

**RETAIL LEASE**

THIS RETAIL LEASE (the "Lease") is made and entered into as of the Date of this Lease, by and between Landlord and Tenant. "Date of this Lease" shall mean the date on which the last one of the Landlord and Tenant has signed this Lease.

**WITNESSETH:**

Subject to and on the terms and conditions of this Lease, Landlord leases to Tenant and Tenant hires from Landlord the Premises.

1. **BASIC LEASE INFORMATION AND DEFINED TERMS.** The key business terms of this Lease and the defined terms used in this Lease are as follows:

1.1 **Landlord.** CITY OF LAKE WORTH, a municipal corporation under the laws of the State of Florida.

1.2 **Tenant.** Maxplan Enterprises, a Florida corporation

1.3 **Tenant's Trade Name.** Kilwin's Chocolates and ice Cream

1.4 **Building.** The building containing the Premises. The Building is located within the Project.

1.5 **Project.** The parcel of land, the Building, and any other buildings and improvements located on such land and known as the Lake Worth Municipal Casino Building located at 10 Ocean Boulevard, Lake Worth, Florida 33460, and legally described in EXHIBIT "A" to this Lease.

1.6 **Premises.** Unit #3 and 4 on the First floor of the Building. The Premises are located in the Project and are depicted in the sketch attached as EXHIBIT "B". Landlord reserves the right to install, maintain, use, repair, and replace pipes, ducts, conduits, risers, chases, wires, and structural elements leading through the Premises in locations that will not materially interfere with Tenant's use of the Premises.

1.7 **Gross Leasable Area of the Premises.** 1,332 square feet. This square footage figure has been agreed upon by the parties as final and correct and is not subject to challenge or dispute by either party.

1.8 **Permitted Use of the Premises.** Buyer is leasing the subject property for future use as a retail Ice Cream and chocolates establishment.

1.9 **Commencement Date.** The date Landlord delivers possession of the Premises with Landlord's Work substantially complete. Substantial completion shall mean the date that a Certificate of Occupancy or its equivalent is issued by the appropriate local government entity concerning the Landlord's Work, or, if no Certificate of Occupancy will be issued for the Landlord's Work, the date on which the Landlord's Work is substantially completed so that Tenant may use the Premises for their intended purpose, notwithstanding that punchlist items or insubstantial details concerning construction, decoration, or mechanical adjustment remain to be performed.

1.10 **Rental Concessions.** Free rent during build-out period. The maximum build-out period is to be 8 months. When tenant opens for business the rent shall commence. First and Security (Security equals two months of the fifth year base rent) is due upon signing of lease.

1.11 **Access.** Lessee shall be provided full access to the Property, at their own risk, during the Free Rent period for the purpose of conducting all necessary alterations, upgrades, and decorating.

1.12 **Rent Commencement Date.** The date which is the earlier of (i) 8 months after the Commencement Date, or (ii) the date Tenant opens for business in any part of the Premises, on October 1, 2012 for one hundred and twenty (120) months with two (2) five year options to renew.

1.13 **Lease Term.** A term commencing on the Rent Commencement Date and continuing for ten (10) full calendar years (plus any partial calendar month in which the Rent Commencement Date falls), as extended or sooner terminated under the terms of this Lease. If the Rent Commencement Date falls on a day other than the first day of a month, the first month of the Lease Term shall commence on the first day of the calendar month immediately following the Rent Commencement Date and the pro rata portion of the Rent shall be paid by Tenant for the partial month. Following the initial one hundred and twenty (120) month base term, two (2) options to renew are provided for five (5) years each.

1.14 **Renewal Option Rates.** Rent for both renewal options shall increase based on market rent with an annual escalation of 3.5%. First renewal is based on increases or market rent, whatever is less. Second renewal option is based on same formula. Renewal option(s) at the then escalated rent increases at 3.5% per year.

1.15 **Base Rent.** The following amounts:

Period	Rate P/S/F Per Annum	Monthly Base Rent	Period Base Rent
1 <sup>st</sup> year	\$25.000	\$2,775.00	\$33,300.00
2 <sup>nd</sup> year	\$25.875	\$2,872.12	\$34,465.50
3 <sup>rd</sup> year	\$26.780	\$2,972.58	\$35,670.96
4 <sup>th</sup> year	\$27.717	\$3,076.59	\$36,919.04
5 <sup>th</sup> year	\$28.687	\$3,184.26	\$38,211.08
6 <sup>th</sup> year	\$29.692	\$3,295.81	\$39,549.74
7 <sup>th</sup> year	\$30.731	\$3,411.14	\$40,933.69
8 <sup>th</sup> year	\$31.807	\$3,530.58	\$42,366.92
9 <sup>th</sup> year	\$32.920	\$3,654.12	\$43,849.44
10 <sup>th</sup> year	\$34.072	\$3,781.99	\$45,383.90

Base Rent amounts shown above do not include applicable sales tax.

1.16 **Allocated Share.** The percentage share resulting from dividing the Gross Leasable Area of the Premises by the Gross Leasable Area of the Project as determined by Landlord from time to time.

1.17 **Security Deposit.** \$6,368.52 to be paid to Landlord upon execution of this Lease by Tenant. Security equals two (2) months of the fifth year base rent.

1.18 **First Month's Rent:** \$3,718.50 to be paid to Landlord upon execution of this Lease by Tenant.

Base Rent:	\$2,775.00
Operating Costs:	\$ 777.00
Sales Tax:	<u>\$ 166.50</u>
Total:	<u>\$3,718.50</u>

1.19 **Tenant's Notice Address.** 512 Lake Avenue, Lake Worth, Florida, 33460

1.20 **Landlord's Notice Address.** c/o City Manager, City of Lake Worth, 7 North Dixie Highway, Lake Worth, Florida 33460.

1.21 **Landlord's Broker.** Anderson & Carr, Inc.

1.22 **Tenant's Broker.** Anderson & Carr, Inc.

1.23 **Guarantor.** N/A

1.24 **Business Days.** All days

2. **TERM.** Tenant shall have and hold the Premises for the Lease Term. The Lease Term shall commence on the Rent Commencement Date. Landlord shall determine the Commencement Date and Rent Commencement Date as provided in Basic Lease

Information and Defined Terms article of this Lease and shall notify Tenant of the dates so determined. Tenant shall, if Landlord so requests, thereafter execute and return within ten days a letter confirming the Commencement Date, Rent Commencement Date, and the expiration date of this Lease in the form attached as **EXHIBIT "H"**. Tenant shall observe and perform all of its obligations under this Lease (except its obligations to conduct business or pay rent) from the date that the Premises are delivered to Tenant until the Rent Commencement Date in the same manner as though the Lease Term began when the Premises were so delivered to Tenant.

### 3. USE.

3.1 **Permitted Use.** Tenant shall continuously use and occupy the Premises only for the Permitted Use of the Premises, in keeping with first-class standards of quality, respect, decorum, integrity, fitness, and stability. Tenant shall not use or permit or suffer the use of the Premises for any other business or purpose. Tenant shall conduct its business in the Premises solely under Tenant's Trade Name. Tenant shall conduct its business upon the Premises in accordance with the highest ethical and operating standards of the retail industry. Tenant acknowledges that the Project is a mixed-use project containing other retail uses. The agreements of Tenant concerning limitations on the use of the Premises, as set forth in this Lease, are a material inducement to Landlord in entering into this Lease. The provisions of this article are in the nature of restrictive covenants running with the land. Tenant shall warehouse, store, and stock in the Premises only goods, wares, and merchandise that Tenant intends to offer for sale at, in, from, or upon the Premises. This shall not preclude occasional emergency transfers of merchandise from the other stores of Tenant, if any, not located in the Project. Nothing contained in this Lease shall be construed as giving Tenant an express or implied exclusive use in the Project, unless expressly set forth in this Lease. Tenant shall conform to the Rules and Regulations. "**Rules and Regulations**" shall mean the rules and regulations for the Project promulgated by Landlord from time to time. The Rules and Regulations which apply as of the Date of this Lease are attached as **EXHIBIT "D"**.

3.2 **No Offensive or Illegal Use.** No use of the Premises during the Lease Term shall be offensive to the neighborhood by reason of odor, fumes, noise, or traffic; no illegal activity shall be conducted on the Premises by Tenant or by anyone claiming the right to use the Premises by or through Tenant; and no activities on the Premises shall be permitted by Tenant, or by anyone claiming the right to use the Premises by or through Tenant, which are, in the sole discretion of Landlord, immoral or lewd or capable of subjecting the Premises to an unfavorable reputation or reducing the sale or rental value of the Premises.

3.3 **Restricted Uses.** Tenant expressly acknowledges that Landlord has advised it of restricted, prohibited, and exclusive uses (collectively, "**Restricted Uses**") applicable to the Premises. Restricted Uses are set forth in **EXHIBIT "K"**. Further, Landlord may grant future exclusive uses in the Project, so long as such future exclusive uses ("**Future Exclusive Uses**") established after the Date of this Lease do not prohibit Tenant's Permitted Use or violate any exclusive rights granted to Tenant hereunder. Tenant shall not use or permit or suffer the use of the Premises for any of the Restricted Uses or Future Exclusive Uses, and shall indemnify, defend and hold Landlord harmless from all costs and claims arising from Tenant's violation of such restrictions. Tenant further acknowledges that the provisions in the agreements granting exclusive use rights to other tenants in the Project and the provisions of this Lease concerning the Restricted Uses are in the nature of restrictive covenants running with the land.

3.4 **Conduct of Business.** Throughout the Lease Term, Tenant shall actively conduct its business with the closing hours of 11pm on Sunday, 12am Monday through Wednesday and 1am on Thursday through Saturday at the latest. Interruption of Tenant's business because of any act of war, strike, fire, the elements, governmental action, or other cause beyond the reasonable control of the Tenant shall not constitute a default under this article, but no interruption of business shall affect the Tenant's responsibility to pay any form of rent due under this Lease. Tenant shall carry at all times in the Premises a stock of "in season" merchandise of such quantity, character, and quality as shall be in accord with advanced and highest quality retail business practices within the locale for Tenant's business. Tenant shall keep the Premises fully staffed with experienced personnel. Additionally, Tenant shall keep the display windows in the Premises well lighted during the hours that Landlord may designate from time to time.

3.5 **Failure to Open for Business.** If Tenant fails to open the Premises for business fully fixtured, stocked with "in season" merchandise, and staffed within 30 days after the Rent Commencement Date, then Tenant shall be in default under this Lease and Landlord shall have, in addition to the other remedies provided in this Lease, the right at its option to collect Base Rent at double the rate for Base Rent otherwise applicable on a per day basis for each and every day that Tenant shall fail to open for and conduct business.

4. **RENT.** Tenant shall pay Rent to Landlord in lawful United States currency. **On the execution of this Lease by Tenant, Tenant shall pay to Landlord the installments of Base Rent and additional rent for Operating Costs for the first**

**month of the Lease Term.** All Base Rent shall be payable in monthly installments, in advance, beginning on the Rent Commencement Date, and continuing on the first day of each and every calendar month thereafter during the Lease Term. Unless otherwise expressly provided, all monetary obligations of Tenant to Landlord under this Lease, of any type or nature, other than Base Rent, shall be denominated as additional rent. Except as otherwise provided, all additional rent payments are due ten days after delivery of an invoice. Tenant shall pay monthly to Landlord any sales, use, or other tax (excluding state and federal income tax) now or hereafter imposed on any Rent due under this Lease. The term “**Rent**” when used in this Lease shall include Base Rent and all forms of additional rent. All Rent shall be paid to Landlord without demand, setoff, or deduction whatsoever, except as specifically provided in this Lease, at Landlord’s Notice Address, or at such other place as Landlord shall designate in writing to Tenant. Tenant’s obligations to pay Rent are covenants independent of the Landlord’s obligations under this Lease.

**5. OPERATING COSTS.**

**5.1 General.** Tenant shall pay to Landlord its Allocated Share of Operating Costs in accordance with the terms and provisions of this article and based on the following.

**5.2 Real Estate Taxes.** The term “**Real Estate Taxes**” shall mean the total of all taxes, assessments, and other charges by any governmental or quasi-governmental authority, including real and personal property taxes, transit and other special district taxes, franchise taxes, and solid waste assessments that are assessed, levied, or in any manner imposed on the Project by such authority. If a tax shall be levied against Landlord in substitution in whole or in part for the Real Estate Taxes or otherwise as a result of the ownership of the Project, then the other tax shall be deemed to be included within the definition of “**Real Estate Taxes**.” Real Estate Taxes are paid annually, upon invoice by the City and are separate from Common Area Maintenance Costs.

**5.3 Common Area Maintenance Costs (CAM).** The term “**CAM**” shall mean the total of all of the costs and expenses incurred or borne by Landlord relating to the operation, maintenance, repair, and security of the Project and the services provided tenants in the Project. By way of explanation and clarification, but not by way of limitation, **CAM** will include the costs and expenses incurred for the following: heating, air conditioning, ventilation, plumbing, electrical, fire sprinkler, fire alarm, and emergency generator systems; elevators; pest control; trash and garbage removal (including dumpster and compactor rental); protection and security; Common Areas decorations, repairs, replacements, and maintenance; amounts paid under easements or other recorded agreements affecting the Project; improvements required by law; building painting and roof repairs; materials, tools, supplies, and equipment to enable Landlord to supply services that Landlord would otherwise have obtained from a third party; expenditures designed to result in savings or reductions in Common Area Maintenance Costs; exterior landscaping and irrigation supply, repair, and maintenance; parking and driveway area repair, and maintenance, including periodic resurfacing and restriping; illumination, repair, maintenance, and replacement of Project signs, property management fees; all utilities serving the Project and not separately billed to or reimbursed by any tenant of the Project; music systems; depreciation on machinery and equipment used in the maintenance of the Project, costs of maintaining, reporting, commissioning or recommissioning any part of the Project that was designed and/or built to be sustainable and conform with Landlord’s environmental management plans and any current or future green/sustainable building rating system or standard; extended coverage, all risks, terrorism, earthquake, change in condition, sprinkler apparatus, plate glass, electronic data processing, boiler and machinery, rental guaranty or interruption, public liability and property damage, flood, and any other additional insurance customarily carried by owners of comparable buildings or required by any mortgagee of the Project; supplies; service and maintenance contracts for the Project; compensation and other benefits respecting employees of the Landlord involved in the operation and maintenance of the Project up to and including the Project manager (including a pro rata share only of the wages and benefits of employees who are employed at more than one building, which pro rata share shall be determined by Landlord and shall be based on Landlord’s estimate of the percentage of time spent by the employees at the Project); legal, accounting, and administrative costs; expenses imposed on the Landlord under any law or any collective bargaining agreement concerning Landlord’s employees; workers’ compensation insurance; and payroll, social security, unemployment, and other similar taxes relating to employees. Landlord may contract for the performance of some or all of the management, operation, maintenance, repair, service and security functions generally described in this section with any persons or entities whom Landlord shall deem appropriate, including persons or entities who are affiliated with Landlord.

**5.4 CAM Payment.** Landlord shall reasonably estimate the Common Area Maintenance Costs that will be payable for each fiscal year by Landlord expiring September 30<sup>th</sup> of each calendar year. Tenant shall pay one-twelfth of its share of the estimated **CAM**, monthly in advance, together with the payment of Base Rent. After the end of each fiscal year and after receipt by Landlord of all necessary information and computations, Landlord shall furnish Tenant a detailed statement of the actual Operating Costs for the prior fiscal year period; and an adjustment shall be made between Landlord and Tenant with payment to or repayment by Landlord, as the case may require, to the end that Landlord shall receive the entire amount actually owed by Tenant for Common Area

Maintenance Costs (CAM) for the year and Tenant shall receive reimbursement for any overpayments for the year. Any payment adjustment owed by Tenant will be due forthwith. Any refund due the Tenant will be credited against Tenant's monthly Rent obligations. Tenant waives and releases any and all objections or claims relating to CAM payment for any calendar year unless, within 30 days after Landlord provides Tenant with the annual statement of the actual Operating Costs for the calendar year, Tenant provides Landlord notice that it disputes the statement. If Tenant disputes the statement, then Tenant shall continue to pay the Rent in question to Landlord in the amount provided in the disputed statement pending resolution of the dispute. Tenant acknowledges that Operating Costs will be included in a Comprehensive Financial Annual Report prepared by Landlord and made publicly available, and Tenant waives all rights to independently audit or review Landlord's books and records for Operating Costs, except as allowed by applicable law and procedures.

## 6. ASSIGNMENT OR SUBLETTING.

6.1 **General.** Tenant may not transfer any of its rights under this Lease, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, without Landlord's prior written consent which shall not be unreasonably withheld. Without limiting the generality of the foregoing, Tenant may not sublease, assign, mortgage, encumber, permit the transfer of ownership or control of the business entity comprising Tenant, or permit any portion of the Premises to be occupied by third parties. Consent by Landlord to a transfer shall not relieve Tenant from the obligation to obtain Landlord's consent to any further transfer. Tenant and Guarantor shall remain fully liable for all obligations under this Lease following any such transfer. The joint and several liability of Tenant, Guarantor, and any successor in interest of Tenant (by assignment or otherwise) under this Lease shall not in any way be affected by any agreement that modifies any of the rights or obligations of the parties under this Lease or any waiver of, or failure to enforce, any obligation under this Lease. Tenant shall pay to Landlord, on demand, an administrative fee of \$1,000, plus all reasonable attorneys' fees and actual costs associated with Landlord's consideration of Tenant's transfer request and the review and preparation of all documents associated therewith. Any transfer by Tenant in violation of this article shall, at Landlord's option, be void. Tenant shall submit in writing to Landlord, not later than 30 days before any anticipated transfer, (a) 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 space, and (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. Landlord shall have the sole option, which shall be, exercised by providing Tenant with written notice of terminating the Tenant's rights and obligations under this Lease rather than permitting any assignment or subletting by Tenant to be exercised within 15 Business Days from submission of Tenant's request for Landlord's consent to a specific transfer.

6.2 **Consent Criteria.** Notwithstanding the foregoing, Landlord's consent to a transfer may be withheld in Landlord's sole and absolute discretion, to any party who: (a) has been presented space for lease in the Project by the Landlord or its agents, and/or employees within the 120 days preceding Tenant's request to sublease or assign, (b) is an occupant of the Project at the time of Tenant's request to sublet or assign for whom Landlord then has alternative space available in the Project, (c) would be using the Premises for a use that is not compatible with the Project or any existing exclusive use restriction in Landlord's sole discretion, (d) does not have the financial wherewithal to discharge its obligations under the Lease, (e) if Lessee is in default under this Lease beyond applicable notice and cure periods, or (f) the transferee has been disbarred, suspended or rendered ineligible to enter into contracts with Landlord, County of Palm Beach, or any other municipal, state or federal entity. In the event Landlord withholds consent to any transfer contrary to the provisions of this article, Tenant's sole remedy will be to seek injunctive relief against or specific performance by Landlord, and Tenant expressly waives any right to damages of any kind for such withholding by Landlord of its consent.

6.3 **Consideration for Consent.** Any amounts received by Tenant as a result of any such transfer, assignment or subletting in excess of the Rent then being paid by Tenant to Landlord under this Lease shall be payable by Tenant to Landlord, it being the parties' intention that Landlord, and not Tenant, shall be the party to receive any profit from any assignment or subletting. Upon reasonable notice, Landlord shall have the right to audit Tenant's books and records to determine the amount payable to Landlord under this section.

## 7. INSURANCE.

7.1 **Tenant's Insurance.** Tenant shall obtain and keep in full force and effect the following insurance coverages: commercial general liability insurance, including contractual liability, on an occurrence basis, on the then most current Insurance Services Office ("ISO") form with combined single limits of \$3 million per occurrence; property insurance on the ISO

causes of loss—special form, in an amount adequate to cover 100% of the replacement costs, without co-insurance, of all of Tenant’s property at the Premises; workers’ compensation insurance; plate glass insurance with a deductible of not more than \$250; if alcoholic beverages are served or sold from the Premises, liquor liability insurance in the amount of \$1 million; and such other insurance as may be reasonably required by Landlord. The commercial general liability insurance shall be primary and non-contributing to any insurance otherwise available to Landlord and shall not have any deductibles. Tenant shall comply with all requirements of the Board of Fire Underwriters of Florida any other similar body affecting the Premises and shall not use the Premises in a manner that shall increase the rate of fire insurance or other insurance of Landlord over that in effect during the year before the Commencement Date. If the use of the Premises by Tenant increases any insurance rate concerning the Project, Tenant shall reimburse Landlord for the additional costs.

7.2 **Insurance Requirements.** All insurance policies shall be written with insurance companies and shall have coverage limits acceptable to Landlord and having a policyholder rating of at least “A-” and a financial size category of at least “Class XII” as rated in the most recent edition of “Best’s Key Rating Guide” for insurance companies. The commercial general liability insurance policy shall name Landlord and Landlord’s managing agent as additional insureds. All policies shall provide that they may not be terminated or modified in any way that would materially decrease the protection afforded Landlord under this Lease without 30 days’ advance notice to Landlord. Tenant shall furnish evidence that it maintains all insurance coverages required under this Lease (ACORD 25 for Commercial General Liability and the 2003 edition of ACORD 28 for Property, with copies of declaration pages for each required policy). Coverage amounts for the commercial general liability insurance may be increased after commencement of the fifth full year of the Lease Term, if Landlord shall reasonably determine that an increase is necessary for adequate protection.

7.3 **Waiver of Subrogation.** Landlord and Tenant each expressly, knowingly, and voluntarily waive and release any claims that they may have against the other or the other’s employees, agents, or contractors and against every other tenant in the Project who shall have executed a waiver similar to this one for damage to its property and loss of business (specifically including loss of Rent by Landlord and business interruption by Tenant) as a result of the acts or omissions of the other party or the other party’s employees, agents, or contractors (specifically including the negligence of either party or its employees, agents, or contractors and the intentional misconduct of the employees, agents, or contractors of either party), to the extent any such claims are covered by the worker’s compensation, employer’s liability, property, rental income, business income, or extra expense insurance described in this Lease, or other property insurance that either party may carry at the time of an occurrence. Landlord and Tenant shall each, on or before the earlier of the Commencement Date or the date on which Tenant first enters the Premises for any purpose, obtain and keep in full force and effect at all times thereafter a waiver of subrogation from its insurer concerning the workers’ compensation, employer’s liability, property, rental income, and business interruption insurance maintained by it for the Project and the property located in the Project. This section shall control over any other provisions of the Lease in conflict with it and shall survive the expiration or sooner termination of this Lease.

## 8. **DEFAULT.**

8.1 **Events of Default.** Each of the following shall be an event of default under this Lease: (a) Tenant fails to make any payment of Rent when due (“**Monetary Default**”); (b) Tenant fails to perform any other obligation under this Lease or the Rules and Regulations or any Guarantor defaults under any guaranty of this Lease and fails to cure such default within ten days of written notice from Landlord (“**Non-Monetary Default**”); (c) Tenant violates any requirement under the Use article of this Lease; (d) Tenant or any Guarantor or surety for Tenant’s obligations under this Lease becomes bankrupt or insolvent or makes a general assignment for the benefit of creditors or takes the benefit of any insolvency act, or if any debtor proceedings be taken by or against Tenant or any Guarantor; surety; (e) a receiver or trustee in bankruptcy is appointed for the Tenant’s property and the appointment is not vacated and set aside within 60 days from the date of the appointment; (f) Tenant rejects this Lease in any bankruptcy, insolvency, reorganization, or arrangement proceedings under the Bankruptcy Code or any State insolvency laws; (g) Tenant ceases to conduct business in the Premises for a period of 15 consecutive days; (h) Tenant, before the expiration of the Lease Term, and without the written consent of Landlord, vacates the Premises or abandons possession of the Premises; (i) the leasehold estate granted to Tenant by this Lease is taken on execution or other legal process; (j) Tenant transfers this Lease in violation of the Assignment or Subletting article; (k) Tenant fails to deliver an estoppel certificate within the time period required by the Estoppel Certificates article of this Lease; (l) Tenant’s net worth or stockholder’s equity falls below its net worth or stockholder’s equity on the Date of this Lease or other material adverse change occurs in Tenant’s financial condition; or (m), if Tenant is a franchisee, Tenant’s franchise agreement is terminated.

8.2 **Remedies.** If Tenant defaults, in addition to all remedies provided by law, Landlord may declare the entire balance of all forms of Rent due under this Lease for the remainder of the Lease Term to be forthwith due and payable and may collect the then present value of the Rents (calculated using a discount rate equal to the discount rate of the branch of the Federal Reserve Bank closest to the Premises in effect as of the date of the default). In addition, Landlord may institute a distress for rent action and obtain a distress writ under Sections 83.11 through 83.19, Florida Statutes. If this Lease is rejected in any bankruptcy proceeding, Rent for the entire month in which the rejection occurs shall be due and payable in full and shall not be prorated. **TENANT EXPRESSLY, KNOWINGLY, AND VOLUNTARILY WAIVES (I) ALL CONSTITUTIONAL, STATUTORY, OR COMMON LAW BONDING REQUIREMENTS, INCLUDING THE REQUIREMENT UNDER SECTION 83.12, FLORIDA STATUTES, THAT LANDLORD FILE A BOND, IT BEING THE INTENTION OF THE PARTIES THAT NO BOND SHALL BE REQUIRED TO BE FILED BY LANDLORD IN ANY DISTRESS ACTION; AND (II) THE RIGHT UNDER SECTION 83.14, FLORIDA STATUTES, TO REPLEVY DISTRAINED PROPERTY.**

  
TENANT INITIALS

8.3 **Landlord's Right to Perform.** If Tenant defaults, Landlord may, but shall have no obligation to, perform the obligations of Tenant, and if Landlord, in doing so, makes any expenditures or incurs any obligation for the payment of money, including reasonable attorneys' fees, the sums so paid or obligations incurred shall be paid by Tenant to Landlord within five days of rendition of a bill or statement to Tenant therefor.

8.4 **Late Charges, Interest, and Bad Checks.** If any payment due Landlord shall not be paid within five days of the date when due, Tenant shall pay, in addition to the payment then due, an administrative charge equal to the greater of (a) 5% of the past due payments, or (b) \$250. All payments due Landlord shall bear interest at the lesser of: (a) 18% per annum, or (b) the highest rate of interest permitted to be charged by applicable law, accruing from the date the obligation arose through the date payment is actually received by Landlord. If any check given to Landlord for any payment is dishonored for any reason whatsoever not attributable to Landlord, in addition to all other remedies available to Landlord, upon demand, Tenant will reimburse Landlord for all insufficient funds, bank, or returned check fees, plus an administrative fee not to exceed the maximum amount prescribed by Section 68.065, Florida Statutes. In addition, Landlord may require all future payments from Tenant to be made by cashier's check from a local bank or by Federal Reserve wire transfer to Landlord's account.

8.5 **Limitations.** None of Landlord's officers, employees, agents, directors, shareholders, partners, members, managers, or affiliates shall ever have any personal liability to Tenant. No person holding Landlord's interest shall have any liability after such person ceases to hold such interest, except for any liability accruing while such person held such interest. **TENANT SHALL LOOK SOLELY TO LANDLORD'S ESTATE AND INTEREST IN THE BUILDING FOR THE SATISFACTION OF ANY RIGHT OR REMEDY OF TENANT UNDER THIS LEASE, AND NO OTHER ASSETS OF LANDLORD SHALL BE SUBJECT TO LEVY, EXECUTION, OR OTHER ENFORCEMENT PROCEDURE FOR THE SATISFACTION OF TENANT'S RIGHTS OR REMEDIES, OR ANY OTHER LIABILITY OF LANDLORD TO TENANT OF WHATEVER KIND OR NATURE.** No act or omission of Landlord or its agents shall constitute an actual or constructive eviction of Tenant or a default by Landlord as to any of its obligations under this Lease unless Landlord shall have first received written notice from Tenant of the claimed default and shall have failed to cure it after having been afforded reasonable time in which to do so, which in no event shall be less than 30 days. Further, Tenant waives any claims against Landlord that Tenant does not make in writing within 30 days of the onset of the cause of such claim. Landlord and Tenant each waive all rights (other than rights under the End of Term article) to consequential damages, lost profits, punitive damages, or special damages of any kind.

8.6 **Multiple Defaults.** Tenant acknowledges that, based on Tenant's credit, reputation, and other factors, Landlord has granted Tenant certain special rights that are not generally granted to tenants in the Project, including any rights or options of first refusal, or to extend the Lease Term, to expand or reduce the size of the Premises, to purchase the Premises or the Project, Project signage rights, rights under co-tenancy provisions, performance, rights to "go dark" or cease operations, "kick-out", or early termination clauses or other similar rights or options. Tenant, therefore, acknowledges that those special rights are expressly conditioned on the prompt and diligent performance of the terms of this Lease by Tenant and should Tenant, on two or more occasions during any 12-month period, (a) fail to pay any installment of rent within five days of the due date, or (b) otherwise default under this Lease; in addition to all other remedies available to Landlord, any and all such rights shall automatically, and without further action on the part of any party, expire and be deemed canceled and of no further force and effect. Should Tenant default under this Lease on two or more occasions during any 12-month period, in addition to all other remedies available to Landlord, any notice requirements or cure periods otherwise set forth in this Lease for a default by Tenant shall not apply.

8.7 **Security Interest.** Tenant hereby grants to Landlord a lien and security interest on all property of Tenant now or hereafter placed in or upon the Premises including, but not limited to, all fixtures, furniture, inventory, machinery, equipment, merchandise, furnishings and other articles of personal property, and all proceeds of the sale or other disposition of such property (collectively, the “**Collateral**”) to secure the payment of all rent to be paid by Tenant pursuant to this Lease. Such lien and security interest shall be in addition to any landlord’s lien provided by law. This Lease shall constitute a security agreement under the Uniform Commercial Code, so that Landlord shall have and may enforce a security interest in the Collateral. Tenant authorizes Landlord to file a financing statement or statements and any further documents as Landlord may now or hereafter reasonably require to protect such security interest under such Code. Landlord, as secured party, shall be entitled to all rights and remedies afforded a secured party under such Code, which rights and remedies shall be in addition to Landlord’s liens and rights provided by law or by the other terms and provisions of this Lease.

## 9. ALTERATIONS.

9.1 **“Alterations”** shall mean any alteration, addition, or improvement in or on or to the Premises of any kind or nature, including any improvements made prior to Tenant’s occupancy of the Premises. Tenant shall make no Alterations which affect utility services or plumbing and electrical lines or fire suppression or other systems of the Project, are exterior to the Premises, or require other alterations, additions, or improvements to portions of the Project outside the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord’s sole discretion (“**Material Alterations**”). Tenant may make non-Material Alterations with Landlord’s prior consent which consent shall not be unreasonably withheld. All Alterations shall be performed in accordance with Landlord’s Tenant Alterations Rules and Requirements attached to this Lease as **EXHIBIT “F”**. The general contractor shall obtain a payment and performance bond in form complying with Section 713.23, Florida Statutes. A copy of the bond, the contractor’s license(s) to do business in the jurisdiction(s) in which the Premises are located, the fully executed contract between Tenant and the general contractor, the general contractor’s work schedule, list of all subcontractors, and all building or other governmental permits required for the Alterations shall be delivered to Landlord before commencement of the Alterations. Except as expressly set forth in this Lease, Landlord has made no representation or promise as to the condition of the Premises, Landlord shall not perform any alterations, additions, or improvements in order to make the Premises suitable and ready for occupancy and use by Tenant, and Tenant shall accept possession of the Premises in its then “as-is”, “where-is” condition, without representation or warranty of any kind by Landlord. Except for work to be performed by Landlord, before any Alterations are undertaken by or on behalf of Tenant, Tenant shall require any contractor performing work on the Premises to obtain and maintain, at no expense to Landlord, workers’ compensation insurance as required by law, builder’s risk insurance in the amount of the replacement cost of the applicable Alterations (or such other amount reasonably required by Landlord), and commercial general liability insurance written on an occurrence basis with minimum limits of \$2 million per occurrence limit, \$2 million general aggregate limit, \$2 million personal and advertising limit, and \$2 million products/completed operations limit; which coverage limits may be effected with umbrella coverage (including contractual liability, broad form property damage and contractor’s protective liability coverage).

9.2 **LEED Requirements.** The Casino is pursuing a third party certification through the US Green Building Council called Leadership in Energy and Environmental Design (LEED) Certification. The LEED Core and Shell (CS) certification promotes energy and water conservation in addition to providing a healthy indoor environment for all of its occupants. More information on can be found at [www.usgbc.org](http://www.usgbc.org). Attached as **EXHIBIT “G”** are LEED Tenant Guidelines to follow in order to leverage the efforts made in the construction of the Casino Project so you maximize tenant’s energy and water savings in conjunction with the City’s Sustainable practices and policies. Other helpful resources are listed in the LEED Tenant Guidelines to assist Tenant in creating the improvements to the leased space that would be complimentary to the Casino’s environmental commitment.

9.3 **Tenants Use of outside and inside area.** Tenant’s use of outside and inside area shall comply with all applicable state and local guidelines and laws. Tenant acknowledges that Florida’s extensive coastal development brings with it a high level of artificial beachfront lighting, which can make beaches unsuitable for sea turtle nesting. Artificial beachfront lighting, including lights located on or near beaches and the urban skyglow from intensive inland light, affects both nesting females and hatchlings. Lighting can deter female sea turtles from emerging from the sea to nest and can interfere with sea-finding ability after nesting is completed. Tenant hereby acknowledges the existence of Landlord’s light management measures adopted to promote sea turtle nesting habitat. These measures include turning off unnecessary lights during the nesting season; using a smaller number or lower wattage of lights; repositioning, shielding, redirecting, lowering, or recessing fixtures so light does not reach the beach; using timers and motion detector switches; planting native dune vegetation to screen light; and reducing interior lighting by moving lights from windows, drawing curtains or blinds after dark, and tinting windows. The Casino building lighting has been approved by both the Florida Department of Environmental Protection and the Palm Beach County Department of Environmental Management. Failure



to comply with the requirements of the permit will result in heavy fines. Tenant alterations of the approved site lighting are expressly forbidden and any fines will be assessed directly to the responsible party.

10. **LIENS.** The interest of Landlord in the Premises shall not be subject in any way to any liens, including construction liens, for Alterations made by or on behalf of Tenant. This exculpation is made with express reference to Section 713.10, Florida Statutes. Tenant represents to Landlord that that any improvements that might be made by Tenant to the Premises are not required to be made under the terms of this Lease and that any improvements which may be made by Tenant do not constitute the "pith of the Lease" under applicable Florida case law. If any lien is filed against the Premises for work or materials claimed to have been furnished to Tenant, Tenant shall cause it to be discharged of record or properly transferred to a bond under Section 713.24, Florida Statutes, within ten days after notice to Tenant. Further, Tenant shall indemnify, defend, and save Landlord harmless from and against any damage or loss, including reasonable attorneys' fees, incurred by Landlord as a result of any liens or other claims arising out of or related to work performed in the Premises by or on behalf of Tenant. Tenant shall notify every contractor making improvements to the Premises that the interest of the Landlord in the Premises shall not be subject to liens.

11. **ACCESS TO PREMISES.** Landlord and persons authorized by Landlord shall have the right, at all reasonable times, to enter and inspect the Premises, to make repairs and alterations Landlord deems necessary, and in the last nine months of the Lease Term to exhibit the Premises to prospective tenants, with reasonable prior notice, except in cases of emergency.

12. **COMMON AREAS.** The "Common Areas" of the Project include such areas and facilities as delivery facilities, walkways, landscaped and planted areas, and parking facilities and are those areas designated by Landlord for the general use in common of occupants of the Project, including Tenant. Landlord shall provide Common Area restrooms and supplies. The Common Areas shall at all times be subject to the exclusive control and management of Landlord. Landlord may grant third parties specific rights concerning portions of the Common Areas. Landlord may increase, reduce, improve, or otherwise alter the Common Areas, otherwise make improvements, alterations, or additions to the Project, and change the name or number by which the Project is known. Landlord may also temporarily close the Common Areas to make repairs or improvements. In addition, Landlord may temporarily close the Project and preclude access to the Premises in the event of casualty, governmental requirements, the threat of an emergency such as a hurricane or other act of God, for pest extermination, or if Landlord otherwise reasonably deems it necessary in order to prevent damage or injury to person or property. Landlord reserves the right, from time to time, to utilize portions of the Common Areas for entertainment, carnival type shows, rides, outdoor shows, displays, automobile and other product shows, the leasing of kiosks, or other uses that in Landlord's judgment tend to attract the public. Further, the Landlord reserves the right to utilize the lighting standards and other areas of the parking areas for advertising purposes and holiday decorations. This Lease does not create, nor will Tenant have any express or implied easement for, or other rights to, air, light, or view over, from, or about the Project.

13. **CASUALTY DAMAGE.** If: (a) the Project shall be so damaged that substantial alteration or reconstruction of the Project shall, in Landlord's opinion, be required (whether or not the Premises shall have been damaged by the casualty), or (b) the Premises shall be partially damaged by casualty during the last two years of the Lease Term, and the estimated cost of repair exceeds 25% of the Base Rent then remaining to be paid by Tenant for the balance of the Lease Term; Landlord may, within 90 days after the casualty, give notice to Tenant of Landlord's election to terminate this Lease, and the balance of the Lease Term shall automatically expire on the fifth day after the notice is delivered. If Landlord does not elect to terminate this Lease, Landlord shall proceed with reasonable diligence to restore the Project and the Premises to substantially the same condition they were in immediately before the happening of the casualty only to the extent of Landlord's Work obligations on the Commencement Date. However, Landlord shall not be required to restore any unleased premises in the Project or any portion of Tenant's property, alterations, or improvements. When repairs to the Premises that are Landlord's obligation under this article have been completed by Landlord, Tenant shall complete the restoration or replacement of the Premises and all of Tenant's Property necessary to permit Tenant's reoccupancy of the Premises. Rent shall abate in proportion to the portion of the Premises not usable by Tenant as a result of any casualty resulting in damage to the Building which is covered by insurance carried or required to be carried by Landlord under this Lease, as of the date on which the Premises becomes unusable. Landlord shall not otherwise be liable to Tenant for any delay in restoring the Premises or any inconvenience or annoyance to Tenant or injury to Tenant's business resulting in any way from the damage or the repairs, Tenant's sole remedy being the right to an abatement of Rent.

14. **CONDEMNATION.** If the whole or any substantial part of the Premises shall be condemned by eminent domain or acquired by private purchase in lieu of condemnation, this Lease shall terminate on the date on which possession of the Premises is delivered to the condemning authority and Rent shall be apportioned and paid to that date. If no portion of the Premises is taken but a substantial portion of the Project is taken, at Landlord's option, this Lease shall terminate on the date on which possession of such portion of the Project is delivered to the condemning authority and Rent shall be apportioned and paid to that date. Tenant shall have

no claim against Landlord for the value of any unexpired portion of the Lease Term, nor shall Tenant be entitled to any part of the condemnation award or private purchase price. If this Lease is not terminated as provided above, Rent shall abate in proportion to the portion of the Premises condemned.

**15. REPAIR AND MAINTENANCE.**

**15.1 Landlord's Obligations.** Landlord shall repair and maintain in good order and condition, ordinary wear and tear excepted, only the roof, the outside walls (excluding storefronts), the structural portions of the Premises (exclusive of structural elements constructed by Tenant), and the portions of the electrical and plumbing systems servicing the Premises which are located outside the exterior boundaries of the Premises. However, unless the Waiver of Subrogation section of this Lease applies, Tenant shall pay the cost of any such repairs or maintenance resulting from acts or omissions of Tenant, its employees, agents, or contractors. Tenant waives the provisions of any law, or any right Tenant may have under common law, permitting Tenant to make repairs at Landlord's expense or to withhold Rent or terminate this Lease based on any alleged failure of Landlord to make repairs. All costs associated with the repair and maintenance obligations of Landlord under this article shall be included in and constitute Operating Costs.

**15.2 Tenant's Obligations.** Except to the extent Landlord is obligated to repair and maintain the Premises as provided in the Landlord's Obligations section of this article, Tenant shall, at its sole cost, repair, replace, and maintain the Premises (including the walls, storefronts, ceilings, and floors in the Premises and electrical, plumbing (including grease traps), mechanical, fire protection, life safety, sprinklers, and HVAC systems servicing the Premises exclusively), in a clean, attractive, first-class condition. All replacements shall be of equal quality and class to the original items replaced. Tenant shall not commit or allow to be committed any waste on any portion of the Premises. Tenant shall enter into and maintain an annual maintenance contract with an air conditioning service firm. Tenant shall furnish to Landlord from time to time and upon request of Landlord, a copy of the air conditioning maintenance contract and the yearly service reports from the contractor. If Tenant fails to furnish copies of the air conditioning maintenance contract and yearly service reports to Landlord within 15 days following Landlord's request, Tenant shall pay a late charge of \$5.00 per day for each day that Tenant is delinquent in submitting the required copies, and Tenant agrees that such late charge shall not be considered a penalty. Tenant shall be responsible for any damage to the roof of the Project caused by Tenant's air conditioning maintenance activities.

**15.3 Service Areas.** Tenant shall also maintain the service areas adjacent to the Premises in good repair and in a good, clean, attractive, first-class condition and free from rubbish and dirt at all times and shall store all trash and garbage within the Premises until such time as Tenant has the trash and garbage removed from the Premises. Tenant shall be responsible for placing all its trash and garbage into dumpsters or trash bins without allowing the trash or garbage to spill over onto the ground adjacent to the dumpsters or trash bins. If Tenant does not properly dispose of its trash and garbage, Landlord may have the area cleaned in which event Tenant upon Landlord's demand shall pay all charges incurred by Landlord therefor, plus an administrative charge equal to the greater of \$50 or 20% of the charges incurred by Landlord. These charges shall be considered additional rent and shall be paid to Landlord upon presentation of a bill therefor.

**15.4 Replacement of Improvements.** At any time during the Lease Term after the fifth anniversary of the Commencement Date, and thereafter at any time after the fifth anniversary of the completion of any replacements of improvements under this section, if Landlord determines, in Landlord's sole reasonable discretion, that any leasehold improvements made to the Premises by Landlord or Tenant, as a result of wear, normal depreciation, or any other cause are of a quality which in Landlord's reasonable judgment is not consistent with the level of quality of, or generally prevailing within, the Project, Tenant will cause those improvements to be replaced. Any such worn or depreciated improvements will be replaced with materials and workmanship of a quality at least equal to the original installation for which replacement is made.

**15.5 Food Services.** If Tenant's operations include the services and/or preparation of food and/or beverages, Tenant shall comply with all Health Department and other governmental rules and regulations applicable to Tenant's operations in the Premises and shall promptly (a) furnish or cause to be furnished to Landlord copies of all Health Department and other governmental reports, notices, and citations issued with respect to the Premises, and (b) immediately cure or otherwise eliminate all deficiencies and violations noted by the Health Department and other governmental authorities. Tenant shall sanitize the dumpster designated for its use by Landlord and the area surrounding the dumpster on a regular basis, but no less than once a week. If Tenant does not properly dispose of its refuse, Landlord may have the area cleaned and Tenant shall pay all cleaning charges incurred by Landlord, plus an administrative fee equal to the greater of \$50.00 or 20% of the cleaning charges.

15.6 **Grease Traps.** Landlord shall install, maintain, repair, and replace all grease traps and other equipment necessary to maintain the restaurant in a clean and sanitary manner and free from insects, rodents, vermin, and other pests. No discharge of grease or grease laden water or other materials or food stuffs shall be introduced by Tenant into the waste water disposal or drainage systems serving the Project, but if a discharge should occur, in addition to all other rights and remedies under this Lease, Tenant shall be responsible for all costs and expenses (including any fines or penalties imposed by governmental authorities) which Landlord may incur.

15.7 **Exhaust Equipment.** Tenant shall maintain all exhausts, filtering or other devices (the “**Exhaust Equipment**”) so as to prevent odors from emanating from the Premises. Tenant shall continuously operate the Exhaust Equipment during all hours of operation of Tenant’s business in the Premises, and shall maintain and repair (or if necessary, replace) the Exhaust Equipment in good working order at all times at Tenant’s sole cost. In the event Landlord notifies Tenant in writing that odors are emanating from the Premises, Tenant shall, within three days after notice from Landlord, commence in good faith to install such other reasonable control devices or procedures, at Tenant’s cost and expense, as is reasonably required to eliminate such odors within a reasonable time, not to exceed seven days. If Tenant fails to take such action, Landlord may, at its sole discretion (i) cure such failure at Tenant’s cost and expense, or (ii) treat such failure to eliminate such odors as a default under this Lease.

15.8 **Dumpster.** Tenant is required to use a City provided dumpster and make arrangements for daily pick up. The rental cost of the dumpster shall be borne by the Tenant. Tenant shall keep the dumpster area and other equipment washing and cleaning area in a clean and sanitary condition.

16. **ESTOPPEL CERTIFICATES.** From time to time, Tenant, on not less than five days’ prior notice, shall execute and deliver to Landlord an estoppel certificate in a form generally consistent with the requirements of institutional lenders and certified to Landlord and any mortgagee or prospective mortgagee or purchaser of the Project. Tenant shall indemnify, defend, and hold Landlord harmless from all damages resulting from Tenant’s failure to comply strictly with its obligations under this article.

17. **SUBORDINATION.** This Lease is and shall be subject and subordinate to all mortgages and ground leases that may now or hereafter affect the Building, and to all renewals, modifications, consolidations, replacements, and extensions of the leases and mortgages. This article shall be self-operative and no further instrument of subordination shall be necessary. However, in confirmation of this subordination, Tenant shall execute promptly any certificate that Landlord may request. If any ground or underlying lease is terminated, or if the interest of Landlord under this Lease is transferred by reason of or assigned in lieu of foreclosure or other proceedings for enforcement of any mortgage, or if the holder of any mortgage acquires a lease in substitution for the mortgage, or if this Lease is terminated by termination of any lease or by foreclosure of any mortgage to which this Lease is or may be subordinate, then Tenant will, at the option to be exercised in writing by the landlord under any ground or underlying lease or the purchaser, assignee, or tenant, as the case may be (a) attorn to it and will perform for its benefit all the terms, covenants, and conditions of this Lease on Tenant’s part to be performed with the same force and effect as if the landlord or the purchaser, assignee, or tenant were the landlord originally named in this Lease, or (b) enter into a new lease with the landlord or the purchaser, assignee, or tenant for the remainder of the Lease Term and otherwise on the same terms, conditions, and rents as provided in this Lease.

18. **INDEMNIFICATION.** To the fullest extent permitted by law, Landlord and Tenant shall each indemnify, defend, and save harmless the other party and the other party’s employees, agents, and contractors (the “**Indemnified Parties**”) from and against any and all loss, damage, claim, demand, liability, or expense (including reasonable attorneys’ fees) resulting from claims by third parties and based on any acts or omissions (specifically including negligence and the failure to comply with this Lease) of the indemnitor, its employees, agents, and contractors in connection with the Project, but only to the extent caused in whole or in part by acts or omissions of the indemnitor, its employees, agents, and contractors, regardless of whether or not the claim is caused in part by any of the Indemnified Parties. This Indemnification article shall not be construed to restrict, limit, or modify either party’s insurance obligations under this Lease and shall not be deemed a waiver of any rights of sovereign immunity that Landlord may have under applicable law. Either party’s compliance with the insurance requirements under this Lease shall not restrict, limit, or modify that party’s obligations under this Indemnification article.

19. **NO WAIVER.** The failure of a party to insist on the strict performance of any provision of this Lease or to exercise any remedy for any default shall not be construed as a waiver. The waiver of any noncompliance with this Lease shall not prevent subsequent similar noncompliance from being a default. No waiver shall be effective unless expressed in writing and signed by the waiving party. No notice to or demand on a party shall of itself entitle the party to any other or further notice or demand in similar or other circumstances. The receipt by Landlord of any Rent after default on the part of Tenant (whether the Rent is due before or after the default) shall not excuse any delays as to future Rent payments and shall not be deemed to operate as a waiver of any then existing

default by Tenant or of the right of Landlord to enforce the payment of any other Rent reserved in this Lease or to pursue eviction or any other remedies available to Landlord. No payment by Tenant, or receipt by Landlord, of a lesser amount than the Rent actually owed under the terms of this Lease shall be deemed to be anything other than a payment on account of the earliest stipulated Rent. No endorsement or statement on any check or any letter accompanying any check or payment of Rent will be deemed an accord and satisfaction. Landlord may accept the check or payment without prejudice to Landlord's right to recover the balance of the Rent or to pursue any other remedy. It is the intention of the parties that this article modify the common law rules of waiver and estoppel and the provisions of any statute which might dictate a contrary result.

**20. SERVICES AND UTILITIES.**

**20.1 Services Furnished.** Landlord shall have no obligation to provide any utilities or services to the Premises. Tenant shall be solely responsible for and shall promptly pay all charges for water, electricity, or any other utility used or consumed in the Premises, including all costs associated with the provision of separate meters for the Premises. Tenant shall contract directly with the local utility providers for such services. Tenant shall be responsible for repairs and maintenance to exit lighting, emergency lighting, and fire extinguishers for the Premises, and for interior janitorial, pest control, and waste removal services. Landlord may at any time change the electrical utility provider for the Building. Tenant's use of electrical and heating, water, ventilating, and air conditioning services furnished by Landlord shall not exceed, either in voltage, rated capacity, use, or overall load, that which Landlord deems to be standard for the Building, and, if required by Landlord, all costs associated with the additional usage and the installation and maintenance of facilities for the additional usage, including separate submetering, shall be paid by Tenant as additional rent. Tenant may be required, upon request of Landlord, to provide Tenant's energy consumption data to Landlord in reasonable format required by Landlord.

**20.2 Interruption of Services.** In no event shall Landlord be liable for damages resulting from the failure to furnish HVAC, water, electric, or other service, unless caused by the negligence or intentional acts of Landlord, and any interruption or failure shall in no manner constitute an eviction of Tenant or entitle Tenant to abatement of any Rent due under this Lease.

**21. SECURITY DEPOSIT.** The Security Deposit shall be held by Landlord as security for Tenant's full and faithful performance of this Lease including the payment of Rent. Tenant grants Landlord a security interest in the Security Deposit. The Security Deposit may be commingled with other funds of Landlord and Landlord shall have no liability for payment of any interest on the Security Deposit. Landlord may apply the Security Deposit to the extent required to cure any default by Tenant. If Landlord so applies the Security Deposit, Tenant shall deliver to Landlord the amount necessary to replenish the Security Deposit to its original sum within five days after notice from Landlord. The Security Deposit shall not be deemed an advance payment of Rent or a measure of damages for any default by Tenant, nor shall it be a defense to any action that Landlord may bring against Tenant. If Tenant fully and faithfully complies with all of the terms, covenants, and conditions of this Lease, any part of the Security Deposit not used or retained by Landlord under the terms of this Lease shall be returned to Tenant within 45 days after the expiration of the Lease Term and after Tenant's delivery of possession of the Premises to Landlord. However, if at the expiration of the Lease Term there are any amounts that may be due from Tenant that have not yet been finally determined (for example, Rent for Operating Costs for the year in which the Lease Term expires) then Landlord may estimate the amounts which will be owed and deduct them from the Security Deposit. When the actual amounts are finally determined, an adjustment shall be made between Landlord and Tenant with payment to or repayment by Landlord, as the case may require, to the end that Landlord shall receive the entire amount actually owed by Tenant and Tenant shall receive reimbursement for any overpayments.

**22. GOVERNMENTAL REGULATIONS.** Tenant shall promptly comply with all laws, codes, and ordinances of governmental authorities pertaining to Tenant or its use of the Premises and activities on or about the Project, including the Americans with Disabilities Act of 1990 ("ADA") and all applicable environmental laws. If Tenant's operations require the ongoing use of hazardous or toxic substances, then Tenant shall supply Landlord with copies of reports and any other monitoring information required by applicable laws. Tenant agrees to pay, and shall indemnify defend, and hold Landlord harmless from and against, any and all losses, claims, liabilities, costs, and expenses (including reasonable attorneys' fees) incurred by Landlord as a result of any breach by Tenant of its obligations under this article, and as a result of any contamination of the Premises because of Tenant's use of hazardous or toxic substances on the Premises. Tenant shall obtain all licenses and permits from time to time required to enable Tenant to conduct its business under this Lease. No failure of Tenant to obtain or maintain any licenses or permits, or extensions or renewals of them, shall release Tenant from the performance and observance of Tenant's obligations under this Lease.

**23. SIGNS.**

23.1 **Landlord's Consent Required.** Tenant will not place or permit to be placed or maintained on any portion of the Project, including on any exterior door, wall, or window of the Premises, or within the interior of the Premises, if visible from the exterior of the Premises, any signage or advertising matter of any kind, without first obtaining Landlord's written approval and consent, which may be withheld in Landlord's sole discretion. All signage shall comply with applicable governmental regulations and restrictions affecting the Project.

23.2 **Building Standard Signage.** Prior to the Commencement Date, Tenant shall erect an exterior sign in conformance with Landlord's Building standard signage within the area designated by Landlord, which sign shall be subject to the prior written approval of Landlord and the Sign Criteria, **EXHIBIT "J"**. If Landlord redevelops or remodels the Project, Landlord may require Tenant, at Tenant's expense, to install new signs in conformity with signage standards established by Landlord or to remodel the storefront of the Premises, or both.

23.3 **Exterior Alterations.** Any signs or other exterior Alterations, including awnings, canopies, decorations, lettering, advertising matters, or other things as may be approved by Landlord shall be maintained by Tenant in good condition and repair at all times and shall conform to the criteria established from time to time by Landlord for the Project. Upon the expiration or sooner termination of this Lease, if Landlord shall so elect, Tenant at its own expense shall remove all signs and restore the exterior of Premises to its original condition. This obligation of Tenant shall survive the expiration or sooner termination of this Lease.

24. **BROKER.** Tenant represents and warrants that it neither consulted nor negotiated with any broker or finder regarding the Premises, except the Landlord's Broker and Tenant's Broker. Landlord shall indemnify, defend, and hold Tenant harmless from and against any claims for commissions from the Landlord's Broker and Tenant's Broker. Tenant shall indemnify, defend, and hold Landlord harmless from and against any claims for commissions from any real estate broker other than the Landlord's Broker and the Tenant's Broker with whom it has dealt in connection with this Lease.

25. **END OF TERM/HOLDOVER.** Tenant shall surrender the Premises to Landlord at the expiration or sooner termination of this Lease in good order and condition, broom-clean, except for reasonable wear and tear. Tenant shall be liable to Landlord for all damages, including any consequential damages and holdover rent in accordance with state law, that Landlord may suffer by reason of any holding over by Tenant, and Tenant shall indemnify, defend, and save Landlord harmless against all costs, claims, loss, or liability resulting from delay by Tenant in so surrendering the Premises, including any claims made by any succeeding tenant founded on any delay. All Alterations made by Landlord or Tenant to the Premises shall become Landlord's property on the expiration or sooner termination of the Lease Term. On the expiration or sooner termination of the Lease Term, Tenant, at its expense, shall remove from the Premises all of Tenant's personal property, all computer and telecommunications wiring, and all Alterations that Landlord designates by notice to Tenant. Tenant shall also repair any damage to the Premises caused by the removal. Any items of Tenant's property that shall remain in the Premises after the expiration or sooner termination of the Lease Term, may, at the option of Landlord, be deemed to have been abandoned, and in that case, those items may be retained by Landlord as its property to be disposed of by Landlord, without accountability to Tenant or any other party, in the manner Landlord shall determine, at Tenant's expense. "**Tenant's Property**" shall mean all moveable personal property, machinery, furniture, and equipment, including moveable trade fixtures, that are installed in the Premises by or for the account of Tenant without expense to Landlord and that can be removed without damage to the Premises or the Project.

26. **ATTORNEYS' FEES.** The prevailing party in any litigation arising out of or in any manner relating to this Lease, including the declaration of any rights or obligations under this Lease, shall be entitled to recover from the losing party reasonable attorneys' fees and costs. In addition, if Landlord becomes a party to any suit or proceeding affecting the Premises or involving this Lease or Tenant's interest under this Lease, other than a suit between Landlord and Tenant, or if Landlord engages counsel to collect any of the amounts owed under this Lease, or to enforce performance of any of the agreements, conditions, covenants, provisions, or stipulations of this Lease, without commencing litigation, then the costs, expenses, and reasonable attorneys' fees and disbursements incurred by Landlord shall be paid to Landlord by Tenant.

27. **NOTICES.** Any notice to be given under this Lease may be given either by a party itself or by its attorney or agent and shall be in writing and delivered by hand, by nationally recognized overnight air courier service (such as FedEx), or by the United States Postal Service, registered or certified mail, return receipt requested, in each case addressed to the respective party at the party's notice address. A notice shall be deemed effective upon receipt or the date sent if it is returned to the addressor because it is refused, unclaimed, or the addressee has moved.

28. **IMPOSSIBILITY OF PERFORMANCE.** For purposes of this Lease, the term “Unavoidable Delay” shall mean any delays due to strikes, lockouts, civil commotion, war or warlike operations, acts of terrorism, acts of a public enemy, acts of bioterrorism, epidemics, quarantines, invasion, rebellion, hostilities, military or usurped power, sabotage, government regulations or controls, inability to obtain any material, utility, or service because of governmental restrictions, hurricanes, floods, or other natural disasters, acts of God, or any other cause beyond the direct control of the party delayed. Notwithstanding anything in this Lease to the contrary, if Landlord or Tenant shall be delayed in the performance of any act required under this Lease by reason of any Unavoidable Delay, then provided notice of the Unavoidable Delay is given to the other party within ten days after its occurrence, performance of the act shall be excused for the period of the delay and the period for the performance of the act shall be extended for a reasonable period, in no event to exceed a period equivalent to the period of the delay. The provisions of this article shall not operate to excuse Tenant from the payment of Rent or from surrendering the Premises at the end of the Lease Term, and shall not operate to extend the Lease Term. Delays or failures to perform resulting from lack of funds or the increased cost of obtaining labor and materials shall not be deemed delays beyond the direct control of a party.

29. **FINANCIAL REPORTING.** Within 15 days after a request from Landlord, Tenant shall furnish to Landlord a balance sheet of Tenant (and, if applicable, the Guarantor) as of the end of the most recently ended fiscal year of Tenant and a statement of income and expense for the year then ended, together with a certificate of the chief financial officer of Tenant to the effect that the financial statements have been prepared in conformity with generally accepted accounting principles consistently applied and fairly present the financial condition and results of operations of Tenant (and, if applicable, the Guarantor) as of and for the period covered. In addition (unless Tenant is paying Percentage Rent, in which case the reporting and audit provisions of the Percentage Rent article shall apply), by February 15 of each year during the Term, Tenant shall furnish to Landlord a complete statement, similarly certified, showing in all reasonable detail the amount of gross sales made by Tenant from the Premises during the preceding year. Gross sales shall mean the aggregate of Tenant’s receipts of every nature relating to the Premises that are received directly or indirectly through an affiliated or related entity, including, but not limited to, all sales and rentals made by Tenant of all goods, wares, merchandise, meals, food, food stuffs, and beverages sold and all services performed by Tenant in, at, or from the Premises, whether for cash, credit, by gift certificate redeemed at the Premises, or other consideration. Any failure of Tenant to timely provide Landlord with any of the statements of Gross Sales required under this section shall be deemed a default under this Lease, and (a) Tenant shall pay a late charge of \$25.00 per day for each day that Tenant is delinquent in submitting each statement, and Tenant agrees that such late charge shall not be considered a penalty, and (b) Landlord shall be entitled, without prior notice to Tenant, to conduct an audit of Tenant’s books for the purpose of determining Gross Sales for the period or periods during which Tenant has failed to supply Landlord with statements, with the cost and expense thereof to be paid by Tenant, together with an administrative fee of \$500.00.

30. **ADVERTISING.**

30.1 **Advertised Name and Address.** Tenant shall not use the name of the Project for any purpose other than as the address of the business to be conducted by Tenant in the Premises and Tenant shall not acquire any property right in or to any name which contains the name of the Project as a part of the name. Tenant shall not use the name of Landlord in any advertisement or otherwise. Tenant shall use in its advertising and promotional activities for its business in the Premises such references to the name of the Project and such identifying lettering, logos, marks, or symbols referring to the Project as Landlord shall specify from time to time. Tenant shall include the name of the Project in its address. Notwithstanding the foregoing, Landlord shall have the right to prohibit the use by Tenant of the name, marks, and symbols of the Project in any manner determined to be unacceptable to Landlord in its sole discretion.

30.2 **Trademark License.** During the Lease Term, Tenant grants Landlord a non-exclusive and royalty-free license and limited right to use Tenant’s trade names, trademarks, logos, and designs in the printing, publication, and distribution of promotional newsletters, advertisements, marketing brochures, and other materials (the “Marketing Materials”) by Landlord and related entities.

31. **MOLD.** Tenant is advised that mold and/or other microscopic organisms (“Mold Conditions”) are prevalent in Florida’s humid climate and locations, especially in proximity to bodies of water. Mold Conditions may cause allergic reactions, respiratory reactions or other problems, particularly in persons with immune system problems, young children and elderly persons. Tenant acknowledges that it is fully responsible to maintain the proper operation of the HVAC system in the Premises at all times during the Lease Term to inhibit Mold Conditions. Tenant shall ensure property maintenance of the Premises to limit the accumulation of water and excessive moisture inside the Premises. Tenant shall notify Landlord immediately of any water intrusion conditions arising within the Premises. TENANT ACKNOWLEDGES THE FOREGOING, AND AGREES TO ACCEPT FULL

RESPONSIBILITY FOR ANY AND ALL RISKS RELATED TO MOLD CONDITIONS IN THE PREMISES. TENANT AGREES TO RELEASE, HOLD HARMLESS AND INDEMNIFY LANDLORD, LANDLORD'S OFFICERS, AGENTS, EMPLOYEES, AND SUCCESSORS FROM ANY AND ALL LIABILITY OR DAMAGES, WHETHER FINANCIAL OR OTHERWISE, ARISING FROM OR RELATED TO MOLD CONDITIONS IN THE PREMISES.

**32. GENERAL PROVISIONS.**

32.1 **Construction Principles.** The words "including" and "include" and similar words will not be construed restrictively to limit or exclude other items not listed. 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. If any provision of this Lease is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Lease shall remain in full force, if the essential provisions of this Lease for each party remain valid, binding, and enforceable. The parties may amend this Lease only by a written agreement of the parties. 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 the understanding of the parties. Landlord and Tenant intend that faxed or PDF format signatures constitute original signatures binding on the parties. This Lease shall bind and inure to the benefit of the heirs, personal representatives, and, except as otherwise provided, the successors and assigns of the parties to this Lease. Any liability or obligation of Landlord or Tenant arising during the Lease Term shall survive the expiration or earlier termination of this Lease.

32.2 **No Representations by Landlord.** Neither Landlord nor Landlord's agents have made any representations or promises concerning the physical condition of the Project or the Premises, Tenant's ability to use the Premises for the uses permitted under this Lease, the area of the Premises or the manner of calculating such area, anticipated Operating Costs, or any other matter affecting or relating to the Premises, except as expressly set forth in this Lease and no rights, easements, or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in this Lease.

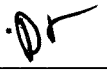
32.3 **Radon Gas.** The following notification is provided under Section 404.056(6), Florida Statutes: "Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."


32.4 **Exhibits.** All exhibits, riders, and addenda attached to this Lease shall, by this reference, be incorporated into this Lease. The following exhibits are attached to this Lease:

- EXHIBIT "A" – Legal Description of the Project
- EXHIBIT "B" – Sketch of Premises
- EXHIBIT "C" – Guaranty
- EXHIBIT "D" – Rules and Regulations
- EXHIBIT "E" – Tenant Improvements
- EXHIBIT "E-1" – Landlord's Work Schedule
- EXHIBIT "F" – Tenant Alteration Requirements
- EXHIBIT "G" – LEED Tenant Guidelines
- EXHIBIT "H" – Special Requirements
- EXHIBIT "I" – Commencement Date Letter
- EXHIBIT "J" – Sign Criteria
- EXHIBIT "K" – Restricted Uses

**33. JURY WAIVER; COUNTERCLAIMS; VENUE.** LANDLORD AND TENANT KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM INVOLVING ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE. TENANT FURTHER WAIVES THE RIGHT TO INTERPOSE ANY NON-COMPULSORY COUNTERCLAIM OF ANY NATURE IN ANY ACTION TO OBTAIN POSSESSION OF THE PREMISES. THIS AGREEMENT SHALL BE CONSTRUED BY AND GOVERNED BY THE LAWS OF THE STATE OF FLORIDA. ANY AND ALL LEGAL ACTION NECESSARY TO ENFORCE THE AGREEMENT WILL BE HELD IN PALM BEACH COUNTY. NO REMEDY HEREIN CONFERRED UPON

ANY PARTY IS INTENDED TO BE EXCLUSIVE OF ANY OTHER REMEDY, AND EACH AND EVERY SUCH REMEDY SHALL BE CUMULATIVE AND SHALL BE IN ADDITION TO EVERY OTHER REMEDY GIVEN HEREUNDER OR NOW OR HEREAFTER EXISTING AT LAW OR IN EQUITY OR BY STATUTE OR OTHERWISE. NO SINGLE OR PARTIAL EXERCISE BY ANY PARTY OF ANY RIGHT, POWER, OR REMEDY HEREUNDER SHALL PRECLUDE ANY OTHER OR FURTHER EXERCISE THEREOF.

LANDLORD: 

TENANT: 

34. **SDN COMPLIANCE.** Tenant hereby represents, warrants and certifies that neither (i) Tenant, nor (ii) any of persons or entities that control or are controlled by Tenant (each a “**Tenant Party**”), has been, is currently, or at any time in the future shall be listed on the Specially Designated National list (“**SDN List**”) maintained by the United States Department of the Treasury Office of Foreign Assets Control (“**OFAC**”). At its option, Landlord shall have the right to immediately terminate this Lease if any Tenant Party becomes listed on the SDN List.

[signatures on following page]



IN WITNESS WHEREOF, this lease has been executed on behalf of landlord and tenant as of the date of this lease.

LANDLORD:

REVIEWED AND APPROVED FOR EXECUTION

CITY OF LAKE WORTH,  
a municipal corporation under the laws of the  
State of Florida

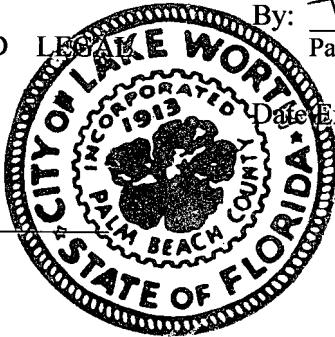
By: [Signature]  
Steven A. Carr, Acting City Manager

By: [Signature]  
Pam Triolo, Mayor

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY:

Date Executed: Feb. 2, 2012

By: [Signature]  
Elaine A Humphreys, City Attorney



ATTEST:

By: [Signature]  
Pamela J. Lopez, City Clerk

TENANT:

Maxplan Enterprises  
a Florida Corporation

[Signature]  
Signature of Witness 1

By: [Signature]  
Name: MARIA MATIAS  
Title: DIRECTOR

Michelle Ray Anne King-Fettig  
Print or type name of Witness 1

Date Executed: JAN 30, 2012

[Signature]  
Signature of Witness 2

Sherry GRAY  
Print or type name of Witness 2

By: [Signature]  
Name: RAAFAT IBRAHIM  
Title: PRESIDENT

[Signature]  
Signature of Witness 1

Michelle Ray Anne King-Fettig  
Print or type name of Witness 1

Date Executed: 01-30-12

[Signature]  
Signature of Witness 2

Sherry GRAY  
Print or type name of Witness 2

**EXHIBIT "A"**

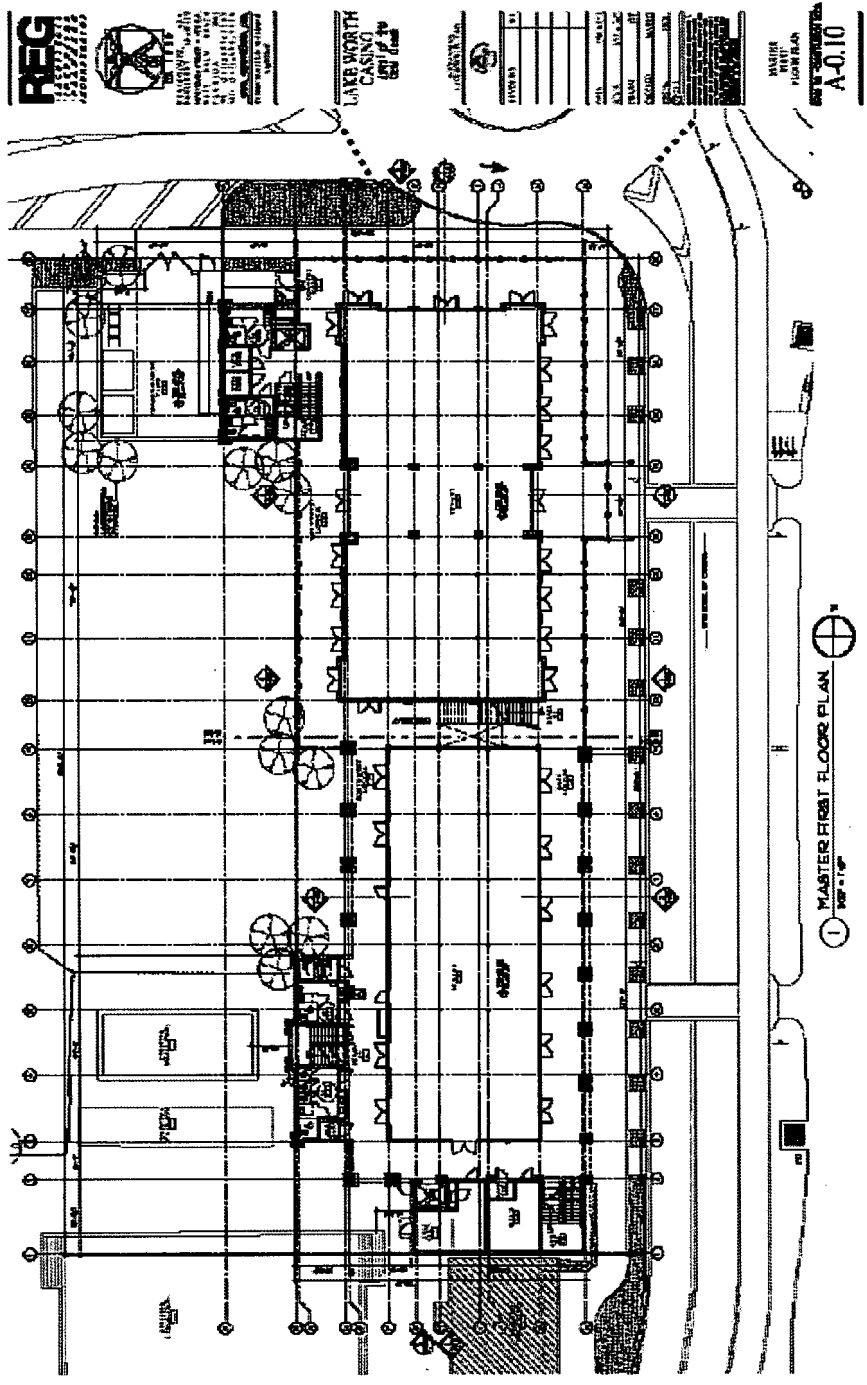
**LEGAL DESCRIPTION OF THE PROJECT**

Lake Worth Casino Building located at 10 South Ocean Boulevard, Florida, 33460

EXHIBIT "B"

SKETCH OF PREMISES

Lake Worth Casino Project  
1st Floor



Paul Snitkin  
ANDERSON & CARR, INC.  
Appraisers-Realtors-Consultants

The above plan is for location of Premises only and is not a representation by Landlord as to any other improvements shown.

**EXHIBIT "C"**

**GUARANTY**

**THIS IS A GENERAL GUARANTY WHICH IS ENFORCEABLE BY THE LANDLORD, ITS SUCCESSORS AND ASSIGNS. THIS IS ALSO AN ABSOLUTE AND UNCONDITIONAL GUARANTY.**

The undersigned (the "Guarantor") absolutely and unconditionally guaranties the prompt and full performance and observance by Maxplan Enterprises, Inc. (Kilwin's Chocolates and Ice Cream) a Florida Corporation by the Tenant under a Lease dated \_\_\_\_\_, 2011, between CITY OF LAKE WORTH, a municipal corporation under the laws of the State of Florida (the "Landlord"), and Tenant for space at Unit #3 and 4, Lake Worth Casino Building at 10 South Ocean Boulevard, Lake Worth, Florida 33460, whether before, during, or after the Lease Term. Guarantor represents and warrants that he has a direct financial interest in Tenant and that he has received substantial consideration in exchange for making this Guaranty.

This is a guaranty of payment and not collection and Landlord may proceed directly against Guarantor without first proceeding with any remedies against Tenant. This Guaranty shall not be impaired by, and Guarantor consents to, any modification, supplement, extension, or amendment of the Lease to which the parties to the Lease may hereafter agree. Presentment, notice, and demand on Tenant or Guarantor and subsequent dishonor are not conditions to proceeding against Guarantor.

In connection with any suit, action, or other proceeding, including arbitration or bankruptcy, arising out of or in any manner relating to this Guaranty, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys', paralegals', and legal assistants' fees and disbursements (including disbursements which would not otherwise be taxable as costs in the proceeding) and expert witness fees through and including all post-judgment and appellate levels.

Any legal action or proceeding arising out of or in any way connected with this Guaranty shall be instituted in a court (federal or state) located in the county in which the Premises are located, which shall be the exclusive jurisdiction and venue for litigation concerning this Guaranty. Landlord and Guarantor shall be subject to the jurisdiction of those courts. The execution of this Guaranty and performance of its obligations by Guarantor, for purposes of personal or long-arm jurisdiction, constitutes doing business in the State of Florida under Section 48.193, Florida Statutes. In addition, Landlord and Guarantor waive any objection that they may now or hereafter have to the laying of venue of any action or proceeding in those courts, and further waive the right to plead or claim that any action or proceeding brought in any of those courts has been brought in an inconvenient forum. All payments to be made by Guarantor under this Guaranty shall be payable at Landlord's office at c/o City Manager, City of Lake Worth 7 North Dixie Highway, Lake Worth, FL 33460.

This Guaranty is a continuing guaranty that shall be effective before the commencement of the Lease Term and shall remain effective following the Lease Term as to any surviving provisions that remain effective after the termination of the Lease. Guarantor's obligations under this Guaranty shall also continue in full force and effect after any transfer of the Tenant's interest under the Lease, during any renewals or extensions of the Lease Term, and during any holdover by Tenant after expiration of the Lease Term.

The liability of Guarantor under this Guaranty shall in no way be affected, modified, or diminished by reason of any of the following, regardless of whether Guarantor receives notice of them, all of which notices Guarantor expressly waives: (a) any assignment, renewal, modification, amendment, or extension of the Lease, or (b) any modification or waiver of or change in any of the terms, covenants, and conditions of the Lease by Landlord and Tenant, or (c) any extension of time that may be granted by Landlord to Tenant, or (d) any consent, release, indulgence, or other action, inaction, or omission under or in respect of the Lease, or (e) any dealings, or transactions, or matters between Landlord and Tenant that may cause the lease to terminate, including without limitation, any adjustment, compromise, deferral, waiver, settlement, accord and satisfaction, or release of Tenant's obligations under the Lease, or (f) any bankruptcy, insolvency, reorganization, liquidation, arrangement, assignment for the benefit of creditors, receivership, trusteeship, or similar proceeding affecting Tenant, or the rejection or disaffirmance of the Lease in any proceedings, whether or not notice of the proceedings is given to Guarantor.

For purposes of this Guaranty, on a default by Tenant under the Lease the entire balance of all forms of Rent due under the Lease for the remainder of the Lease Term may be declared to be forthwith due and payable as provided in the Lease notwithstanding any stay, injunction, or other prohibition preventing a similar declaration as against Tenant and, in the event of any such declaration by



EXHIBIT "D"

RULES AND REGULATIONS

1. The sidewalks and public portions of the Project, such as entrances, passages, courts, parking areas, elevators, vestibules, stairways, corridors, or halls shall not be obstructed or encumbered by Tenant or its employees, agents, invitees, or guests nor shall they be used for any purpose other than ingress and egress to and from the Premises. Tenant shall not conduct any business, loading or unloading, assembling, or any other work connected with Tenant's business on any portion of the Common Areas or in any other area of the Project outside the confines of the Premises. Tenant shall not sell or display merchandise on, or otherwise obstruct, the Common Areas or any other area of the Project outside the confines of the Premises.

2. No awnings or other projections shall be attached to the outside walls of the Project. No curtains, blinds, shades, louvered openings, or screens or anything else which may be visible from outside the Building shall be attached to or hung in, or used in connection with, any window or door of the Premises, without the prior written consent of Landlord. No aerial or antenna shall be erected on the roof or exterior walls of the Premises or in the Project.

3. No sign, advertisement, notice, or other lettering shall be exhibited, inscribed, painted, or affixed by Tenant on any part of the outside of the Premises or Project or on corridor walls or doors or mounted on the inside of any windows without the prior written consent of Landlord. Signs on any entrance door or doors shall conform to Project standards and shall, at Tenant's expense, be inscribed, painted, or affixed for Tenant by sign makers approved by Landlord.

4. No show cases or other articles shall be put in front of or affixed to any part of the exterior of the Project, nor placed in the public halls, corridors, or vestibules without the prior written consent of Landlord.

5. Whenever Tenant shall submit to Landlord any plan, agreement, assignment, sublease, or other document for Landlord's consent or approval, Tenant shall reimburse Landlord, on demand, for the actual out-of-pocket costs for the services of any architect, engineer, or attorney employed by Landlord to review or prepare the plan, agreement, assignment, sublease, consent, or other document.

6. The water and wash closets and other plumbing fixtures shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, or other substances shall be thrown in them. All damages resulting from any misuse of fixtures shall be borne by the Tenant who, or whose employees, agents, invitees, or guests, shall have caused the damages.

7. No animals of any kind (except dogs assisting disabled persons) shall be brought on the Premises or Project.

8. Unless the Permitted Use includes food service uses, no cooking shall be done or permitted by Tenant on the Premises. Except for standard residential type refrigerator and microwave oven, no refrigeration or heating equipment may be placed inside the Premises without the prior written consent of Landlord in each instance. Tenant shall not cause or permit any unusual or objectionable odors to be produced on or permeate from the Premises.

9. Prohibited Disposable Food Service Ware: Food Vendors, Restaurants and any other vendor may not sell Prepared Food in Disposable Food Service Ware that contains Polystyrene Foam.

LANDLORD: PR

TENANT: MGM

10. Required Biodegradable/Compostable Disposable Food Service Ware: All Food Vendors using any Disposable Food Service Ware shall use a suitable, affordable alternative Biodegradable/Compostable product to containers made from Polystyrene Foam. The city will assist the vendors by providing a list of potential products. However, it is the responsibility of the Food Vendor to locate a suitable alternative. A number of other cities around the world including San Francisco and Berkeley have successfully banned Styrofoam so there are plenty of commercially viable alternatives.



LANDLORD: PR

TENANT: MGM

11. Plastic Bags: In the City of Lake Worth Contract with the vendors at the Beach, this section requires the use of recyclable paper, compostable and/or reusable checkout bags. The goal is to reduce litter of plastic bags that kill over 100,000 marine animals a year and create a nuisance to our residents by being both unsightly and creating a potential biohazard.

11.1 All Stores shall provide recyclable Bags, compostable bags and/or reusable bags.

11.2 Definitions: "Recyclable Paper Bag" means a paper bag that meets all of the following requirements: (1) contains no old growth fiber, (2) is 100% recyclable overall and (3) displays the words "Reusable" and "Recyclable" in a highly visible manner on the outside of the bag and (4) should contain post consumer discarded waste.

LANDLORD:   
TENANT: 

12. Tenant shall not make or permit to be made any unseemly or disturbing noises, or electromagnetic, radio or television interference, or disturb or interfere with occupants of the Project or neighboring premises or those having business with them, or interfere with equipment of Landlord or occupants of the Project, whether by the use of any musical instrument, radio, television, machines or equipment, unmusical noise, or in any other way, including use of any wireless device or equipment. Tenant shall not use any advertising medium such as loud speakers, sound amplifiers, or radio or television broadcasts in a manner which may be heard outside the Premises.

13. Neither Tenant nor any of Tenant's employees, agents, invitees, or guests shall at any time bring or keep on the Premises any firearms, inflammable, combustible, or explosive substance or any chemical substance, other than reasonable amounts of cleaning fluids and solvents required in the normal operation of Tenant's business, all of which shall only be used in strict compliance with all applicable environmental laws.

14. Landlord shall have a valid pass key to all spaces within the Premises at all times during the Lease Term. No additional locks or bolts of any kind shall be placed on any of the doors or windows by Tenant, nor shall any changes be made in existing locks or the mechanism of the locks, without the prior written consent of the Landlord and unless and until a duplicate key is delivered to Landlord. Tenant must, on the termination of its tenancy, restore to the Landlord all keys to stores, offices, and toilet rooms, either furnished to or otherwise procured by Tenant, and in the event of the loss of any keys so furnished, Tenant shall pay Landlord for the replacement cost of them.

15. Tenant shall not create or use any advertising mentioning or exhibiting any likeness of the Project without the prior written consent of Landlord. Landlord shall have the right to prohibit any advertising that, in Landlord's reasonable opinion, tends to impair the reputation of the Project or its desirability as a retail center, and on notice from Landlord, Tenant shall discontinue the advertising.

16. The Premises shall not be used for lodging or sleeping, or for any immoral, disreputable, or illegal purposes, or for any purpose that may be dangerous to life, limb, or property.

17. Canvassing, soliciting, and peddling within the Project or in the Common Areas is prohibited and Tenant shall cooperate to prevent such activities.

18. Tenant, its employees, agents, contractors, and invitees shall park their vehicles only in the portion of the parking areas and roadways of the Project designated by Landlord. Usage of parking spaces shall be in common with all other tenants of the Project and their employees, agents, contractors, and invitees. All parking space usage shall be subject to any reasonable rules and regulations for the sale and proper use of parking spaces that Landlord may prescribe. Tenant's employees, agents, contractors, and invitees shall abide by all posted roadway signs in and about the parking facilities. Landlord shall have the right to tow or otherwise remove vehicles of Tenant and its employees, agents, contractors, or invitees that are improperly parked, blocking ingress or egress lanes, or violating parking rules, at the expense of Tenant or the owner of the vehicle, or both, and without liability to Landlord. Upon request by Landlord, Tenant shall furnish Landlord with the license numbers and descriptions of any vehicles of Tenant, its principals,

employees, agents, and contractors. Landlord reserves the right to charge Tenant an administrative fee of \$50.00 per violation of the foregoing rules.

19. ~~Tenant shall not go upon the roof of the Project without the written consent of Landlord.~~ Any roof opening or other work on the roof required at the Premises shall be performed by Landlord's roofing contractor, at Tenant's expense. Such openings shall include, as required, supporting structures, angles, curbs, flashing ducts, and vents and grills. Landlord may refuse to approve such roof opening or other work request if it may affect the roof's structural system, may void the roof warranty, or may otherwise affect the integrity of the roofing system.

LANDLORD: Pr  
TENANT: Megan

20. Tenant shall secure and keep in effect an effective pest control contract providing for periodic inspection and treatment for roaches, insects, rodents, termites, and other pests. If Tenant violates this requirement, Landlord may provide pest control and bill Tenant the costs therefor.

21. Tenant shall not conduct any auction, fire, "going out of business," or bankruptcy sales.

22. All trucks and delivery vans shall be parked in designated areas only and not parked in spaces reserved for cars. All delivery service doors are to remain closed except during the time that deliveries, garbage removal, or other approved uses are taking place. All loading and unloading of goods shall be done only at the times, in the areas, and through the entrances designated for loading purposes by Landlord. Tenant shall assume all liability and risk concerning these movements.

23. Tenant shall be responsible for the removal and proper disposition of all crates, oversized trash, boxes, and items of garbage from the Premises. The corridors and parking and delivery areas are to be kept clear of these items.

24. Landlord shall not be responsible or liable for lost or stolen personal property, equipment, or money occurring anywhere in the Project, regardless of how or when the loss occurs.

25. Tenant shall give Landlord prompt notice of all accidents to or defects in air conditioning equipment, plumbing, electric facilities, or any part or appurtenance of the Premises.

26. Tenant agrees and fully understands that the overall aesthetic appearance of the Project is of paramount importance; thus Landlord shall maintain complete aesthetic control over any and every portion of the Premises visible from outside the Premises in Landlord's sole and absolute discretion. Landlord will notify Tenant in writing of any aesthetic deficiencies and Tenant will have seven days to correct the deficiencies to Landlord's satisfaction or Tenant shall be in default of this Lease and the Default article shall apply.

27. Tenant shall not install, operate, or maintain in the Premises or in any other area, any electrical equipment that does not bear the U/L (Underwriters Laboratories) seal of approval, or that would overload the electrical system or any part of the system beyond its capacity for proper, efficient, and safe operation as determined by Landlord, taking into consideration the overall electrical system and the present and future requirements therefor in the Project. Tenant shall not furnish any cooling or heating to the Premises, including the use of any electronic or gas heating devices, without Landlord's prior written consent.

28. Landlord may, on request by any tenant, waive compliance by the tenant with any of the Rules and Regulations provided that (a) no waiver shall be effective unless in writing and signed by Landlord or Landlord's authorized agent, (b) a waiver shall not relieve the tenant from the obligation to comply with the rule or regulation in the future unless expressly consented to by Landlord, and (c) no waiver granted to any tenant shall relieve any other tenant from the obligation of complying with the Rules and Regulations unless the other tenant has received a similar waiver in writing from Landlord.

29. Tenant will take all steps necessary to prevent: inadequate ventilation, emission of chemical contaminants from indoor or outdoor sources, or both, or emission of biological contaminants. Tenant will not allow any unsafe levels of chemical or biological contaminants (including volatile organic compounds) in the Premises, and will take all steps necessary to prevent the release of contaminants from adhesives (for example, upholstery, wallpaper, carpet, machinery, supplies, and cleaning agents).



30. Tenant shall comply with any recycling programs for the Project implemented by Landlord from time to time.

31. Tenant shall not place a load on any floor of the Premises exceeding the floor load per square foot area that such floor was designed to carry. Landlord reserves the right to prescribe the weight limitations and position of all heavy equipment and similar items, and to prescribe the reinforcing necessary, if any, that in the opinion of Landlord may be required under the circumstances, such reinforcing to be at Tenant's expense.

32. All contractors performing work to the structure or systems of the Project must be approved by Landlord.

33. The Project is a smoke-free environment and smoking is not permitted on the Premises or within 25 feet of any entrance to the Project.

34. Landlord reserves the right to grant or deny access to the Project to any telecommunications service provider. Access to the Project by any telecommunications service provider (unless through Landlord's current Building telecommunications provider's lines) shall be governed by the terms of Landlord's standard telecommunications license agreement, which must be executed and delivered to Landlord by such provider before it is allowed any access whatsoever to the Project.

35. No vinyl wall covering may be installed on any interior side of any wall which comprises an exterior wall of the Building, unless the wall covering was manufactured using a micro-venting procedure having no less than 140 needle/venting holes per square inch, and Tenant shall provide a letter from the wall covering manufacturer confirming such process.

36. Whenever these Rules and Regulations directly conflict with any of the rights or obligations of Tenant under this Lease, this Lease shall govern.

## EXHIBIT "E"

### TENANT IMPROVEMENTS

#### As-Is

1. **Landlord's Work.** Landlord shall perform the work described in EXHIBIT "E-1", Landlord's Work Schedule, in a good and workmanlike manner, using Building Standard materials and in accordance with all applicable governmental and legal requirements, at Landlord's sole cost and expense ("**Landlord's Work**"). Other than as set forth in the preceding sentence, Landlord has made no representation or promise as to the condition of the Premises. "Building Standard" shall mean the type, brand, grade, or quality of materials Landlord designates from time to time to be the minimum quality to be used in the Project or, as the case may be, the exclusive type, brand, grade, or quality of material to be used in the Project. On the Commencement Date, Tenant shall be deemed to have inspected the Premises and be fully familiar with the physical condition of the Premises, and shall accept the Premises in its then existing "as-is," "where-is" condition. Landlord shall not perform any work other than the Landlord's Work and shall not perform any work as to any portions of the Premises not specifically addressed in the description of the Landlord's Work. Landlord warrants that the Landlord's Work shall be free from defects in materials and workmanship for a period of one year from the Commencement Date. Landlord shall correct any defects to Landlord's Work reported to it within the one-year warranty period. Landlord has made no other warranty, express or implied, or representation as to fitness or suitability. Except under the express warranty provided in this paragraph, Landlord shall not be liable for any latent or patent defect in the Premises, or any costs or expenses related in any way to the Tenant's Work.

2. **Tenant's Work.** Tenant shall, but is not required to, at its sole cost and expense, perform all work necessary or desirable for Tenant's occupancy of the Premises (the "**Tenant's Work or Improvements**"). Within 21 days after the Date of the Lease, Tenant shall furnish to Landlord, for Landlord's written approval, two complete permit sets (final construction drawings) of plans and specifications for the Tenant's Work (the "**Plans**"). The Plans shall include the following: fully dimensioned architectural plan; electric/telephone outlet diagram; reflective ceiling plan with light switches; mechanical plan; furniture plan; electric power circuitry diagram; plumbing plans; all color and finish selections; all special equipment and fixture specifications; and fire sprinkler design drawings. Tenant shall submit the approved Plans to applicable building authorities for permit within five days following Landlord's approval and Tenant shall thereafter diligently pursue obtaining its building permits. The Plans will be prepared by a licensed architect and the electrical and mechanical plans will be prepared by a licensed professional engineer. The Plans shall be produced on CAD. The architect and engineer will be subject to Landlord's approval, which shall not be unreasonably withheld. The Plans shall comply with all applicable laws, ordinances, directives, rules, regulations, and other requirements imposed by any and all governmental authorities having or asserting jurisdiction over the Premises. Landlord shall review the Plans and either approve or disapprove them within a reasonable period of time. Should Landlord disapprove them, Tenant shall make any necessary modifications and resubmit the Plans to Landlord in final form within ten days following receipt of Landlord's disapproval of them. Tenant shall thereafter diligently pursue obtaining its building permits for the Tenant's Work.

The Tenant's Work shall be constructed by a general contractor selected and paid by Tenant and approved by Landlord. The general contractor shall obtain a payment and performance bond in form complying with Section 713.23, Florida Statutes. A copy of the bond, the contractor's license(s) to do business in the jurisdiction(s) in which the Premises are located, the fully executed contract between Tenant and the general contractor, the general contractor's work schedule, list of all subcontractors, and all building or other governmental permits required for the Tenant's Work shall be delivered to Landlord before commencement of the Tenant's Work. Tenant shall cause the Tenant's Work to be completed promptly and with due diligence. Unless approved by Landlord in its sole discretion, Tenant shall not have access to the Premises for the commencement of the Tenant's Work until Landlord has delivered the Premises to Tenant with a Certificate of Occupancy or Completion, as the case may be, as to Landlord's Work as required by governmental authorities and Tenant and its vendors and contractors have obtained all governmentally required permits separate from any permits obtained by Landlord as to the Tenant's Work. Tenant's Work shall be performed in accordance with the Plans and shall be done in a good and workmanlike manner using new materials in accordance with Building standards. All work shall be done in compliance with all other applicable provisions of this Lease and with all applicable laws, ordinances, directives, rules, regulations, and other requirements of any governmental authorities having or asserting jurisdiction over the Premises, including the making of any alterations or improvements to the Premises or the Project which are required to comply with the ADA. Tenant shall pay any impact fees or assessments arising from the Tenant's Work. Before the commencement of any work by Tenant, Tenant shall furnish to Landlord certificates evidencing the existence of builder's risk, commercial general liability, and workers' compensation insurance complying with the requirements set forth in the Insurance article of this Lease. Any damage to any part of the Project that occurs as a result of Tenant's Work shall be promptly repaired by Tenant.

3. **Compliance.** Tenant shall also ensure compliance with the Tenant Improvement Rules and Regulations attached to the Lease.

4. **Tenant Delays.** If Landlord or the general contractor is delayed in substantially completing Landlord's Work as a result of the occurrence of any Tenant Delay (as hereafter defined), then, (i) any deadlines set forth in the Lease for Landlord's delivery of the Premises shall be extended day for day for each day of Tenant's Delay, and (ii) at Landlord's option, for purposes of determining the Rent Commencement Date, the date of delivery of the Premises shall be deemed to be the day that Landlord's Work would have been substantially completed absent any Delay(s). For purposes of this provision each of the following shall constitute a "Tenant Delay": (a) Tenant's failure to furnish information or to respond to any request by Landlord or any design consultant for any approval within any time period prescribed, or if no time period is prescribed, within two business days of a request, including any information required to modify the Building shell plans to accommodate Tenant's Work; or (b) changes or proposed changes required by Tenant's Work requiring changes to Landlord's Work or Building shell construction; or (c) any delay resulting from Tenant's activities in the Premises before substantial completion of Landlord's Work; or (d) any other delay to Landlord's ability to complete Landlord's Work as required by the terms of this Lease caused by Tenant, its employees, agents, contractors, or consultants.

5. **Changes.** Tenant shall be responsible to reimburse Landlord for all costs resulting from changes to Landlord's Work requested by Tenant. Such costs shall be deducted from the Tenant Improvement Allowance, if any, or if no Allowance is granted, paid to Landlord within ten days of receipt of invoice. If the cost of any changes will exceed any remaining balance of the Tenant Improvement Allowance (after deducting the most current estimate of the work cost before the change in question), Tenant shall pay to Landlord the amount of the excess within ten days of receipt of a notice from Landlord as to the amount. Such payments by Tenant shall not be considered additional rent.

**EXHIBIT "E-1"**

**LANDLORD'S WORK SCHEDULE**

Landlord shall deliver the following ("**Landlord's Work**") only:

Vanilla Shell (as defined by City) Poured in-place, unfinished concrete slab floor with appropriate stub outs for plumbing and electrical; taped and primed, appropriately rated demising walls; basic code required electrical service including minimal lighting; open raw ceilings with exposed mechanical systems; fire sprinklers to code; conduits provided for wireless/cable/telephone services. Code required restrooms for the entire building are provided as shared facilities

The costs of any changes to Landlord's Work requested or required by Tenant will be paid to Landlord by Tenant within 30 days following invoice therefor.

## **EXHIBIT "F"**

### **TENANT ALTERATION REQUIREMENTS**

#### **A. Requirements Prior to Commencement of Any Work in the Premises:**

1. Two (2) copies of Tenant's general contractor's or any subcontractor, as may apply, liability insurance naming Landlord and its managing agent as additional insureds.
2. Two (2) copies of approved building permit. Permit to include sufficient information to describe the work and designate the name and suite number of Tenant or if the work is extensive provide copies of plans and specifications as approved by the Building Department with the permit. (Landlord reserves the right to review and approve additional items and comments that may be required by the Building Department before commencement of the work.)
3. Prepare two (2) copies for Landlord's approval of a recordable "Notice of Commencement" executed by Tenant as "Owner".
4. Two (2) copies of Contractor "Certificate of Liability Insurance" prepared in accordance with the requirements of the Project, and evidencing the existence of builder's risk, commercial general liability, and workers' compensation insurance complying with the requirements of the Insurance article of this Lease.
5. One (1) copy of the Contractor's Florida Contracting License.
6. Two (2) copies of the work/project's completion schedule.
7. Two (2) copies of project vendor list with contact information.
8. Tenant, at its expense, will provide and furnish to Landlord payment and performance bonds (or other similar assurances agreed by Landlord), by a surety company reasonably acceptable to Landlord, in amounts equal to 150% of the costs and expenses of the work to be performed by the Tenant.

#### **B. General Requirements:**

1. Tenant and all construction personnel shall abide by Landlord's job site rules and regulations and fully cooperate with Landlord's construction representatives in coordinating all construction activities in the Project, including rules and regulations concerning working hours, parking, and use of the construction elevator, if applicable.
2. Tenant shall be responsible for cleaning up any refuse or other materials left behind by construction personnel at the end of each work day.
3. Tenant shall deliver to Landlord all forms of approval provided by the appropriate local governmental authorities to certify that the Tenant Improvements and Alterations have been completed and the Premises are ready for occupancy, including original building permit and a final, unconditional certificate of occupancy.
4. At all times during construction, Tenant shall allow Landlord access to the Premises for inspection purposes. On completion of any Alterations and Tenant Improvements, Tenant's general contractor shall review the Premises with Landlord and Tenant and secure Landlord's and Tenant's acceptance of the Tenant Improvements and Alterations.
5. Workers shall provide their own temporary toilet facilities, trash facilities, water coolers, and construction materials dumpsters and shall locate them along with any construction trailers or field offices in areas specifically designated by Landlord.
6. No painting or spraying of chemicals, varnishes, lacquers, finishes, or paint will be allowed during normal business hours. Such activities shall only occur during days and times specifically preapproved by Landlord.

7. Any work that may disturb tenants of the Building (including welding, cutting torch, drilling or cutting of the concrete floor slab or temporary interruption of any utility service), shall only occur before or after normal business hours and with Landlord's prior consent. Any unduly loud noise complained of by other Tenants will be immediately diminished to Landlord's reasonable satisfaction or the work will cease until the noise is so diminished.

8. Reasonable quantities of water and electricity for lighting, portable power tools, and other common uses as well as use of the construction elevator will be furnished to the contractor at a cost to be assigned at the completion of the job based on usage during the build-out period (including Building standard charges for use of the elevator). The contractor shall make all connections, furnish any necessary extensions, and promptly and professionally remove such connections and extensions on completion of work.

9. If a shutdown of plumbing, sprinkler, electrical, air conditioning and/or other equipment becomes necessary in connection with Tenant's work, Tenant will notify Landlord in advance and Landlord will determine when such shutdown may be made, and at Landlord's election any such shutdown will be done only when a representative of Landlord is present. In all instances where this is done, the system shall not be left inoperable overnight or over a prolonged period.

10. All equipment installed shall be compatible with the base building fire alarm system and the contractor shall warrant that any connection to the base building fire alarm system shall only occur after proper notification to Landlord and on an after-hours basis. Any disruption to the existing fire alarm system or damage as a result of contractor's work will be the sole responsibility of Tenant.

11. All additional electrical circuits added to existing electrical panels or any new circuits added to new electrical panels will be appropriately labeled as to the area or equipment serviced by the circuit in question. Any electrical panel covers removed to facilitate installation or connection shall be reattached.

12. All workers must stay in their designated work areas and the use of radios, loud music, alcoholic beverages, narcotics, or cigarette smoking is prohibited on the Project.

13. Any roof opening required at the Premises shall be performed by Landlord's roofing contractor, at Tenant's expense. Such openings shall include supporting structures, angles, curbs, flashing ducts, and vents and grills. Landlord may refuse to approve such roof opening request if it may affect the roof's structural system, may void the roof warranty, or may otherwise affect the integrity of the roofing system.

14. Any damage to any part of the Building that occurs as a result of any work performed by Tenant shall be promptly repaired by Tenant to the reasonable satisfaction of Landlord.

15. Tenant, at its expense, will promptly repair or replace, or at Landlord's election reimburse Landlord for the cost of repairing or replacing, property of Landlord that may be damaged, lost or destroyed in the performance of the work or as a result thereof.

16. Landlord will have no responsibility for or in connection with the work; Tenant, at its expense, will remedy and be responsible for all defects in the work, whether appearing during its progress or after completion and whether the same affect the Premises in particular or any of the Building in general.

17. Demolition of partitions and removal of rubbish will be done during hours first approved by Landlord in writing. All such materials are to be taken from the Premises through the delivery entrance of the Building, by the freight elevator only (if any); or, if not freight elevator exists, only through the rear entrance of the Premises.

18. Electrical and power panel balancing will be maintained by and at the expense of Tenant during the entire period of Tenant Work.

19. Tenant and its contractors will not demolish or remove any of the Building's structure.

20. Roof openings (including, supporting structures, angles, curbs, flashing, ducts, vents and grills) are subject to Landlord's prior written consent in each instance, which consent will not be unreasonably withheld. Notwithstanding the foregoing,

Landlord may refuse to give its consent to any roof opening that in Landlord's judgment exceeds the capability of the structural system. Any roof openings consented to by Landlord must be made only by Landlord's roofing contractor at Tenant's expense, or such duly licensed roofing contractor as Landlord may designate or approve in writing in its sole discretion.

21. All corridor, elevator, and lobby finishes require protection during construction.
22. There is a Two Hundred Fifty and 00/100 Dollar (\$250.00) penalty for "false alarms".

**C. Upon Completion of the Work, Tenant Shall Provide to the Landlord:**

1. Two (2) copies each of final inspection report and Certificate of Occupancy or Completion indicating that the work has been completed in accordance with the permit issued by the Building Department.
2. Two (2) copies each of "as-built" drawings indication the alterations and relocating of existing construction (mechanical, electrical, etc...) if applicable, in PDF file format or on CD's.
3. Two (2) copies each of "Final Releases" in accordance with the Florida Lien Laws from general contractor, subcontractors, vendors, and suppliers associated with the work and Contractor's Final Affidavit indicating that all subcontractors have been paid in full for the work.
4. Two (2) copies each of permit plans including approved fire sprinkler drawings.
5. Two (2) copies of all equipment operating and maintenance manuals and demonstration of any equipment that will become the property of Landlord.
6. Two (2) copies of general contractor's one (1) year warranty on labor and materials for the work.
7. Two (2) copies of all other manufacturer guarantees/warranties on the improvements. Manufacturer's guarantees/warranties shall name Landlord as beneficiary where Landlord is or shall become responsible for the repair and maintenance of the installation.
8. Two (2) original copies of a letter from the architect of record indicating that the improvements have been installed in accordance with the approved plans and specification for the Building.
9. Two (2) copies of Tenant's completed "punch list" signed off by the Architect or Tenant's representative that the work has been satisfactorily completed by the Contractor.
10. Extra attic stock materials used in the build-out such as flooring, ceiling, base, paint, wall covering, etc materials to be stored in Tenant's suite for future use.
11. Two (2) copies of an independent HVAC Test and Balance report, if applicable.
12. Two (2) original copies of the Contractor's Final Owner (Tenant) Affidavit which is necessary to terminate the Notice of Commencement once the work has been concluded and the "Notice to Terminate the Notice of Commencement" document prepared by Tenant's Contractor and recorded by the Tenant.
13. Two (2) copies of the final payment application from the general contractor and accounting of the construction contract amounts (final AIA application for payment).

**The above required documentation must be delivered to Landlord prior to the release of any payments that may be due under the Lease.**

**D. Sustainability Requirements:**

1. Tenant shall comply with any recycling requirements enacted by Landlord, including the separation of construction materials/debris, paper, cardboard, plastics and glass.

2. Tenant shall provide all contractors performing work with a copy of these Rules and Regulations and a copy of the Lien section of the Lease indicating that no liens may be placed against Landlord's interest in the Project for work performed by Tenant.



## **EXHIBIT “G”**

### **LEED Tenant Requirements**

#### **Tenant Design and Construction Guidelines - Lake Worth Casino**

The Lake Worth Casino has been designed and constructed to be environmentally friendly, incorporating the sustainable design and construction features outlined below in designing the core and shell. In addition, tenant design and construction guidelines have been prepared to assist tenants in designing and building sustainable interiors and to adopt green building practices within their individual tenant spaces. Combined, these important features and required guidelines contribute to attaining LEED-CS (Core and Shell) and LEED-CI (Commercial Interiors) certifications:

#### **Sustainable Design and Construction Features at Lake Worth Casino (LEED-CS, Core and Shell)**

##### **Water Use Reduction:**

-All common area and future tenant water fixtures shall have sensors and meet or exceed federal mandates on gallons used.  
-All landscape has been designed for minimal use of irrigation water. -Partial irrigation water is from storm run off drained from the surface parking into the Storm Drainage system in numerous areas using an ecological filtration system or bioswale

##### **Optimize Energy Performance, Lighting Power and Lighting Controls, Daylighting and Views:**

-Window head height has been set at 8-0” to maximize daylight and views, thereby reducing the amount of energy required for interior lighting.

##### **Optimize Energy Performance, HVAC, Thermal Comfort, and Controllability of Systems:**

-The Cooling Tower system facilitates energy efficient HVAC, providing individual air handling systems in each tenant space. The system also maximizes flexibility in tenant build out, minimizing construction time and reducing construction waste.  
-The high reflective roof covering lowers cooling costs by reducing “hot spots” on the Roof with SRI’s above 29 for steep sloped roof areas and above 78 for flat roofed areas.

##### **Construction Indoor Air (IAQ) Management, Indoor Chemical and Pollutant Source Control and the Elimination or Control of Environmental Tobacco Smoke:**

-The air circulation system incorporates Merv 13 filters. Interior finishes are specified at minimum volatile organic compound (VOC) levels including primers, paints, and adhesives. Cabinets and wood materials contain no added urea-formaldehyde resins to prevent off gassing. The building is a non-smoking environment.

##### **Sustainable Products and Materials:**

-Interior products and construction materials maximize recycled content. For example, door frames are regionally manufactured from post-consumer recycled content, the concrete masonry construction is composed of local aggregate and recycled content, and the steel floor system utilizes recycled steel.

#### **Tenant Design and Construction Guidelines at the Lake Worth Casino (LEED-CI, Commercial Interiors)**

The following tenant design and construction guidelines complement the features and sustainable strategies for the core and shell of the building. They are intended to assist tenants in designing and building sustainable interiors and to adopt green building practices. The interior finish specifications for Lake Worth Casino qualify typical interior finishes so that they reduce harmful off gassing, optimize indoor air quality, utilize locally produced and recycled materials where possible, protect against deforestation, and reclaim removed finishes during renovation or tenant turnover. These are the minimum standards to be used in evaluating a material finish when making selections for tenant spaces.

##### **Floor**

Carpet Tile – 18 to 20 oz. yarn weight, level loop pile, direct glue down, Materials Estimated Price Range: \$ TBA (to include allowance for General Contractor/Flooring Contractor and Freight)

Meets Green Label Plus.

Carpet is reclaimable and is reclaimed. No PVC backing.

Carpet Adhesive – does not exceed VOC limit 50.

No vinyl, reclaim unused flooring.

Floor Tile – 12” x 12”, chlorine free, contains no plasticizers, VOC free, requires no dressing or cleaning with caustic chemicals.

Installed Estimated Price (with “click” system): \$TBA.

Floor Tile Adhesive (if adhesive-free “click” system is not utilized) – does not exceed VOC limit 50.

#### **Base**

Carpet Base - 4” carpet base to match carpet in carpeted areas, meets Green Label Plus.

Cove Base – 4” cove base, no vinyl.

Materials Estimated Price Range: \$ TBA

Wood Base, Crowns, Chair rail – FSC (Forest Stewardship Council)-certified wood.

#### **Walls**

Tenant demising wall - 3 5/8” metal studs with 5/8” Type ‘X’ gypsum wall board each side (per code), gypsum does not exceed VOC limit 50.

Interior walls – 3 5/8” metal studs with 5/8” gypsum wall board each side, gypsum does not exceed VOC limit 50.

Interior Paint – (2) Two coats of latex flat over (1) coat primer. Latex flat does not exceed VOC limit 50 and primer does not exceed VOC limit 200.

#### **Doors**

Entry Doors – Provided in Shell.

Interior Doors – 3’-0” wide x 8’-0” height, wheat board core or Medex.

Alternate door as per demountable partition system specification for owner approval

#### **Door Frames**

Painted recycled hollow metal.

Semi-gloss trim paint not to exceed VOC limit 250.

Regionally manufactured, post-consumer recycled content.

Prehung FSC wood frames

#### **Door Hardware**

All exterior doors shall have the Building Standard for Common Spaces.

Interior doors shall be Schlage, AL series, Jupiter, lever type, brushed chrome finish or Equal and approved by Owner.

Locksets shall be: Passage set.

Door Stops: Typical all doors.

#### **Ceiling**

The Owner’s preference is no to have a dropped ceiling.

Ceiling height – a minimum of 8’-6” above finish floor.

Acoustical ceiling system – 2’ x 2’ tegular ceiling tiles, 60%-80% recycled content, reclamation and recyclable.

#### **Window Treatment**

Non-PVC 2” blinds, interior mount, valance and “white” finish.

Alternate wood blinds manufactured locally, FSC-certified, Low-VOC finish.

#### **Cabinetry**

All cabinets of composite wood, including core materials, must contain no added urea-formaldehyde resins. All laminate adhesives must contain no added urea-formaldehyde.

#### **Appliances**

Shall be by tenant.

Shall meet or exceed federal energy standards and be *ENERGY STAR* qualified.

#### **Plumbing Fixtures**

Toilets and urinals must have sensors.

All faucets must meet or exceed federal mandates for water consumed and be consistent with the project's current specified plumbing fixtures.

### **Lights**

-2'x4' fluorescent light fixture, CFL or LED as approved by owner

-emergency lights as required by code

-exit signs as required by code

-all lights and controls are to meet Florida Building Code (FBC) 2007 chapter 13.

-all lights will have motion sensors for controls and a maximum watts per square foot as per FBC chapter 13.

### **HVAC**

-complete air handler system and controls

- no fiberboard ductwork permitted

-this system allows for passive controls as well as individually controlled tenant spaces

-high efficiency cooling tower with individual air handler per tenant zone at 600-800sf per zone.

-condensate collection to be tied into building rainwater collection system.

## EXHIBIT "H"

### SPECIAL REQUIREMENTS

1. **Option to Renew.** Provided that Tenant has never been in default of the Lease, Tenant shall have two renewal options of five (5) years to extend the Lease Term, provided that Tenant shall provide written notice to Landlord of its election to extend the Lease Term at least nine (9) months, but not more than fifteen (15) months, prior to the expiration of the initial Lease Term, with time being of the essence as to this notification period. Landlord shall have no obligation to notify Tenant hereafter of the required notification date to renew the Lease and Tenant shall be deemed to have waived its renewal option in the event Tenant fails to notify Landlord in writing by the required notification date.

1.1 All terms and conditions of the Lease shall remain unchanged and in full force and effect upon Tenant's extension of the Lease Term except that Base Rent shall be increased as set forth in the Basic Lease Information of the Lease.

1.2 The foregoing renewal option shall no longer be available and shall automatically cease to exist, upon the occurrence of any of the following: (1) the expiration or sooner termination of the Lease, (2) the occurrence of any event of default by Tenant under the Lease, or (3) any assignment of the Lease, subletting of the Premises (or any part thereof) or other transfer within the meaning of the Assignment Article of the Lease.

2. **License to Use Outside Patio Area.** So long as the federal, state, and local laws, codes, zoning restrictions, ordinances, regulations, and safety requirements permit (provided that the failure to obtain such approvals and permits shall not be deemed to be a contingency of the effectiveness of this Lease or entitle Tenant to terminate this Lease), Landlord agrees that Tenant shall have, at such time during the Lease Term as Landlord shall designate, a revocable license to use the area adjacent to and immediately outside of the Premises, as described on **Exhibit "H-1"** attached hereto.

2.1 Tenant's use of the Patio Area complies with all laws, codes, zoning restrictions, ordinances, regulations, safety requirements, approvals, permits and licenses relating thereto.

2.2 All necessary approvals, permits, and licenses in connection with such use are obtained and paid for by Tenant (with copies furnished to Landlord) and remain in full force and effect during Tenant's use of the Patio Area.

2.3 Tenant shall install, at its sole cost and expense, all furniture and equipment (collectively, "**Furniture**") in the Patio Area. Tenant acknowledges and agrees that the furniture shall not be used or placed in the Patio Area until its design, size, color, position, and method of attachment or installation are first approved by Landlord in writing; and Tenant shall be solely responsible for any destruction, damage, theft, or vandalism of, or to, the Furniture.

2.4 Tenant hereby covenants and agrees that it shall not: (i) restrict access to the Project or pedestrian flow through the common areas outside the Patio Area; (ii) erect or place any canopy or other enclosure or covering on the Patio Area without Landlord's prior written approval; (iii) permit any music or other similar sounds to be heard in the Patio Area without Landlord's prior written approval; or (iv) permit loitering in the Patio Area by persons who are not customers of Tenant.

2.5 Tenant shall clean and keep in good repair the Patio Area and Furniture and shall remove all trash generated therefrom on a daily basis or more frequently as needed. If Tenant fails to clean or keep the Patio Area in good repair, or remove trash therefrom as required by this section, then in addition to and not in lieu of any other remedy to which Landlord may be entitled, Landlord shall have the right but not the obligation, upon 24 hours' prior written notice to Tenant, to clean, repair, or remove the trash on Tenant's behalf; and Tenant shall pay Landlord 125 percent of Landlord's cleaning, repair, or trash removal costs (including any overtime costs) immediately upon Landlord's demand therefore.

2.6 Tenant shall reimburse Landlord immediately upon Landlord's demand therefore, the cost of repairs or restoration of the common areas arising out of Tenant's use of the Patio Area or acts or negligence of Tenant, its customers, employees, agents, contractors, invitees, or licensees.

2.7 Tenant agrees to pay to the landlord \$15.00 per square foot per annum for use of the Patio Area which shall be added to the base rent and subject to all annual escalation clauses contained in this lease document including lease renewal options.

2.8 Tenant's right granted herein to use the Patio Area is neither transferable nor assignable independently from its leasehold interest.

2.9 Landlord shall have no liability to Tenant if it is unable to use the Patio Area for any reason other than Landlord's negligence or willful misconduct.

2.10 Landlord shall be entitled, in its sole and absolute discretion, to revoke Tenant's license to use the Patio Area, upon 30 days' prior written notice to Tenant and to remove Tenant therefrom; and Prior to the revocation of such license, Tenant, at its sole cost and expense, shall remove its Furniture from the Patio Area and restore the Patio Area to its condition prior to Tenant's use thereof, ordinary wear and tear excepted. If Tenant fails to do so, then Landlord may remove Tenant's Furniture and restore the Patio Area, and Tenant shall pay the cost of such removal and restoration to Landlord, upon demand.

2.11 Should Landlord require the use of any portion of the Patio Area in connection with special events at the Project, operation or maintenance of the Project, construction of Tenant improvements or moving in of new tenants to the Project, or for any other purpose or use, Tenant shall remove its Furniture and other personal property from the Patio Area for such periods of time as Landlord shall designate in order to accommodate such uses.

## **EXHIBIT "H-1"**

### **Description of Patio Area**

The Patio areas will be laid out based on the amount of footage needed for walk thru traffic. The café seating must allow for 4' for walk thru traffic and cannot be blocked.

**EXHIBIT "I"**

**CITY OF LAKE WORTH**

**COMMENCEMENT DATE LETTER**

\_\_\_\_\_, 20\_\_

TENANT  
Maxplan Enterprises, Inc.,  
Unit #3 and #4  
Lake Worth Casino Building

Re: Lease dated \_\_\_\_\_, 20\_\_ by and between City of Lake Worth, as Landlord, and Maxplan Enterprises, Inc. (Kilwin's Chocolates and ice Cream, as Tenant (the "Lease"))

Dear \_\_\_\_\_:

This will confirm that:

1. All Landlord's Work required under the terms of this Lease have been satisfactorily performed in accordance with the Lease, and as of the date of this notice Tenant has inspected the Premises and accepted the Premises "as-is", "where-is";
2. The Commencement Date of the Lease Term is \_\_\_\_\_; and
3. The Rent Commencement Date is \_\_\_\_\_ and the expiration date of the Lease Term is \_\_\_\_\_.

**ACCEPTED AND AGREED:**

**TENANT:**

Maxplan Enterprises, Inc.  
a Florida Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(CORPORATE SEAL)

Date Executed: \_\_\_\_\_

**LANDLORD:**

CITY OF LAKE WORTH,  
a municipal corporation under the laws of the State of Florida

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(SEAL)

Date Executed: \_\_\_\_\_

**EXHIBIT "J"**

**SIGN CRITERIA**

Signage must comply with City ordinances and final approval from Landlord.



## EXHIBIT "K"

### PROHIBITED/RESTRICTED USES

#### Specific Leases:

#### General Restrictions:

Adult book store or facility selling, renting or displaying pornographic or adult books, literature, magazines, films, pictures, video discs, videotapes or other paraphernalia or merchandise (materials shall be considered "adult" or "pornographic" for such purpose if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality), provided that the sale, rental or display of such items as an incidental part of a permitted business (as used above, the term "incidental" means, with respect to any national or regional video store chain, any sale or rental of such material, and with respect to other tenants, the sale of such materials from not more than 10% of the sales area of such business and so as to constitute less than ten percent 10% of the gross sales of such business) shall be permitted.

Auction or bankruptcy sale, unless bona fide and permitted by law

Auction house

Automobile body shop

Automobile dealership or used car lot

Automotive repairs and service

Barbecue stands or barbecue pits

Bingo parlor or similar games of chance, except as incidental retail sale such as lottery tickets and other items commonly sold in retail establishments

Boat sale or display

Bottling of beverages

Bowling alley

Brothel

Cabinet working and carpentry shops

Car wash

Carnival

Catering hall

Cocktail lounge, pub or bar, except as incidental to a restaurant

Cold storage warehouse and pre-cooling plants

Cult meeting place

Dance hall

Discotheque or nightclub

Food stamp center

Feed, hay and other livestock supplies

Fertilizer stores

Firing range

Flea market

Funeral establishment

Glass installation

Government offices

Gun store

Head shop

House of worship

Junk yard

Labor camp

Leather goods manufacturing, excluding tanning

Locksmith shops, sharpening and grinding shops

Lumber yards

Manufacturing use—contractors' plants and storage yards  
Massage parlor, except a lawful business providing massages only by a licensed massage therapist or a physiotherapist is allowable  
Meeting hall  
Mobile home park  
Mobile home sales  
Off-track betting parlor  
Pawn shop  
Place of public assembly  
Poultry markets and commercial chicken hatcheries  
Psychic  
Railroad, motor truck and water freight and passenger stations  
Religious organization  
Refinery  
Sale, repair, service or storage of trucks and/or trailers and recreational vehicles  
Second-hand stores for the disposal of furniture, fixture and tools  
Shooting gallery  
Skating rink  
Stockyard  
Theater  
Tire vulcanizing and retreading or sale of used tires  
Unemployment agency  
Upholstery and furniture repairs  
Warehouse use  
Wood burning for cooking  
Any use prohibited by recorded restrictions, covenants or conditions affecting the Project as of the Date of this Lease, if any.  
Any restrictions or conditions set forth in the Zoning and Land Use Codes applicable to the Project.