenant has cured the Event of Default or is in the process of curing such Event of Default in a manner satisfactory to Landlord; and

(c) That in the event of the cancellation or termination of this Lease prior to the Lease Expiration Date, the Subtenant under such Sublease shall make full and complete attornment to Landlord for the balance of the term of such Sublease with the same force and effect as though said Sublease were originally made directly from Landlord to the Subtenant; provided that such Subtenant has received a non-disturbance agreement from Landlord, as provided below.

(d) Any sublessee selling, serving or furnishing any alcoholic beverage, shall be required to obtain Liquor Liability Insurance in the amount of \$1,000,000 per occurrence for injury by reason of the selling, serving or furnishing of any alcoholic beverage, with Tenant and Landlord added to said Liquor Liability Insurance as additional insured.

(3) Non-Disturbance Agreements. Landlord shall issue a commercially reasonable "Non-Disturbance Agreement" to each Subtenant requesting same, which Non-Disturbance Agreement shall require such Subtenant to acknowledge in writing to the effect that this Lease is prior to and paramount to the Sublease, and providing that Landlord shall recognize the Sublease and not disturb the Subtenant's possession thereunder so long as Subtenant is not in default under its Sublease (subject to the following sentence) and agrees to attorn to Landlord for the balance of the term of such Sublease with the same force and effect as though said Sublease were originally made directly from Landlord to the Subtenant. Any such Non-Disturbance Agreement may condition the Subtenant's right to non-disturbance on Landlord's continued receipt of Rent in the amount provided herein.

(4) Copies of Subleases. Upon written request by Landlord, Tenant shall promptly deliver to Landlord complete copies of any and all Subleases entered into by Tenant with Subtenants.

G. Right of First Offer. If Landlord hereafter elects to sell the Land, it shall, to the extent permitted under applicable law, first give notice to Tenant of such intent to sell the Land together with the terms upon which it would agree to sell the same ("Offer Notice"). Upon receipt of the Offer Notice, Tenant shall have fifteen (15) business days in which to either accept or decline the offered terms. If Tenant accepts the terms set forth in the Offer Notice, Landlord and Buyer shall enter into a purchase agreement reflecting such terms and proceed to the closing of such transaction. If Tenant (i) rejects such offer, (ii) fails to accept the offer within the aforementioned fifteen (15) day period or (iii) fails to close on the purchase of the Land in accordance with the aforementioned purchase agreement (unless Tenant is seeking the remedy of Landlord's specific performance thereunder) (each a "Rejection"), Landlord may seek to sell the Land on the terms set forth in the Offer Notice and Tenant's right of first offer under such Offer Notice shall be null and void, but applicable to any subsequent offer to sell the Land. If Landlord is successful in finding a buyer of the Land after a Rejection, it may thereafter modify the terms set forth in the applicable Offer Notice, provided the purchase price (including any credits, discounts, fees and similar concessions or payments in favor of the buyer of the Land or any affiliate thereof) thereunder is not reduced by more than three percent (3%) from the amount set forth in the Offer Notice.

18. Injunction. Landlord, at Landlord's option, in addition to any other rights reserved to Landlord, and notwithstanding the concurrent pendency of summary or other dispossession proceedings between Landlord and Tenant, shall have the right at all times during the term of this Lease to restrain by injunction any violation or attempted violation by Tenant or Subtenant, of any of the terms, covenants, conditions, or agreements of this Lease, and to enforce by injunction any of the terms, covenants, conditions, and agreements hereof.

19. Default; Termination.

A. The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant:

(1) Any failure by Tenant to pay the Rent required to be paid by Tenant hereunder where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; or

(2) Any failure by Tenant to pay the Impositions required to be paid hereunder by Tenant where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; or

(3) There shall be filed by or against Tenant in any court or other tribunal pursuant to any statute or other rule of law, either of the United States or of any State or of any other authority now or hereafter exercising jurisdiction, a petition in bankruptcy or insolvency proceedings or for reorganization or for the appointment of a receiver or trustee of all or substantially all of Tenant's property, unless such petition be filed against Tenant and if in good faith Tenant shall promptly thereafter commence and diligently prosecute any and all proceedings appropriate to secure the dismissal of such petition, and such petition is dismissed within 180 days or Tenant makes an assignment for the benefit of creditors; or

(4) Pursuant to any other default or breach of this Lease by Tenant, Landlord obtains a money judgment against Tenant in a court of competent jurisdiction, and such judgment is not paid to Landlord within sixty (60) days after such judgment becomes final.

(5) Failure of Tenant to comply with any provision of this Lease unrelated to the payment of Rent, where Tenant fails to remedy the alleged violation within thirty (30) days from receipt of written notice from Landlord alleging such violation.

B. In the event of any such default by Tenant, then in addition to any other remedies available to Landlord at law or in equity, Landlord, subject to the rights of the Leasehold Mortgagee under Article 5, shall have the immediate option to terminate this Lease and all rights of Tenant hereunder by giving written notice of such intention to terminate in the manner specified in this Article of the Lease. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

(1) The worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(2) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided.

C. In the event of the vacation or abandonment of the Land and Improvements by Tenant, Landlord shall have the right to re-enter the Land and Improvements and take possession of the Land and Improvements pursuant to legal proceeding or pursuant to any notice provided by law, then if Landlord does not elect to terminate this Lease, Landlord may, from time to time, without terminating this Lease, either recover all Rent as it becomes due, or relet the Land and Improvements or any part thereof for such term or terms and at such Rent and upon such other terms and conditions as Landlord in its sole discretion may deem advisable.

D. In the event that Landlord shall elect to so relet, then Rent received by Landlord from such reletting shall be applied, first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; second, to the payment of any cost of such reletting; third, to the payment of Rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future Rent as the same may become due and payable hereunder. Should that portion of such Rent received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord immediately upon demand therefor by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained, any costs and expenses incurred by Landlord in such reletting.

E. Upon a default or breach of any term of this Lease by any party hereunder, the aggrieved party shall have all of the rights and remedies provided by law or equity.

F. Except as otherwise expressly provided herein, the rights and remedies given herein to Landlord and Tenant shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights reserved to Landlord or to Tenant under the provisions of this Lease or given to Landlord or to Tenant by law.

G. Landlord hereby agrees that upon a default by Tenant hereunder, Landlord shall, concurrently with the delivery of written notice of such default to Tenant, deliver a copy of such notice to the Leasehold Mortgagee and to its designated representative at their respective addresses, as set forth below.

20. Landlord's Right to Cure Tenant's Defaults. Whenever and as often as Tenant or Subtenant shall fail or neglect to comply with and perform any term, covenant, condition, or agreement to be complied with or performed by Tenant or Subtenant hereunder, then, upon thirty (30) days' prior written notice to Tenant, Landlord at Landlord's option, in addition to all other remedies available to Landlord, may perform, or cause to be performed, such work, labor, services, acts, or things, and take such other steps, including entry onto the Land and the Improvements thereon, as Landlord may deem advisable, to comply with and perform any such term, covenant, condition, or agreement which is in default, in which event Tenant shall reimburse Landlord upon demand, and from time to time, for all costs and expenses suffered or incurred by Landlord in so complying with or performing such term, covenant, condition, or

agreement. The commencement of any work or the taking of any other steps or performance of any other act by Landlord pursuant to the immediately preceding sentence shall not be deemed to obligate Landlord to complete the curing of any term, covenant, condition, or agreement which is in default.

21. Tenant's Expenses. Landlord shall reimburse Tenant upon demand for all reasonable expenses, including attorneys' fees, incurred by Tenant in connection with any litigation to enforce any obligation of Landlord which is in default hereunder.

22. Landlord's Expenses. Tenant shall reimburse Landlord upon demand for all reasonable expenses, including attorneys' fees, incurred by Landlord in connection with the collection of any rent in default hereunder, or the termination of this Lease by reason of a material default of Tenant, as such term is defined above, or the enforcement of any other obligation of Tenant which is in default hereunder, or the protection of Landlord's rights hereunder, or any litigation or dispute in which Landlord becomes a party or otherwise becomes involved, without fault on its part, relating to the Land and Improvements or Landlord's rights or obligations hereunder. If the leasehold interest of Tenant hereunder shall hereafter be held by more than one person, corporation, or other entity, and if litigation shall arise by reason of a dispute among such persons, corporation, or other entities, and if Landlord is made a party to such litigation without Landlord's consent, then Tenant shall reimburse Landlord upon demand for all reasonable expenses, including attorneys' fees, incurred by Landlord in connection with any such litigation.

23. Waiver of Trial by Jury. To the extent permitted by law, Landlord and Tenant hereby waive trial by jury in any litigation brought by either of the parties hereto against the other on any matter arising out of or in any way connected with this Lease or the Land or the Improvements thereon.

24. Merger. In no event shall the leasehold interest, estate, or rights of Tenant hereunder, or of the holder of any mortgage upon this Lease, merge with any interest, estate, or rights of Landlord in or to the Land, it being understood that such leasehold interest, estate, and rights of Tenant hereunder, and of the holder of any mortgage upon this Lease, shall be deemed to be separate and distinct from Landlord's interest, estate, and rights in or to the Land, notwithstanding that any such interests, estates, or rights shall at any time or times be held by or vested in the same person, corporation, or other entity.

25. Definition of Landlord. The term Landlord as used in this Lease shall at any given time mean the person or persons, corporation or corporations, or other entity or entities who are the owner or owners of the reversionary estate of Landlord in and to the Land and Improvements. The term Landlord shall include The City Of Punta Gorda, Florida, its successors and assigns.

26. Quiet Enjoyment. Landlord covenants that at all times during the term of this Lease, so long as Tenant is not in default hereunder, Tenant's quiet enjoyment of the Land and Improvements or any part thereof shall not be disturbed by any act of Landlord, or of anyone acting by, through or under Landlord.

27. Present Condition of Premises. Tenant represents that the Land, the improvements thereon, the sidewalks and structures adjoining the same, and the sub-surface conditions, have been examined by Tenant and Tenant's agents and that Tenant accepts the same, without recourse to Landlord, in the condition or state in which they or any of them now are, without representation or warranty, expressed or implied in fact or by law, as to the nature, condition, or usability thereof, or as to the use or uses to which the Land and Improvements or any part thereof may be put, or as to the prospective income from, and expense of operation of, the Land and Improvements.

28. Landlord's Right of Entry. Upon three (3) days' prior written notice to Tenant, Landlord and Landlord's authorized agents and employees shall have the right from time to time, at Landlord's option, to enter and pass through the Land and the Improvements thereon during business hours to examine the same and to show them to prospective purchasers, fee mortgagees, and others, but this shall not obligate Landlord to make any such entry or examination.

29. Notices. Any notice, demand, election, payment, or other communication (hereafter in this Article 29 collectively referred to as Messages) which Landlord or Tenant shall desire or be required to give pursuant to the provisions of this Lease shall be sufficiently given for all purposes as follows:

(1) When personally delivered to the recipient, notice is effective on delivery.

(2) When mailed first class to the last address of the recipient known to the party giving notice, notice is effective on delivery.

(3) When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.

(4) When delivered by overnight delivery (e.g. Federal Express/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.

(5) When sent by facsimile to the last facsimile number of the recipient known to the party giving notice, notice is effective on receipt as long as (1) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (2) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a non-business day.

Addresses for purposes of giving notice are set forth as follows:

Landlord:

City Manager
City of Punta Gorda

(or if there have been modifications, that this Lease is in force and effect as modified, and identifying the modification agreements); (b) the date to which rent has been paid; (c) whether or not there is any existing default by Tenant in the payment of any rent or other sum of money hereunder, and whether or not there is any other existing default by either party hereto with respect to which a notice of default has been served, and, if there is any such default, specifying the nature and extent thereof; and (d) whether or not there are any set-offs, defenses, or counterclaims against enforcement of the obligations to be performed hereunder existing in favor of the party executing such certificate.

31. Payments of Money; Interest. All amounts whatsoever which Tenant shall be obligated to pay to Landlord pursuant to this Lease shall be deemed Rent, and in the event of the nonpayment by Tenant of any sum of money which Tenant from time to time shall be obligated to pay to Landlord under any provision of this Lease, Landlord shall have the same rights and remedies by reason of such nonpayment as if Tenant had failed to pay an installment of Rent under Article 2 hereof. In each instance when Tenant shall be obligated to make any payment of any sum of money to Landlord hereunder, interest shall accrue thereon and be payable hereunder at the rate of seven percent (7%) per annum, or the highest rate permitted by law, whichever is lower, computed from the date such payment first became due hereunder.

32. Non-Waiver. No waiver by Landlord of any breach by Tenant of any term, covenant, condition, or agreement herein and no failure by Landlord to exercise any right or remedy in respect of any breach hereunder, shall constitute a waiver or relinquishment for the future of any such term, covenant, condition, or agreement or of any subsequent breach of any such term, covenant, condition, or agreement, nor bar any right or remedy of Landlord in respect of any such subsequent breach, nor shall the receipt of any rent, or any portion thereof, by Landlord, operate as a waiver of the rights of Landlord to enforce the payment of any other rent then or thereafter in default, or to terminate this Lease, or to recover the Land and Improvements, or to invoke any other appropriate remedy which Landlord may select as herein or by law provided.

33. Surrender. Tenant shall, on the last day of the term of this Lease or upon any termination of this Lease pursuant to Article 19 (Default; Termination) hereof, or upon any other termination of this Lease, well and truly surrender and deliver up the Land, with the Improvements then located thereon into the possession and use of Landlord, without fraud or delay and in good order, condition, and repair, free and clear of all lettings and occupancies, free and clear of all liens and encumbrances other than those existing on the date of this Lease and those, if any, created by Landlord, without any payment or allowance whatever by Landlord on account of or for any buildings and improvements erected or maintained on the Land at the time of the surrender, or for the contents thereof or appurtenances thereto. Provided, however, that Tenant's Trade Fixtures and personal property of Tenant or of any subtenant or other occupant of space in the Land and Improvements shall be and remain the property of Tenant, and Tenant shall have a reasonable time after the expiration of the term of this Lease to remove the same.

34. Memorandum of Lease. Each of the parties hereto will, promptly upon request of the other, execute a memorandum of this Lease in form suitable for recording setting forth the names of the parties hereto and the term of this Lease, identifying the Land and Improvements, and also including such other clauses therein as either party may desire.

35. No Partnership. Landlord shall not be deemed, in any way or for any purpose, to have become, by the execution of this Lease or any action taken under this Lease, a partner of Tenant, in Tenant's business or otherwise, or a member of any joint enterprise with Tenant.

36. No Oral Changes. This Lease may not be changed or modified orally, but only by an agreement in writing signed by the party against whom such change or modification is sought to be enforced.

37. Bind and Inure. The terms, covenants, conditions, and agreements of this Lease shall bind and inure to the benefit of the parties hereto and their respective successors and assigns, subject, however, to the provisions of Article 4 (Title to Improvements), Article 17 (Assignment; Subletting) and Article 25 (Definition of Landlord) hereof. Any waiver of rights by either party hereto shall be deemed to be a waiver of such rights not only by such party but shall be deemed to be a waiver of such rights for and on behalf of each and every successor and assignee of such party. The word Tenant as used herein shall in each instance be deemed to mean the person or persons, corporation or corporations, or other entity or entities who from time to time shall be primarily obligated under this Lease to perform the obligations of Tenant hereunder.

38. Obligation to Refrain From Discrimination. The parties hereto hereby covenant by and for themselves, their heirs, executors, administrators, and assigns, and all persons claiming under or through them that this Lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of sex, race, color, creed, national origin, or ancestry, in the leasing, subleasing, transferring, use, or enjoyment of the land herein leased, nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased.

39. Force Majeure. The time within which either party hereto shall be required to perform any act under this Lease, other than the payment of money, shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably by strikes, lockouts, acts of God, governmental restrictions, failure, or inability to secure materials or labor by reason of priority or similar regulation or order of any governmental or regulatory body, enemy action, civil disturbance, fire, unavoidable casualties, or any other cause beyond the reasonable control of either party hereto, excluding, however, the inability or failure of either party to obtain any financing which may be necessary to carry out its obligations. Notwithstanding the foregoing, unless the party entitled to such extension shall give notice to the other party hereto (plus concurrent notice by telephone if such other party's telephone number is not readily available) of its claim to such extension within three (3) business days after the event giving rise to such claim shall have occurred, there shall be excluded in computing the number of days by which the time for performance of the act in question shall be extended, the number of days which shall have elapsed between the occurrence of such event and the actual giving of such notice.

40. Hazardous Material. The Tenant shall keep and maintain the Land and Improvements in compliance with, and shall not cause or permit the Land and Improvements to be in violation of, any federal, state, or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions ("Hazardous Materials Laws") on, under, about, or affecting the Land and Improvements. The Tenant shall not use, generate, manufacture, store, or dispose of on, under or about the Land and Improvements or transport to or from the Land and Improvements any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials, including without limitation any substances defined as or included in the definition of hazardous substances, hazardous wastes, hazardous materials, or toxic substances under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials").

The Tenant shall be solely responsible for, and shall indemnify and hold harmless the Landlord, its directors, officers, employees, agents, successors, and assigns from and against, any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under or about the Land and Improvements, including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup, or detoxification of the Land and Improvements, and the preparation and implementation of any closure, remedial, or other required plans; and (c) all reasonable costs and expenses incurred by the Lender in connection with clauses (a) and (b), including, but not limited to, reasonable attorneys' fees, but expressly excluding any liability solely arising due to the negligence or willful misconduct of Landlord. The Tenant shall, upon the request of the Landlord, provide the Landlord with a bond or letter of credit, in form and substance satisfactory to the Landlord, in an amount sufficient to cover the costs of any required cleanup.

The Tenant shall, at its expense, take all necessary remedial action(s) in response to the presence of any Hazardous Materials on, under, or about the Land and Improvements.

41. Signage. Tenant is granted the right at all times during the Term to place signs on the Land and Improvements in accordance with applicable provisions of the City of Punta Gorda Land Development Regulations. Landlord shall cooperate with Tenant to permit the placement of lawful signs within the Project.

42. Severability. If any provision of this Lease or the application of a provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease and the application of the invalid or unenforceable provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected, and the remainder of this Lease shall otherwise remain in full force and effect. Moreover, the invalid or unenforceable provision shall be reformed, if possible, so as to accomplish most closely the intent of the parties consistent with applicable law.

43. Governing Law and Venue. This Lease shall be construed and enforced in accordance with the laws of the State of Florida. Venue shall be Charlotte County, Florida.

45. Attorney Fees and Costs. In any proceeding or controversy associated with or arising out of this Lease or a claimed or actual breach hereof, the prevailing party shall be entitled to

recover from the other party as a party of the prevailing party shall be entitled to recover from the other party as a part of the prevailing party's costs, such party's actual attorneys', appraiser's and other professionals' fees and court costs/ The award for legal expenses shall not be computed in accordance with any court schedule, but shall be as necessary to fully reimburse all attorneys' and other professionals' fees and other expenses actually incurred in good faith, regardless of the size of the judgment, it being the intention of the parties to fully compensate the prevailing party for all the attorneys' and other professionals' fees and other expenses paid in good faith.

46. Drafts: No inference shall be drawn from the modification or deletion of versions of the provisions of this Lease contained in any drafts exchanged between the parties before execution of the final version of this Lease that would be inconsistent in any way with the construction or interpretation that would be appropriate if the prior drafts had never existed.

47. Integration: This Lease shall constitute the entire agreement of the parties concerning the matters covered by this Lease. All prior understandings and agreements had between the parties concerning those matters, including all preliminary negotiations, lease proposals, letters of intent, and similar documents, are merged into this Lease, which alone fully and completely expresses their understanding. No person, firm, or corporation has at any time had any authority from Landlord to make any representations or promises on behalf of Landlord, and Tenant expressly agrees that if any such representations or promises have been made by Landlord or others, Tenant waives all rights to rely on them.

48. Amendment: This Lease may not be amended, modified, altered, or changed in any respect, except by further agreement in writing duly executed on behalf of Landlord and Tenant.

49. Exhibits and Riders: All exhibits and riders attached to this Lease shall, by this reference, be incorporated into this Lease.

50. Counterparts: This Lease may be executed by the parties signing different counterparts of this Lease, which counterparts together shall constitute the agreement of the parties.

51. Time: Time is of the essence of each and every provision of this lease. All time periods expressed as days will be computed in business days (a "business day" is every calendar day except for Saturday, Sunday and national legal holidays). If any deadline falls on a Saturday, Sunday or national legal holiday, performance will be due the next business day. All the time periods will end at 5:00 p.m. local time (meaning the county where the property is located) of the appropriate day.

52. Construction of Language: Whenever in this Lease the context allows, the terms "Lease," "Lcase Term," and "term of this Lease," or terms of similar import, shall be deemed to include all renewals, extensions, or modifications of this Lease or the Lease Term. The words "including" and "include" when used in this Lease shall be deemed to mean "including but not limited to," or "including without limitation." The headings of articles and sections in this Lease are for convenience only and shall not be relevant for purposed of interpretations of this Lease.

53. Construction of Lease. This Lease has been negotiated "at arm's-length" by Landlord and Tenant, each having the opportunity to be represented by legal counsel of its choice and to negotiate the form and substance of this Lease. Therefore, this Lease shall not be more strictly construed against either party by reason of the fact that one party may have drafted this Lease.

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

ATTEST:

, City Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

, City Attorney

First Witness

Printed Name

Second Witness

Printed Name

CITY:

CITY OF PUNTA GORDA, FLORIDA, a Florida
Municipal corporation

By: _____,
Mayor

Date of Execution: _____

BUYER:

ATA FISHVILLE FL, LLC, an Arizona limited
liability company

By: ARCITERRA STRATEGIC RETAIL
ADVISOR, LLC, an Arizona limited liability
company, as Manager

By: ARCITERRA GROUP, LLC, an Arizona
limited liability company, its Manager

By: _____,
Manager

Date of Execution: _____

③ go
28
Wotitzky

City of Punta Gorda

Resolution No. 3271-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PUNTA GORDA, FLORIDA, VACATING CERTAIN PORTIONS OF MAUD STREET, RETTA ESPLANADE, MAUD PARK AND COSBY PARK IN THE CITY OF PUNTA GORDA, CHARLOTTE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED IN EXHIBITS "A-1", "A-2", "A-3", "A-4" AND "A-5"; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Fishermen's Village is a commercial multi-use development constructed in the City of Punta Gorda, Florida (the "City") on lands within the subdivision plats of Trabue and Punta Gorda recorded in Plat Book 1, Page 1, and Plat Book 1, Page 23 of the Official Records of Charlotte County, Florida (the "Plat"); and

WHEREAS, ATA Fishville, FL, LLC, a Florida limited liability company ("ATA"), the owner of Fishermen's Village, plans to substantially enlarge and enhance Fishermen's Village on various lands adjacent to and within the existing Fishermen's Village project, all of such lands being located within the Plat, a description of such lands being attached hereto designated as the "Property"; and

WHEREAS, ATA is obligated, pursuant to that certain Acquisition Agreement between ATA and the City dated September 2, 2015 to petition for the vacation of certain portions of Maud Street and Retta Esplanade; and

WHEREAS, application has been made by ATA for the vacation and discontinuance of those portions of Maud Street described in Exhibit "A-1" and Retta Esplanade described in Exhibit "A-2"; and

WHEREAS, application has been made by ATA for the vacation and discontinuance of Maud Park described in Exhibit "A-3" and Cosby Park described in Exhibits "A-4" and "A-5"; and

WHEREAS, there is no evidence of Maud Park or Cosby Park ever being accepted or used for park purposes by the City; and

WHEREAS, Cosby Park and Maud Park have been continuously used and occupied by the City for non-park purposes for over thirty (30) years; and

WHEREAS, portions of the Property have been previously vacated pursuant to vacation Resolutions recorded in Official Records Book 18, Page 122, Official Records Book 468, Page 313, Official Records Book 582, Page 273 and Official Records Book 582, Page 1877, all in the Public Records of Charlotte County, Florida and are incorporated herein by reference (collectively the "Prior Vacations"); and

WHEREAS, portions of the Property have been occupied by buildings owned by ATA and its predecessors on lands owned by the City for over thirty (30) years; and

WHEREAS, the City has acquired title to portions of the Property by deeds dated July 12, 1974, recorded in Official Records Book 475, Page 631, September 4, 1974, recorded in Official Records Book 470, Page 129, August 29, 1978, recorded in Official Records Book 585, Page 1507, and October 10, 1978, recorded in Official Records Book 586, Page 510, all in the Public Records of Charlotte County, Florida and are incorporated herein by reference (collectively the "Prior Deeds"); and

WHEREAS, portions of the Property were leased to ATA's predecessor under a lease dated July 17, 1978 (the "Lease"); and

WHEREAS, the portions of the Property comprising Maud Park and Cosby Park have been continuously in City ownership under color of title and lawfully used by ATA and its predecessors pursuant to the Lease for generating public revenue and not for public park purposes for over thirty (30) years; and

WHEREAS, in connection with the development of Fishermen's Village pursuant to the Lease, final judgments were entered in separate Suits to Quiet Title, City of Punta Gorda, Florida vs. C.C. Morgan et al, Case No. 76-684 on November 10, 1976 in Official Records Book 542, Page 469; and City of Punta Gorda, Florida vs. C.C. Morgan, et al, Case No. 78-327-J.R.A. on July 17, 1978 in Official Records Book 580, Page 275, in the Public Records of Charlotte County, Florida, both of which are incorporated herein by reference. Both final judgments are in favor of the City and terminate the rights of all unknown persons claiming under the heirs and successors of the original dedicator of the Plat; and

WHEREAS, the City has held title to Maud Park and Cosby Park by virtue of one or more deeds recorded for a period of more than seven (7) years; and

WHEREAS, the public municipal non-park use of the Property has been open and notorious for thirty (30) years; and

WHEREAS, due notice of these vacations has been given as required by law;

WHEREAS, the Planning Commission reviewed the request at its regularly scheduled meeting of October 24, 2016, and recommended approval of the vacation request; and

WHEREAS, after a duly noticed Public Hearing held this date, City Council finds that no reason or cause has been shown as to why the vacation should not take place.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Punta Gorda, Florida that:

- I. The above recitals are true, correct and integral to the adoption of this Resolution.
- II. Exhibits "A-1", "A-2", "A-3", "A-4" and "A-5", which identifying certain portions of Maud Street, Retta Esplanade, Maud Park and Cosby Park, attached hereto are hereby incorporated into this Resolution.
- III. The portions of right-of-way described in Exhibits "A-1" and "A-2", and the parks described in Exhibits "A-3", "A-4" and "A-5" are hereby vacated, abandoned and closed and all rights of the Public in and to said Property are hereby vacated and discontinued.

- IV. Subject to the provisions of the Acquisition Agreement, the City surrenders all of its right, title and interest to the lands described in Exhibits "A-1", "A-2", "A-3", "A-4" and "A-5".
- V. All Prior Vacations by the City and Prior Deeds on lands within the Property are hereby ratified and confirmed.
- VI. A certified copy of this Resolution shall be sent by the City Clerk to the Clerk of the Circuit Court for recording in the Public Records of Charlotte County, Florida.
- VII. A certified copy of this Resolution shall be mailed by the City Clerk to the Post Office Department of the United States of America, Punta Gorda, Florida, directed to the Postmaster.
- VIII. This Resolution shall take effect upon being recorded in the Public Records of Charlotte County, Florida.

DONE in regular session of the City Council of the City of Punta Gorda, Florida, this 2nd day of November, 2016.

ATTEST:




KAREN SMITH, City Clerk

APPROVED AS TO FORM:


DAVID M. LEVIN, City Attorney


RACHEL KEESLING, Mayor

Exhibit A-1

Vacation of a Portion of Maud Street

Description:

That portion of Maud Street lying between and adjacent to Lot 5, Block 16 and Lot 8, Block 15, Trabue subdivision, Plat Book 1, Page 1, as recorded in the Public Records of Charlotte County, Florida.



SCALE: 1"=50'

Vacated portion
of Retta Esplanade
O.R. Book 582,
Page 1877

West Retta Esplanade
66' Public RW

Lot 8, Block 15,
Trabue Subdivision
Plat Book 1, pg. 1,
Charlotte Co., FL

Portion of
Maud Street 66' Public RW
to be vacated

Lot 5, Block 16,
Trabue Subdivision
Plat Book 1, pg. 1,
Charlotte Co., FL

Lot 1, Block 15,
Trabue Subdivision
Plat Book 1, pg. 1,
Charlotte Co., FL

Lot 4, Block 16,
Trabue Subdivision
Plat Book 1, pg. 1,
Charlotte Co., FL

Maud Street
66' Public R/W



660 Charlotte Street, Suite 8
Punta Gorda, Florida 33950
Tel. (941) 637-9565 | Fax (941) 637-1149
www.sedfl.com
Certificate of Authorization No. 28551

Project No.:	15-0237
Proj. Manager:	KHR
Proj. Designer:	EPL
Drawn By:	DRG
Checked By:	KHR
Approved By:	GWB

VACATION OF A PORTION OF MAUD STREET

EXHIBIT A-1

DATE:	07-28-2016
SCALE:	1" = 50'
SHEET	1 of 1
DRAWING No.:	15-0237

Exhibit A-2

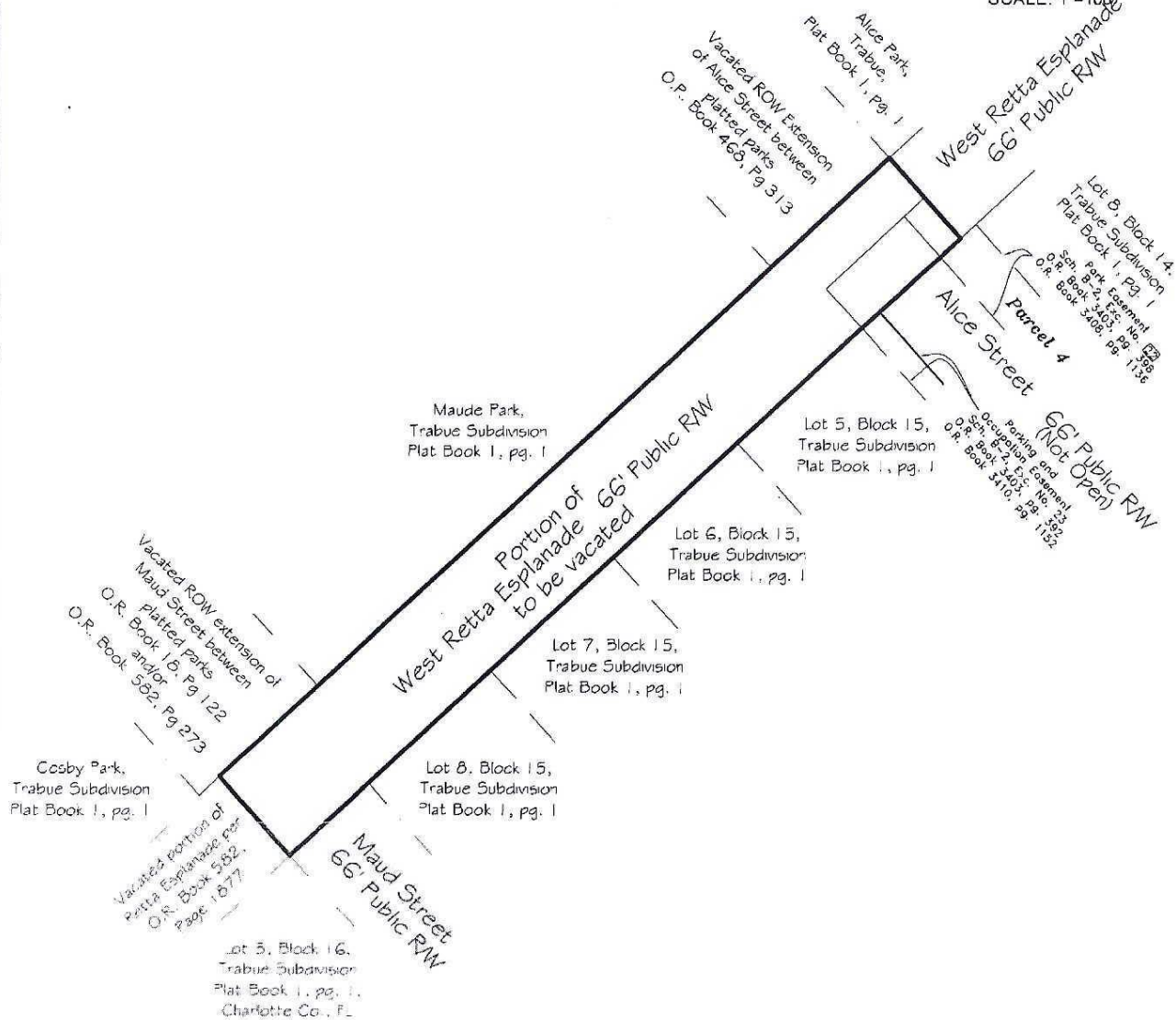
Vacation of a Portion of West Retta Esplanade

Description:

That portion of West Retta Esplanade Right of Way from the northeasterly line of that previously vacated portion of West Retta Esplanade as recorded in O.R. Book 582, Page 1877, Public Records of Charlotte County, Florida, to the westerly line of Alice Park extended south. All lying within the subdivision of Trabue, Plat Book 1, Page 1, of the Public Records of Charlotte County, Florida.



SCALE: 1"=100'



660 Charlotte Street, Suite 8
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Tel. (941) 637-9655 | Fax (941) 637-1149
www.sedfl.com
Certificate of Authorization No. 26551

Project No.: 15-0237
Proj. Manager: KHR
Proj. Designer: EPL
Drawn By: DRG
Checked By: KHR
Approved By: GWB

VACATION OF A PORTION OF WEST RETTA ESPLANADE

EXHIBIT A-2

DATE: 07-28-2016
SCALE: 1" = 100'
SHEET 1 of 1
DRAWING No.: 15-0237

Exhibit A-3

Vacation of Maud Park

Description:

All of Maud Park, subdivision of Trabue, Plat Book 1, Page 1, of the Public Records of Charlotte County, Florida to the Mean High Water Line of Charlotte Harbor.

P:\15-0237 Fishermans Village Concept\Plat Vacations\FX\HIBIT A-3.dwg, 8/11/2016 11:39:41 AM, dgunczik



SCALE: 1"=100'

Submerged Land Lease

Vacated ROW Extension
of Alice Street between
platted parts
O.R. Book 468, Pg 313

Maude Park
Trabue Subdivision
Plat Book 1, pg. 1
to be vacated

Maude Park
Trabue Subdivision
Plat Book 1, pg. 1
to be vacated

Vacated ROW extension of
Maud Street between
platted parts
O.R. Book 16, Pg 122
and/or
O.R. Book 582, Pg 273

West Retta Esplanade 66' Public RW

Maud Street
66' Public RW



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Project No.:	15-0237
Proj. Manager:	KHR
Proj. Designer:	EPL
Drawn By:	DRG
Checked By:	KHR
Approved By:	GW B

VACATION OF
MAUDE PARK

EXHIBIT A-3

DATE:	07-28-2016
SCALE:	1" = 100'
SHEET	1 of 1
DRAWING No.:	15-0237

Exhibit A-4

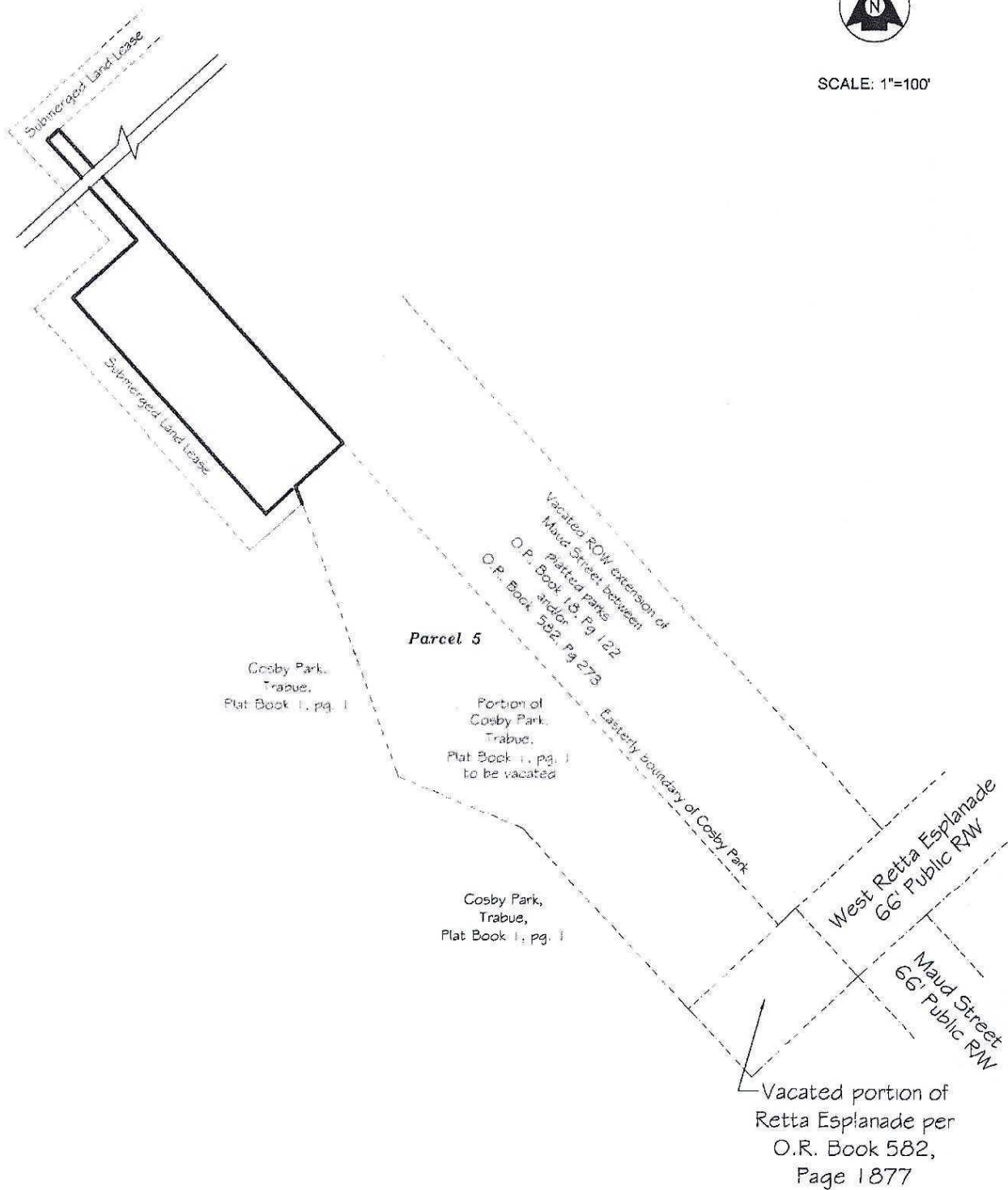
Vacation of a Portion of Cosby Park

Description:

That portion of Cosby Park, subdivision of Trabue, Plat Book 1, Page 1, of the Public Records of Charlotte County, Florida, bound by and contiguous with the southwesterly line of the vacated right of way extended of Maud Street as recorded in O.R. Book 582, Page 273, of the Public Records of Charlotte County, Florida, by the Mean High Water Line of Charlotte Harbor to the southwest and northwest, and the northwesterly line of Parcel 5, as described in that Special Warranty Deed, recorded in O.R. Book 3681, Pages 1603 – 1605, of the Public Records of Charlotte County, Florida.



SCALE: 1"=100'



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Certificate of Authorization No. 26551

Project No.:	15-0237
Proj. Manager:	KHR
Proj. Designer:	EPL
Drawn By:	DRG
Checked By:	KHR
Approved By:	GWB

VACATION OF A PORTION OF COSBY PARK

EXHIBIT A-4

DATE:	07-28-2016
SCALE:	1" = 100'
SHEET	1 of 1
DRAWING No.:	15-0237

Exhibit A-5

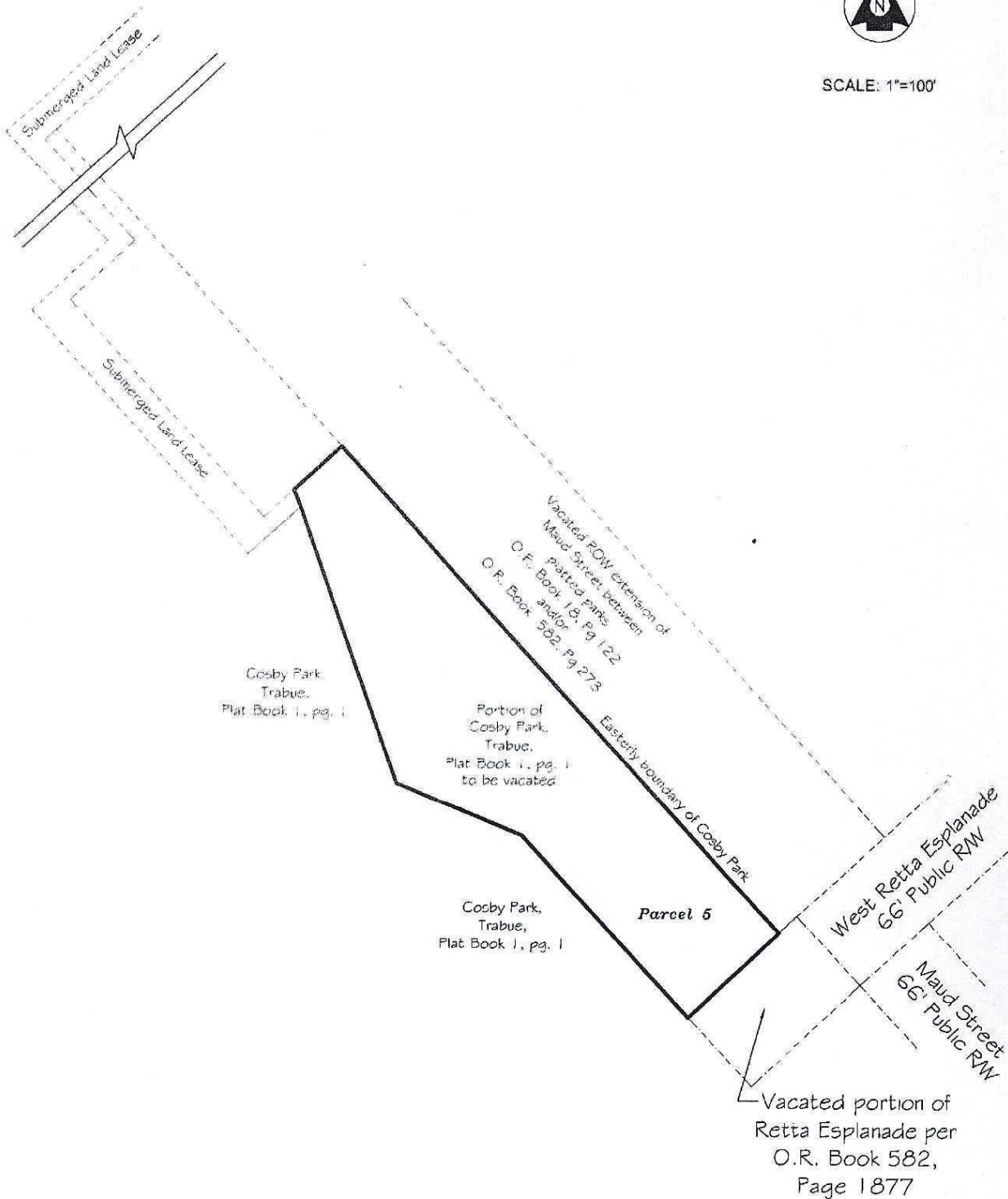
Vacation of a Portion of Cosby Park

Description:

That portion of Cosby Park, subdivision of Trabue, Plat Book 1, Page 1, of the Public Records of Charlotte County, Florida, described as Parcel 5 in that Special Warranty Deed recorded in O.R. Book 3681, pages 1603 – 1605, of the Public Records of Charlotte County, Florida.



SCALE: 1"=100'



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Project No.: 15-0237
Proj. Manager: KHR
Proj. Designer: EPL
Drawn By: DRG
Checked By: KHR
Approved By: GWB

VACATION OF A PORTION OF COSBY PARK

EXHIBIT A-5

DATE: 07-28-2016

SCALE: 1" = 100'

SHEET 1 of 1

DRAWING No.:
15-0237

This instrument prepared by:
Edward L. Wotitzky, Esq.
Wotitzky, Wotitzky, Ross & McKinley, P.A.
223 Taylor Street
Punta Gorda, FL 33950

Parcel ID No.: _____

Reverter Quit-Claim Deed

THIS QUIT-CLAIM DEED, executed this 2nd day of September, 2015, by ATA FISHVILLE FL, LLC, an Arizona limited liability company, herein referred to as "Grantor", to CITY OF PUNTA GORDA FLORIDA, a Florida Municipal corporation, whose post office address is 326 W. Marion Avenue, Punta Gorda, Florida 33950, herein referred to as "Grantee":

(Whenever used herein the terms "Grantor" and "Grantee" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

WITNESSETH:

The Grantor, for and in consideration of Ten Dollars (\$10.00) in hand paid by the said Grantee, the receipt and sufficiency whereof is hereby acknowledged, does hereby remise, release and quit-claim unto the said Grantee forever, all the right, title, interest, claim and demand which the said Grantor has in and to the following-described lot, piece or parcel of land, situate, lying and being in Charlotte County, Florida, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

TO HAVE and TO HOLD the same together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said Grantor, either in law or equity, to the said Grantee forever.

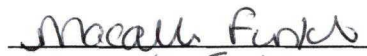
IN WITNESS WHEREOF, the Grantor has signed and sealed these presents the day and year first above written.

Signed, Sealed and Delivered in the Presence of:

ATA FISHVILLE FL, LLC,
an Arizona limited liability company


Blaine Rice
Printed name of first witness

By: **ArciTerra Strategic Retail Advisor, LLC,**
its Manager


Macalle Finkle
Printed name of second witness


By: **ArciTerra Group, LLC,**
an Arizona limited liability company,
its Manager

By: 
Jonathan M. Larmore, Manager

State of Florida
County of Charlotte

The foregoing instrument was acknowledged before me this 2nd day of September, 2015 by JONATHAN M. LARMORE, as Manager of ARCITERRA GROUP, LLC, an Arizona limited liability company, as Manager of ARCITERRA STRATEGIC RETAIL ADVISOR, LLC, an Arizona limited liability company, as Manager of ATA FISHVILLE FL, LLC, an Arizona limited liability company, on behalf of the said companies. He is personally known to me ~~or who produced~~ as identification.

My commission expires:


Notary Public

