

SHOP LEASE FOR  
SHOPS IN THE CENTRAL BUSINESS DISTRICT PARKING GARAGE  
Shop 108 & 112

THIS IS the Shop Lease (the "Lease") for the spaces commonly referred to as Shops 108 & 112 in the Central Business District Parking Garage, entered into on the 7th day of November, 2017, by and between:

**THE CITY OF FORT LAUDERDALE**, a municipal corporation of the State of Florida, referred to as "**LESSOR**" or "**CITY**",

and

**E & J DINING, INC. d/b/a MR. NICK'S SUB SHOPPE**, a Florida corporation, whose principal address is 901 S. Andrews Avenue, Fort Lauderdale, FL 33316 referred to as "**LESSEE**".

WHEREAS, CITY is the fee simple owner of that certain parcel of improved land commonly referred to as the Central Business District Parking Garage (the "**Project**"), consisting of a multi-level parking garage (the "**Garage**"), and ground-floor commercial space (collectively, the "**Shops**" or individually a "**Shop**"); and

WHEREAS, LESSEE is desirous of leasing from the CITY, and the CITY is desirous of leasing to LESSEE, Shop 108 and Shop 112 in the Shops in the Project for an initial term of five (5) years, with two (2) five (5) year options to renew, for use as a sub and sandwich shop; and

WHEREAS, Leasing of Shop 108 and Shop 112 by CITY to LESSEE serves a valid municipal purpose.

WHEREAS, pursuant to Section 8.12 of the Charter of the City of Fort Lauderdale, the CITY has negotiated the underlying Lease of a portion of the City-owned Project; and

WHEREAS, at its regular meeting of November 7, 2017, the City Commission of the CITY authorized execution of a Lease for Shops No. 108 and 112 of the Project with the LESSEE; and

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

**1. Recitals.** LESSOR and LESSEE acknowledge that the foregoing Recitals are true and

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correct.

## **1.1 Leased Premises.**

(a) LESSOR leases to LESSEE the following described Leased Premises:

Shop No. 108 and 112 of the Shops in the Project, consisting of approximately 1,432 square feet, and as shown on Exhibit "A" attached to and incorporated in this Lease. (hereinafter the "Lease Premises")

(b) The Leased Premises are being leased subject to compliance by LESSEE with all laws, ordinances, rules and regulations promulgated by any governmental agencies and all subdivisions of the State of Florida, including LESSOR, now in effect or which may hereafter be enacted or promulgated. LESSOR agrees to use its best efforts to assist LESSEE in securing compliance with all applicable building codes as they may pertain to the structure of the Leased Premises and as intended to be utilized by LESSEE.

**2. TERM.** The Commencement Date of this Lease Agreement shall be **November 8, 2017** and ending **November 7, 2022**. Lessee shall have the option to extend the term of this Lease for two additional terms of five (5) years. No earlier than twelve (12) months nor later than nine (9) months prior to the expiration of the original term or the applicable option term, Lessee shall notify the City Manager, in writing, of its intention to exercise such option. Such option shall not be applicable if, at the time of the exercise, or at any time thereafter prior to the expiration of the original term, Lessee is in default of any of its obligations under this Lease.

**3. PURPOSE.** The Leased Premises are leased to LESSEE for use as a restaurant. In the event the Leased Premises are no longer used exclusively for that purpose, LESSOR reserves the right to cancel this Lease.

**4. MUTUAL REPRESENTATIONS AND WARRANTIES.** The parties mutually represent, warrant, and disclose to each other the following:

- (a) **Municipality.** The City is a municipal corporation organized and existing pursuant to the Constitution and Laws of the State of Florida.
- (b) **Disclosure.** The Lessee acknowledges that the City has made full disclosure of all facts set forth above. The Lessee acknowledges that it has made, or had ample opportunity to make, a thorough and complete inspection of the Leased Premises and is fully advised of its condition, services provided, nature of construction, and state of repair. Lessee fully accepts the Leased Premises in its present condition.
- (c) **Authority.** All steps, acts, and conditions required by the Charter of the City as a condition precedent to the execution of this Lease, have been satisfied, and the

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City has full authority to enter into this Lease.

**5. GENERAL COVENANTS.** The following are general obligations and covenants of the parties, their successors and assigns:

- (a) **Compliance with regulations of public bodies.** LESSEE further covenants and agrees that it shall, at its own cost and expense, make such improvements on the Leased Premises, perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over the Leased Premises, in order to comply with the requirements relating to sanitation, fire hazard, zoning requirements, historic designation regulations, environmental requirements, building code requirements, City of Fort Lauderdale Engineering Standards, Americans With Disabilities Act requirements and other similar requirements designed to protect the public and worker environments. LESSEE shall not use the Leased Premises, nor shall the Leased Premises suffer any such use during the Term of this Lease, which is in violation of any of the statutes, laws, ordinances, rules or regulations of the federal, state, county, municipal government or any other governmental authority having jurisdiction over the Leased Premises.
- (b) **Indemnification against claims.**
  - (1) Lessee shall protect, defend, indemnify and hold harmless the City, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses including attorney's fees or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of Lessee under this Lease, conditions contained therein, the location, construction, repair, maintenance use or occupancy of the Leased Premises or improvements located thereon, or the breach or default by Lessee of any covenant or provision of this Lease except for any occurrence arising out of or resulting from the intentional torts or gross negligence of the CITY, its officers, agents and employees.
  - (2) Without limiting the foregoing, any and all such claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation or restoration of the Leased Premises, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity.
  - (3) Lessee further agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and agrees to bear all other costs and expenses related thereto even if the claim is groundless,

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false or fraudulent and if called upon by the City, Lessee shall assume and defend not only itself but also the City in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to City, provided that the City (exercisable by the CITY's Risk Manager) shall retain the right to select counsel of its own choosing.

- (c) **No liens created.** Each party covenants and agrees that it has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title, and interest of the other party in and to the property covered by this Lease and that no third person shall ever be entitled to any lien, directly or indirectly, derived through or under the other party, or its agents or servants, or on account of any act or omission of said other party. All persons contracting with the Lessee, or furnishing materials or labor to said Lessee, or to its agents or servants, as well as all persons whomsoever, shall be bound by this provision of this Lease. Should any such lien be filed, Lessee shall discharge the same within thirty days thereafter, by paying the same or by filing a bond, or otherwise, as permitted by law. Lessee shall not be deemed to be the agent of the City so as to confer upon a laborer bestowing labor upon the Leased Premises, or upon a materialman who furnishes material incorporated in the construction of improvements upon the Leased Premises, a construction lien upon the City's estate under the provisions of Chapter 713, Florida Statutes, or any subsequent revisions thereof. Lessee shall have no power or authority to incur any indebtedness giving a right to a lien of any kind or character upon the right, title or interest of City in and to the Leased Premises, and no person shall ever be entitled to any lien, directly or indirectly derived through or under the Lessee, or its agents, servants, employees, contractors or officers or on account of any act or omission of said Lessee as to the Leased Premises. These provisions shall be deemed a notice under Section 713.10(1), Florida Statutes of the "non-liability" of the City.

(d) **Operating costs.**

- (1) LESSEE agrees to contract directly for and promptly to pay when due to the authority or entity charged with the collection thereof all operating, maintenance and servicing charges and costs, including those associated with telephone, gas, electricity, garbage, trash or refuse removal services and all other costs and expenses incurred in the use and operation of the Leased Premises, except as expressly provided in subsections (2) and (3) hereof.
- (2) The City shall provide water and sewer services to the Leased Premises without charge, provided, however, that LESSEE shall promptly repair any leakages inside the Leased Premises.
- (3) The LESSEE agrees to obtain at its expense all permits and licenses and

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pays all fees and charges that may be required by any governmental unit, including the LESSOR, for the Use of the Leased Premises. Upon the LESSOR's request, at reasonable intervals, LESSEE shall promptly furnish to the LESSOR evidence satisfactory to the LESSOR showing LESSEE's compliance with its obligations under this section.

- (4) LESSEE shall have the right to audit, inspect and copy the books and records of LESSOR with respect to any cost or item which is passed through to LESSEE, upon ten (10) days advance, written notice by LESSEE to LESSOR. LESSOR shall cooperate with LESSEE in providing LESSEE reasonable access to its books and records during normal business hours for this purpose. If the results of the audit show an overcharge to LESSEE of more than two percent (2%) of the actual amount owed by LESSEE, then LESSOR shall pay the reasonable costs of such audit, and LESSOR shall credit or refund to LESSEE any overcharge of such items as discovered by the audit within thirty (30) days of completion of such audit.
- (e) **Insolvency of LESSEE.** Should the LESSEE, at any time during the term of this Lease, suffer or permit to be filed against it a composition or arrangement proceeding under state law, or make any assignment for the benefit of its creditors, or should a receiver be appointed for the LESSEE 's property because of the LESSEE 's insolvency and the appointment not vacated within thirty (30) days thereafter, or should the LESSEE 's leasehold interest be levied on and the lien not discharged within thirty (30) days after levy has been made, or should the LESSEE fail to promptly make the necessary returns and reports required of it by state and federal law, or should the LESSEE fail promptly to comply with all governmental regulations, both state and federal, and should such failure in any manner jeopardize the rights of the LESSOR, then, and in such event, and upon the happening of any of those events, the LESSOR shall have the right, at its election, to consider the same a default on the part of the LESSEE of the terms and provisions of this Lease, and, in the event of such default not being cured by the LESSEE within a period of thirty (30) days from the date of the giving by the LESSOR of written notice to the LESSEE of the existence of such default, the City shall have the option of declaring this Lease terminated and the interest of the LESSEE ended, or the LESSOR may exercise any other options as prescribed by law or which appear in this Lease. The pendency of arrangement proceedings to which the LESSEE shall be a party shall not preclude the LESSOR from exercising the options conferred upon it. In the event the LESSEE, or receiver of the LESSEE 's property, shall seek an injunction against the LESSOR's exercise of the options conferred, such action on the part of the LESSEE, or receiver, shall automatically terminate this Lease as of the date of the making of such application. In the event a court having subject matter jurisdiction over the Leased Premises shall enjoin the LESSOR from exercising the options conferred in this Lease, such injunction shall automatically terminate this Lease.

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- (f) **Bankruptcy of LESSEE.** Should the LESSEE, at any time during the term of this Lease, suffer or permit an involuntary or voluntary petition in bankruptcy to be filed against it, or institute a composition or an arrangement proceeding under Chapters 7, 11, or 13 of the Bankruptcy Code or as they may be amended from time to time, the LESSEE agrees to provide adequate protection and adequate assurance of future performance to the City which will include but not be limited to the following:
- (1) All monetary and non-monetary defaults existing prior to the institution of the filing of the bankruptcy petition shall be cured within ten days of written demand made upon the LESSEE by the City which will include all costs and attorneys' fees expended to the date of the curing of the default; and
  - (2) An additional two (2) months of advance rental will be required as additional security of future performance which must be paid to the LESSOR within ten (10) days of the filing of the petition in bankruptcy; and
  - (3) All obligations of the LESSEE must be performed in accordance with the terms of the Lease.
- (h) **Litigation Venue.** The parties waive the privilege of venue and agree that all litigation between them in the state courts shall take place in Broward County, Florida, and that all litigation between them in the federal courts shall take place in the Southern District in and for the State of Florida.
- (i) **Property Taxes.** In addition to Base Rent (as defined below), LESSEE shall be liable to the LESSOR for the proportionate share of ad valorem real property taxes and assessments attributable to the Leased Premises (the "Taxes") for each calendar year or portion thereof, commencing on the Rent Commencement Date (as defined herein) and ending upon the termination date of this Lease. Said Taxes are to be prorated for any partial Lease Year occurring during the period in which the taxing authority assesses Taxes. The LESSOR shall bill LESSEE monthly for the estimated amount of Taxes owed by LESSEE, based upon the latest actual property taxes assessed. LESSOR shall pay all Taxes levied against the Project before the same become delinquent and shall take advantage of any and all available discounts, abatement, or credits for early payment of same, and LESSEE shall only be obligated to reimburse LESSOR for the discounted Taxes. In no event shall LESSEE be obligated to pay any penalties or interest associated with the late payment of Taxes. In the event that LESSEE's proportionate share of the actual Taxes paid by the LESSOR to Broward County exceed the amount collected from LESSEE, the LESSEE shall remit the balance owed to the LESSOR within thirty (30) days of receiving such notice. In the event that the actual Taxes paid by the LESSOR are less than the amount paid by LESSEE, the LESSEE shall receive a credit for the amount overpaid by LESSEE against amounts next due and payable by LESSEE to

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LESSOR hereunder. As used in this Lease, the term "proportionate share" shall be equal to a fraction, the numerator of which shall be the number of square feet of leasable floor area in the Leased Premises and the denominator of which shall be the number of square feet of the leasable floor area in the Shops (whether leased or occupied or not).

**(j) Repairs and Maintenance.**

**(1) Upkeep.** LESSEE agrees at its expense to keep and maintain the interior and the exterior painted portions of the Leased Premises, including the surface of all demising walls, plate glass, doors, furnishings, fixtures, utility systems located in or exclusively serving the Leased Premises and personal property, in a good state of repair, clean and in first-class condition. The LESSOR is responsible and agrees that it shall maintain, or cause to be maintained, the Garage and all common areas in the Project in good order and repair. As used in this Lease, the term "common areas" consist of all parking areas, landscaped areas, streets, sidewalks, driveways, vehicle travelways,, and other facilities available for joint use, including, but not limited to, sidewalks, stairwells and elevators, all as they may from time to time exist and be available to all tenants of the Project, their employees, agents, customers, licensees and invitees

**(2) Repairs; Modifications.** LESSEE agrees at its expense to make all repairs and maintenance to the interior (as measured from the exterior surface of the outside wall of the Leased Premises, inward), non-structural portions of the Leased Premises, including electrical, plumbing, non-loadbearing walls, and the water, sewer and sprinkler lines and fixtures from the point of connection to the Leased Premises up to the (i) exterior surface of the outside wall of the Leased Premises, unless repairs for any of the foregoing items are necessitated due to acts or omissions of LESSOR, its agents, or employees. LESSOR agrees, at its expense without reimbursement or contribution by LESSEE, except as provided in Section 5(d)(1) above, to keep and maintain in good condition and repair in compliance with such laws, codes, regulations and ordinances as required by regulations of governing authorities, and replace if necessary, the (i) exterior and the structural components of the Leased Premises (floor slabs, masonry walls, foundation, roof [including interior ceiling if damaged by leakage], and loadbearing walls), (ii) exterior paint, (iii) the plumbing system (but not the fixtures) to the exterior surface of the outside wall of the Leased Premises, (iv) that portion of the electrical system, which is not the responsibility of Florida Power & Light Company, to the exterior surface of the outside wall of the Leased Premises, and (v) the water, sewer and sprinkler mains and connections up to the exterior surface of the outside wall of the Leased Premises, unless repairs for any of the foregoing items are necessitated due to acts or omissions of LESSEE, its agents, employees, patrons, licensees, or invitees. Any modification of any utility system (telephone, telecommunication lines, water, gas, electrical, sewer, lighting, air-conditioning and heating) desired by LESSEE for incorporation into the Leased Premises shall first be reviewed by the City Engineer of the CITY, in his proprietary

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capacity and not in his governmental capacity and approved by him in writing before any modification occurs. Any modification shall be considered a "fixture" as defined in this Lease. The LESSOR shall be responsible for maintenance and repair of the entire air-conditioning and heating system inside the Leased Premises at its own expense.

(3) **Surrender.** The LESSEE at its expense agrees to deliver to the City upon the termination of this Lease the entire Leased Premises including all improvements, in a good state of repair and in first class condition, ordinary wear and tear excepted.

(k) **Quiet enjoyment.** The City covenants, warrants and agrees that LESSEE shall be entitled peacefully to enjoy, to occupy and to possess the Leased Premises throughout the Lease term without interference, hindrance or molestation.

(l) **Receipts.** LESSEE shall, upon written demand by the LESSOR, obtain and deliver to the LESSOR receipts, satisfactions and discharges showing the payment of any obligation required of LESSEE by this Lease.

**6. EASEMENTS.** LESSEE shall convey to the City any easements in and through the Leased Premises that may be required for the installation of utilities or any other purposes deemed necessary by the City. In the event there is a loss of beneficial use or impairment of beneficial use resulting from the granting of an easement, proper adjustment of the rent hereinafter required shall be made at the time of the conveyance of such easement by LESSEE to the City.

**7. ZONING.** LESSEE hereby accepts the existing zoning of the Leased Premises, which the City represents and warrants to be Regional Activity Center – City Center Zoning District ("RAC-CC"), which is compatible and consistent with the usages and purposes contemplated in this Lease. LESSEE further accepts and specifically agrees to abide by all existing zoning ordinances of the City of Fort Lauderdale insofar as they are applicable to the Leased Premises.

**8. POSSESSION.** [This Paragraph is intentionally deleted.]

**9. RENTAL.**

(a) LESSEE agrees promptly to pay to the LESSOR as "**Base Rent**" for the occupancy of the Leased Premises during the first Lease Year (as defined below) the sum of **\$34,368**, exclusive of sales tax, payable in equal monthly installments of **\$2,864**, in advance and without demand on the first day of each month to which applicable. Rents shall be made payable to the CITY OF FORT LAUDERDALE and delivered to 100 N. Andrews Avenue, Fort Lauderdale, FL 33301 or to such other address as may be designated from time to time by the City's Assistant to the City Manager. The Base Rent and all Additional Rent (defined below) does not include Florida State sales tax on commercial tenancies, the payment of which is the responsibility of the

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LESSEE and the same will be paid to the LESSOR at the place and in the manner and on the same date as required for payment of Base Rent. In addition to the Base Rent due hereunder, all payments that LESSEE is obligated to make under this Lease shall be considered "**Additional Rent**" regardless of whether the payments are so designated. All Additional Rents, unless previously paid, are due and payable within thirty (30) days after rendition of a statement therefor.

The Base Rent shall begin to accrue on the date (the "**Rent Commencement Date**") which is four (4) months after the Commencement Date. That period of time between the Commencement Date and the Rent Commencement Date is hereinafter referred to as the "**Free Rent Period**". During the Free Rent Period, LESSEE shall be responsible for paying any Additional Rents that fall due.

**(b) Security Deposit.** On the Commencement Date, LESSEE shall pay to LESSOR the sum of **\$5,728.00** as and in the nature of a "**Security Deposit**" under this Lease, subject to increase as provided below:

- (1) If the option to extend the term is not timely exercised and granted, and the Lease terminates, or the Lease is terminated prior to expiration of the original term, the City shall inspect the Leased Premises and, if applicable, notify LESSEE in writing that the City intends to impose a claim upon all or any portion of the security deposit, and list reasons for such claim. LESSEE shall have fifteen (15) days to object in writing to the claim. If no objection is received after that time expires, the City shall deduct the amount claimed and return the balance of the security deposit to LESSEE, if any balance remains, within fifteen (15) days after the time for submitting a written objection by LESSEE expired.
- (2) If the option to extend the term is timely exercised and granted, within fifteen days prior to the commencement of the extended lease term, LESSEE shall pay to the City an additional sum of money which is equal to two (2) months of the new applicable monthly rental amount, less the amount of the existing security deposit, plus all applicable taxes, which sum shall be held by the City as the extended term deposit, as and for the last month rental and security deposit for such extended term. Thirty (30) days prior to the expiration of the extended term, the parties agree that the extended term deposit shall be disbursed in the same manner as the original term deposit, as set forth immediately above. This procedure shall apply to all the option terms exercised by LESSEE.
- (3) If LESSEE defaults in one or more of its obligations under this Lease at any time during the initial term or any extended term, and does not remedy and cure such default in accordance with the terms of this Lease, the parties agree that the City shall retain any deposit monies held by it at the time the lease is terminated as and for its liquidated damages, since the parties acknowledge that, at the time of the execution of this Lease, actual damages

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attributable to default are not ascertainable or otherwise susceptible to calculation. The provisions of this subparagraph shall not, however, prevent the City from exercising any or all other remedies or rights it has under this Lease, including the right to seek actual damages when such damages are ascertainable or otherwise susceptible to calculation.

**(c) Rent Adjustments.** To the extent the annual rent is to be adjusted, such annual rents shall be increased each Lease Year by fixed increases at the rate of three (3%) percent. Therefore, commencing with the first month of the second lease year and each year thereafter during the term of this Lease, the annual Base Rent shall be adjusted to be 103% of the prior year's Base Rent, cumulatively.

**(d) Late Fee.** LESSEE recognizes that late payment of any Rent or other sum due hereunder from LESSEE to City will result in administrative expense to City, the extent of which additional expense is extremely difficult and economically impractical to ascertain. LESSEE therefore agrees that if Rent or any other payment due hereunder from LESSEE to City remains unpaid for a period of fifteen (15) days after the same is due, the amount of such unpaid Rent or other payment shall be increased by a late charge to be paid to the City by LESSEE in an amount equal to six percent (6%) per month of the amount of the delinquent Rent or other payment. The amount of the late charge to be paid to City by LESSEE for any particular month shall be computed on the aggregate amount of delinquent Rent and other payments, including all accrued late charges then outstanding. LESSEE agrees that such amount is a reasonable estimate of the loss and expense to be suffered by City as a result of such late payment by LESSEE and may be charged by City to defray such loss and expense. The terms of this paragraph in no way relieves LESSEE of the obligation to pay Rent or other payments on or before the date on which they are due, nor do the terms of this paragraph in any way affect City's remedies under this Lease in the event said Rent or other payment is unpaid after the date due.

**10. INSPECTION OF LEASED PREMISES.** The City or its agents shall have the right to enter the Leased Premises at all reasonable hours for the purpose of inspecting the same, or for any other purposes not inconsistent with the terms of this Lease.

**11. IMPROVEMENTS BY LESSEE.**

**(a)** LESSEE shall not make any alterations, improvements, additions or modifications to the Leased Premises without first having obtained the written approval of the City Engineer and the City's Department of Sustainable Development, Building Service Division and Fire Department. LESSEE shall submit plans and specifications of any proposed improvements at least thirty days in advance of the intended date of installation or construction. No variations from approved plans shall be permitted without the approvals set forth above.

**(b)** LESSEE acknowledges that Engineering Standards of the City of Fort Lauderdale

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(hereinafter, collectively "Standards") shall govern all interior motifs, window displays, and signage. In cases in which ordinances of the City are less restrictive than the Standards, the Standards shall control. LESSEE shall strictly observe all sign requirements, whether imposed by ordinance or the Standards, when applicable.

(c) Any construction or installation performed by LESSEE shall be free and clear of any and all encumbrances whatsoever. LESSEE shall deliver to the City a written, detailed statement of the costs of construction or installation of any improvements and shall furnish proof, by affidavit or otherwise, that all claims, liabilities, and obligations incurred in the construction or installation of improvements, and costs associated with furnishings, fixtures and equipment necessary or incidental to the business use of the Leased Premises, have been paid in full.

(d) In the first twelve (12) months after the Effective Date of this lease, LESSEE shall undertake and complete the following improvements ("Lessee Improvements") to the Leased Premises at a cost of not less than \$30,000. LESSEE shall present to the LESSOR proof of improvements and accurate accounting of the items listed below:

1. Re-design the restaurant with the following:

- a. Installation of exhaust hood
- b. Removal of service counter
- c. Removal and replacement of signage
- d. Repair of walk-in cooler
- e. Repair ceiling tiles and support structure
- f. Installation of sinks and fountain
- g. Paint, remodel, decorate
- h. Installation of commercial grill, oven, and deep fryer
- i. Installation of sandwich prep cold bar
- j. Installation of stand-up freezer and single door refrigeration for service line
- k. Installation of fire suppression system for both hood areas

(e) The failure of LESSEE to comply with any term, condition or covenant of this paragraph shall constitute a material breach and default under this Lease, entitling the City to all remedies, rights and privileges granted to it in this Lease and by law.

**12. GENERAL OBLIGATIONS OF LESSEE.**

(a) All garbage or trash generated by or from use of the Leased Premises by LESSEE shall be stored in a place or places designated by the CITY for removal.

(b) LESSEE shall not place or distribute any advertising materials, merchandise, or any item whatsoever in the adjacent mall area or in, on or about the Parking Garage structure, including vehicles parked therein, without the express written consent of

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the City Manager of the City.

- (c) LESSEE shall not use, keep, or permit to be used or kept, any noxious gas or substance or do anything or create any noise or cause any vibration whatsoever which, in the opinion of the City, is objectionable or offensive to other tenants of the Shops, or users of the Parking Garage facility, or in any manner constitutes a nuisance, whether public or private.
- (d) The Leased Premises shall not be used for lodging or sleeping purposes at any time.
- (e) No illumination of the Leased Premises other than by electric light shall be permitted.
- (f) The LESSEE shall promptly obtain any and all permits, licenses and fees required by any governmental agency having jurisdiction.
- (g) LESSEE shall be responsible for security of the Leased Premises.
- (h) LESSEE shall comply in all particulars with all pertinent rules, regulations, laws, codes and ordinances duly and legally promulgated by any governmental authority having jurisdiction over the Leased Premises, and the Leased Premises shall not be used for any improper or immoral purposes. LESSEE agrees, at its sole cost and expense, to comply with all laws, ordinances, orders and regulations regarding the interior, non-structural portions of the Leased Premises and Leasehold Improvements. Notwithstanding anything herein to the contrary, nothing in this Lease shall be construed to obligate LESSEE to remediate any hazardous materials located in the Leased Premises or the Project unless the acts of LESSEE or its employees cause the presence of such hazardous materials.

**13. CONDEMNATION.** LESSEE waives any claim of loss or damage, and any right or claim to any part of an award that results from the exercise of eminent domain power of any governmental body, regardless of whether the loss or damage arise because of condemnation of all or part of the Leased Premises. If any eminent domain power that is exercised interferes with LESSEE's use of the Leased Premises, the rentals under this Lease will be proportionately abated. If a partial taking or condemnation renders the Leased Premises unsuitable for LESSEE's purposes under this Lease, the Lease Term will cease as of the date the condemning authority requires possession. If an eminent domain power is exercised, LESSEE has no claim against LESSOR for the value of an unexpired term of this Lease.

**14. ACCELERATION; GRACE PERIOD; DEFAULT.**

- (a) **Time of the essence.** The LESSEE agrees promptly to perform, comply with and abide by this Lease, and agrees that time of payment and of performance are of the very nature and essence hereof.
- (b) **Default in rent; grace period.** The LESSEE shall have a grace period of fifteen (15) days within which to pay any and all sums of rent due hereunder, which sums

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shall be due and payable without notice or demand, which LESSEE hereby waives. If any of said sums of money herein required to be paid by the LESSEE to the City shall remain unpaid for such period of fifteen (15) days, then the City, acting through its City Manager, shall have the following options and rights:

- (1) **Total acceleration.** To accelerate the maturity of the rent installments for the balance of the term. This option shall be exercised by an instrument in writing signed by the City Manager on behalf of the City and transmitted to the LESSEE notifying it of the intention of the City to declare all future rent installments for the balance of the lease term presently due and payable.
- (2) **Partial acceleration.** In lieu of the option in subparagraph (1 ) above, the City may, in like manner, declare as presently due and payable the unpaid rent installments for such period of years as may be fixed in the City's said notice to the LESSEE. The exercise of this option shall not be construed as a splitting of a cause of action, nor shall it alter or affect the obligations of the LESSEE to pay rent under the terms of this Lease for the period unaffected by said notice.

(c) **Remedies.** In the event of any such material default by LESSEE after the expiration of all applicable notice and cure periods, LESSOR shall be entitled to all the following remedies:

- (1) LESSOR may terminate this Lease by delivering written notice of termination to LESSEE, in which event LESSEE shall immediately surrender the Leased Premises to LESSOR; provided that, if LESSEE fails to so surrender the Leased Premises, then LESSOR may, without prejudice to any other remedy it has for possession of the Leased Premises or arrearages in Rent or other damages, re-enter and take possession of the Leased Premises and expel or remove LESSEE and any other person occupying the Leased Premises, or any part thereof, in accordance with applicable law.
- (2) LESSOR may re-enter and take possession of the Leased Premises, without terminating the Lease, in accordance with applicable law, and relet the Leased Premises, applying the Rent received to the account of LESSEE; provided that, if LESSOR so re-enters and takes possession of the Leased Premises, as set forth above, LESSOR agrees to use reasonable efforts to relet the Leased Premises for a commercially reasonable rate at the time of such reletting. No reletting by LESSOR is considered to be for LESSOR's own account unless LESSOR has notified LESSEE in writing that this Lease has been terminated. In addition, no such reletting is to be considered an acceptance of LESSEE's surrender of the Leased Premises unless LESSOR so notifies LESSEE in writing.
- (3) LESSOR may re-enter the Leased Premises, without terminating the Lease or being liable for any damages, whether caused by the negligence of LESSOR or

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otherwise, and do whatever LESSEE is obligated to do under this Lease on LESSEE's behalf, in which event LESSEE shall pay to LESSOR, within thirty (30) days after LESSOR's demand for such reimbursement (which demand shall be accompanied by a reasonably detailed description of all such claimed costs and expenses), the reasonable expenses paid by LESSOR in satisfying LESSEE's obligations under this Lease.

(d) **Default in other provisions.** If the LESSEE shall default in the performance of any other term or condition of this Lease (except the payment of rent), then the City, acting through its City Manager, shall send to the LESSEE a written notice of default, specifying the nature of the default, and the LESSEE shall, within thirty (30) days after the date of said notice, cure, and remedy said default, whereupon this Lease shall continue as before.

(e) **Right to Cure Defaults.** Should LESSOR fail or refuse to perform any of its obligations under this Lease, and shall not cure such default within thirty (30) days after notice thereof from LESSEE (or if such default cannot be reasonably cured within thirty (30) days, shall have failed within thirty (30) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such default) (provided, however, that, in an emergency, LESSEE shall be required to give LESSOR only such notice as shall be practicable under the circumstances) or if LESSOR otherwise defaults under the terms of this Lease, LESSEE shall have the right, in addition to all rights and remedies available to it at law and/or in equity, but not the obligation, to perform such obligations, or any of them, on LESSOR's behalf. In such event, LESSOR shall reimburse LESSEE for the reasonable cost and expense incurred by LESSEE in so doing, within thirty (30) days after LESSEE's demand for such reimbursement, which demand shall be accompanied by a reasonably detailed description of all such claimed costs and expenses, failing which, LESSEE may, at its election, offset such owed amounts against subsequent installments of monthly Rent then becoming due and payable under this Lease.

## 15. OWNERSHIP AT TERMINATION.

(a) For the purpose of this Paragraph 15,

(1) the term "**Trade Fixture**" shall mean an article or articles which is a chattel and which may or may not have been physically annexed or affixed to the Leased Premises by LESSEE or LESSOR and capable of being removed without structural or functional damage to the Leased Premises. A Trade Fixture does not become part of the Leased Premises, and,

(2) the term "**Fixture**" shall mean an article or articles which is or are a chattel(s) and which have been physically annexed or affixed to the Leased Premises by LESSEE or LESSOR and is not capable of being removed without structure or functional damage to the Leased

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Premises. A Fixture becomes part of the Leased Premises.

- (b) Any Trade Fixtures, business equipment, inventory, trademarked items, signs, decorative soffit, counters, shelving, showcases, mirrors and other removable personal property installed in or on the Leased Premises by LESSEE at its expense ("**Personal Property**"), shall remain the property of LESSEE. LESSOR agrees that LESSEE shall have the right, at any time or from time to time, to remove any and all of Personal Property. LESSEE at its expense shall immediately repair any damage occasioned by the removal of Personal Property and upon expiration or earlier termination of this Lease, shall leave the Leased Premises in a neat and clean condition, free of debris, normal wear and tear and damage by casualty excepted.
- (c) All improvements, structures and Fixtures of every kind now existing or hereafter erected, installed or placed within the Leased Premises, with the exception of Personal Property and any specially designed and fabricated Fixtures employed by LESSEE, shall, at the end of the Term, whether upon expiration or earlier termination, be and become the property of the LESSOR and shall be left in good condition and repair, ordinary wear and tear and damage by casualty excepted

**17. INSURANCE.** LESSEE shall indemnify and save the City harmless from all liability or damages of any nature arising out of any use of the Leased Premises by LESSEE, including, but not limited to, its agents, employees, licensees and invitees. The parties further agree to the following provisions pertaining to insurance:

- (a) **Fire and extended coverage by LESSEE.** The LESSEE, at its expense, shall provide full theft, windstorm, fire and extended coverage (and glass breakage insurance at the option of LESSEE) on any improvements constructed, and personal property located, within the Leased Premises by the LESSEE, for the benefit of the City and the LESSEE, as each party's interests may appear, in an amount satisfactory to the City up to one hundred percent, but not less than ninety percent of the replacement value of the improvements. Such insurance shall provide that the interests of the City are included as a loss payee and contain a waiver of subrogation rights by LESSEE's carrier against the City.
- (b) **Fire and extended coverage by the City.** The City represents that it has comprehensive insurance coverage pertaining to the entire Parking Garage structure, which coverage does not include improvements or personal property of LESSEE. If LESSEE, including, but not limited to, its agents, employees, licensees, or invitees does, or omits to do, any act or conducts any business resulting in an increase in such insurance premiums payable by the City, LESSEE shall pay the City an amount of money equal to such increase.
- (c) **Workers' Compensation.** The LESSEE shall provide, carry, maintain and pay for all necessary Workers' Compensation insurance for the benefit of its employees with the following limits: Workers' compensation - statutory limits; Employer's Liability - one hundred thousand dollars (\$100,000.00).

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**(d) Liability Insurance.** LESSEE shall, at its own expense, provide, pay for, and continuously maintain, comprehensive and all inclusive public liability and property damage insurance for the benefit of the City, with a policy limit of not less than one million dollars (\$1,000,000.00), combined single limits, which coverage shall include property damage and personal injuries, including death, and shall include the City of Fort Lauderdale as an additional named insured. If all other LESSEEs of the Shops are required to increase their insurance coverage with the City to an amount in excess of one million dollars (\$1,000,000.00), then and in that event, the insurance herein required of LESSEE shall be increased to the same amount as required for all other such LESSEEs.

**(e) Policies.** All of the policies of insurance provided for in this Lease:

- (i) shall be in the form and substance approved by the Department of Insurance of the State of Florida ("DOI"),
- (ii) shall be issued only by companies licensed by DOI,
- (iii) Certificates of Insurance pertaining to same shall be delivered to CITY, at least fourteen (14) days prior to the Effective date of the License Term,
- (iv) shall be with a carrier having an A Best's Rating of not less than A, Class VII,
- (v) shall bear endorsements showing the receipt by the respective companies of the premiums thereon or shall be accompanied by other evidence of payment of such premiums to the insurance companies, including evidence of current annual payment, if on any installment payment basis, and
- (vi) shall provide that they may not be canceled by the insurer for thirty (30) days after service of notice of the proposed cancellation upon CITY and shall not be invalidated as to the interest of CITY by any act, omission or neglect of LESSEE.

**(f)** In any case where the original policy of any such insurance shall be delivered to LESSEE, a duplicated original of such policy shall thereupon be delivered to LESSOR's Risk Manager. All insurance policies shall be renewed by LESSEE, and certificates evidencing such renewals, bearing endorsements or accompanied by other evidence of the receipt by the respective insurance companies of the premiums thereon, shall be delivered to LESSOR's Risk Manager, at least twenty (20) days prior to their respective expiration dates.

**(g)** LESSOR does not in any way represent that the types and amounts of insurance

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required hereunder are sufficient or adequate to protect LESSEE's interests or liabilities but are merely minimum requirements established by LESSOR's Risk Management Division. LESSOR reserves the right to require any other reasonable insurance coverages that LESSOR deems necessary depending upon the risk of loss and exposure to liability.

(h) If the Leased Premises is hereafter damaged, destroyed or rendered partially untenable for their accustomed use, by fire or other casualty, insured or which should have been insured under the coverage LESSOR is obligated to carry pursuant to Paragraph 17(b) of this Lease, then LESSOR shall commence repair of said Leased Premises within sixty (60) days after such casualty and, within one hundred twenty (120) days after commencement of such repair, restore the Leased Premises to substantially the same condition in which the Leased Premises were immediately prior to the occurrence of the casualty, exclusive of the damage covered pursuant to Paragraph 17(a) of this Lease. From the date of such casualty, until the Leased Premises is so repaired and restored, Rent and all other charges and items payable hereunder shall abate in such proportion as the part of the Leased Premises thus destroyed or rendered untenable bears to the total Leased Premises. However, if fifty percent (50%) or more of the Leased Premises, or the building of which the Leased Premises are a part (based upon the cost to replace the Leased Premises damaged or destroyed as compared with the market value of the improvements on said Leased Premises immediately prior to such fire or other casualty, as shown by certificate of LESSOR's architect), is destroyed or rendered untenable by fire or other casualty during the last year of the Primary Term, or any Option Term of this Lease, then LESSOR or LESSEE shall have right to terminate this Lease effective as of the date of the casualty, by giving written notice of termination to the other within thirty (30) days of such casualty; provided, however, LESSEE shall have the right to nullify any LESSOR termination by exercising an option to extend this Lease (if available). If said notice of termination is given within this thirty-day period, this Lease shall terminate and Rent and all other charges shall abate as aforesaid from the date of such casualty, and LESSOR shall promptly repay to LESSEE any Rent paid in advance which has not been earned as of the date of such casualty. If said notice is not given and LESSOR is required or elects to repair or rebuild the Leased Premises as herein provided, then LESSEE shall repair and replace LESSEE's Property to at least their condition prior to the damage or destruction.

Any and all net insurance proceeds received by or on account of LESSEE with respect to any improvements or Fixtures shall be deposited with the primary depository for the LESSOR, to be held in escrow for the benefit of the LESSEE and LESSOR, and said funds shall be used for the purpose of reconstruction or repair, as the case may be, of any of the structures, improvements or fixtures located within the Leased Premises so damaged or destroyed. Such reconstruction and repair work shall be done in strict conformity with all applicable building and zoning codes and regulations or standards promulgated by any governmental agency having subject matter jurisdiction. Should the costs of regulations or repair exceed the amount of funds available from the proceeds of such insurance policy, then, and in such event, such funds shall be used as far as the same will permit in paying the costs of reconstruction or repair. In the event that the cost

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of such reconstruction or repair work shall be less than the proceeds derived from such insurance policies, the surplus shall be payable to LESSOR or LESSEE, as their interests may appear.

- (i) **Precautions.** In order to reduce the hazards and risks of interruption of business occasioned by windstorm and other acts of God, the LESSEE agrees that it will at its expense take all reasonable precautions to protect the Leased Premises from such damage or destruction by the elements.
- (j) **Primary coverage.** All insurance referred to hereunder shall apply as primary coverage and shall not be affected by any insurance which the LESSOR may carry in its own name.

**17. ASSIGNMENT AND SUBLEASING.** LESSEE may assign or sublease its interest in this Lease, in whole or in part, (a) only to an assignee or sublessee that either (i) LESSEE will have the power to direct the management and policies of, directly or indirectly, whether through the ownership of voting interests, by contract, or otherwise, or (ii) who has (A) five (5) or more years of top managerial experience running a restaurant operation, and (B) financial resources equal to or greater than E & J Dining, Inc. at the commencement of this Lease term, and (b) only with the written consent of the CITY and as determined in the CITY'S sole discretion, authorized by appropriate municipal action, taken at a public meeting of the CITY Commission of the CITY. Such consent shall not operate to release the LESSEE from its obligations under this Lease. Notwithstanding anything in Paragraph 9 of this Lease, in the event of an assignment, the assignee shall be liable for rent escalations in accordance with Paragraph 9 (e) hereof. Anything herein to the contrary notwithstanding, in the event LESSEE requests approval of LESSOR for an assignment or sublease of the Leased Premises, LESSOR shall have the right, but not the obligation, to recapture the Leased Premises from LESSEE and terminate LESSEE's remaining Leasehold Interest as of the proposed effective date of such requested assignment or sublease; provided, however, LESSEE shall have the right to nullify such termination within ten (10) days of receipt of the notice of termination by providing LESSOR with written notice withdrawing such proposed assignment or sublease of the Leased Premises. For purposes of this Lease, the term "assignment" shall not include, and all of the foregoing provision shall not apply to, a change in control or change in shareholders, members, directors, management or organization of LESSEE, or any subsidiary, affiliate or associate of the parent of LESSEE.

**18. SUCCESSORS IN INTEREST.** The covenants and agreements herein contained shall be binding on and inure to the benefit of the respective successors and assigns of the parties hereto. Wherever used, the singular number shall include the plural and the use of any gender shall be applicable to all genders.

**19. NOTICES.** All notices required by law and by this Lease to be given by one party to the other shall be in writing, and the same may be served as follows:

- (a) By certified mail, return receipt requested, to the following:  
The City City of Fort Lauderdale

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c/o Assistant to the City Manager  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301

LESSEE E & J Dining, Inc. d/b/a Mr. Nick's Sub Shop  
901 S. Andrews Avenue  
Fort Lauderdale, Florida 33316

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or to such other addresses as the City or LESSEE, may by writing to the other designate.

(b) The notice may also be served by personal delivery to the City or LESSEE, or to an agent of the LESSEE in charge of the Leased Premises.

**20. SEVERABILITY.** If any section, subsection, sentence, clause, provision or part of this Lease shall be held invalid for any reason, the remainder of this Lease shall not be affected thereby.

**21. LEASE NON-EXCLUSIVE.** It is specifically understood and agreed that the City reserves the right to lease other shops in the Parking Garage to competitors of LESSEE.

**22. MORTGAGE INTERESTS.**

(a) Notwithstanding any provisions in this Lease to the contrary, LESSEE may, from time to time, pledge its leasehold interest as security for a bona fide loan or loans from reputable established lenders or lending institutions, such pledges to be subject to the approval of the City. LESSEE shall not subordinate the City's interest in the Leased Premises to any such security holder.

(b) The provisions hereinafter set forth shall apply to the holder of record of a first mortgage on LESSEE's interest herein:

(1) In the event the holder of the first mortgage interest succeeds to LESSEE's interest under this Lease, pursuant to the remedies provided in the mortgage instrument, or by foreclosure of mortgage or by assignment in lieu of foreclosure, the LESSOR agrees to recognize such first mortgage holder as the LESSEE under the terms and provisions of this Lease, provided however, that the City has previously given its written approval to such first mortgage holder.

(2) It is the responsibility of LESSEE to provide the LESSOR the name and address of any mortgage holder.

(3) There shall be no subordination of LESSOR's fee simple interest in the Leased Premises and LESSEE shall have no authority to subject the Leased

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Premises to any mortgage liens, statutory construction liens, equitable liens or otherwise which are in any manner superior to City's fee simple interest in the Leased Premises.

**23. SUBROGATION.** The LESSOR shall have the option, without waiving or impairing any of its rights hereunder, to pay any sum or perform any act required of the LESSEE, and the amount of any such payment and the value of any such performance, together with interest thereon, shall be secured by this Lease, and shall be promptly due and payable to the City.

**24. LIEN UPON REVENUES, INCOME, ETC.** In the event of a breach by LESSEE of any of the provisions of this Lease, after expiration of any applicable notice and cure period, the LESSOR shall thereupon have a lien upon all revenues, income, rents, earnings, and profits from the Leased Premises as additional security to the LESSOR for the faithful performance by LESSEE of each of the terms and provisions hereof, and to secure payment of all sums owing to the City hereunder in addition to any lien afforded under general law. Such lien shall be superior to the rights of the LESSEE and any of its creditors or assignees or any trustee or receiver appointed for the LESSEE's property, or any other person claiming under the LESSEE. Upon the City's termination of the LESSEE's rights under this Lease by reason of the LESSEE's default in accordance with Paragraph 14(c), all such revenues, income, rents, earnings and profits derived or accruing from the Leased Premises from the date of such termination shall constitute the property of the LESSOR and the same is hereby declared to be a trust fund for the exclusive benefit of the LESSOR and shall not constitute any asset of the LESSEE or any trustee or receiver appointed for the LESSEE's property. The provisions of this paragraph shall be effective without the LESSOR's re-entry upon the Leased Premises or repossession thereof, and without any judicial determination that the LESSEE's interest under the Lease has been terminated.

**25. HOLDING OVER.** LESSEE will, at the termination of this Lease by lapse of time or otherwise, yield up immediate possession of the Leased Premises to LESSOR. If LESSEE retains possession of the Leased Premises or any part thereof after such termination, then LESSOR may at its option, serve written notice upon LESSEE that such holding over constitutes any one of: (i) creation of a month to month tenancy, upon the terms and conditions set forth in this Lease, or (ii) creation of a tenancy at sufferance, in any case upon the terms and conditions set forth in this Lease; provided, however, that the Base Rent shall, in addition to all other sums which are to be paid by LESSEE hereunder, whether or not as additional rent, be equal to double the Base Rent being paid to LESSOR under this Lease immediately prior to such termination. If no such notice is served, then a tenancy at sufferance shall be deemed to be created at the rent in the preceding sentence. LESSEE shall also pay to LESSOR all damages sustained by LESSOR resulting from a retention of possession by LESSEE, including the loss of any subsequent tenant or lessee of any portion of the Leased Premises. The provisions of this Section shall not constitute a waiver by LESSOR of any right of re-entry as herein set forth; nor shall receipt of any rent or any other act in apparent affirmance of the tenancy operate as a waiver of the right to terminate this Lease for a breach of any of the terms, covenants or obligations herein on LESSEE's part to be performed.

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**26. CUMULATIVE REMEDIES.** All rights and remedies of LESSOR and LESSEE herein created or otherwise extending at law are cumulative and the exercise of one or more rights or remedies may be exercised and enforced concurrently or consecutively and whenever and as often as deemed desirable.

**27. RE-ENTRY AND REPOSSESSION.** If the LESSEE shall fail to keep and perform any of the covenants, conditions and agreements provided in this Lease to be performed by LESSEE, and such default shall not be remedied within the grace period provided elsewhere in this Lease, the LESSOR shall have all rights and remedies provided elsewhere in this Lease and as available at law and in equity.

**28. NON-WAIVER.** Failure of the City to insist upon the strict performance of any of the covenants, conditions, and agreements of this Lease in any one or more instances, shall not be construed as a waiver or relinquishment in the future of any such covenants, conditions and agreements. The LESSEE covenants that no surrender or abandonment of the Leased Premises or of the remainder of the term herein shall be valid unless accepted by the City in writing. The City shall be under no duty to relet the Leased Premises in the event of an abandonment or surrender or attempted surrender or attempted abandonment of the Leased Premises by the LESSEE. Upon the LESSEE's abandonment or surrender or attempted abandonment or attempted surrender of the Leased Premises, the City shall have the right to retake possession of the Leased Premises or any part thereof, and such retaking of possession shall not constitute an acceptance of the LESSEE's abandonment or surrender thereof.

**29. INDEMNITY AGAINST COSTS AND CHARGES.** If at any time during the Term of this Lease either LESSOR or LESSEE shall institute any action or proceeding against the other relating to the provisions of this Lease or any default hereunder, then the unsuccessful party in such action or proceeding agrees to reimburse the successful party for the reasonable expenses for attorneys' fees, paralegal fees and disbursements incurred therein by the successful party. Such reimbursement shall include all legal expenses incurred prior to trial, at trial and at all levels of appeal and post judgment proceedings. Any sums due the City under this paragraph shall constitute a lien against the interest of the LESSEE in the Leased Premises and all its improvements situated therein to the same extent and on the same condition as delinquent rent would constitute a lien on said Leased Premises and improvements.

**30. PARKING.** LESSEE shall be entitled, at no additional fee, cost or rent, to the use of two (2) parking spaces in the Garage, one parking space to be located on the first level of the Garage and the other to be located on the second level of the Garage, both in areas designated by the Parking Manager of the CITY as parking for Shop lessees. LESSEE shall obtain the appropriate parking permits from the Parking Manager of the CITY.

**31. RADON GAS.** 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

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obtained from your county public health unit.

**32. MISCELLANEOUS.**

- (a) **No Waiver of Sovereign Immunity.** Nothing contained in this Lease is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.
- (b) **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Lease. None of the parties intend to directly or substantially benefit a third party by this Lease. The parties agree that there are no third party beneficiaries to this Lease and that no third party shall be entitled to assert a claim against any of the parties based on this Lease. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.
- (c) **Non-Discrimination.** LESSEE shall not discriminate against any person in the performance of duties, responsibilities and obligations under this Lease because of race, age, religion, color, gender, sexual orientation, national origin, marital status, disability or sexual orientation.
- (d) **Entire Agreement.** This Lease together with the Exhibits (which Exhibits, collectively, are hereby incorporated where referenced to herein and made a part hereof as though fully set forth) incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Lease that are not contained in this document, and no prior agreement or understanding pertaining to the same shall be of any force or effect. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
- (e) **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Lease has been their joint effort.
- (f) **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Lease and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Lease shall not be deemed a waiver of such provision or modification of this Lease. A waiver of any breach of a provision of this Lease shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Lease.

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- (g) **Governing Law.** This Lease shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Lease and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida. To that end, LESSEE expressly waives whatever other privilege to venue it may otherwise have.
- (h) **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Lease if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("**Force Majeure**"). In no event shall a lack of funds alone on the part of LESSEE be deemed Force Majeure.
- (i) **Survival of Provisions.** All obligations (including indemnity, Rent and other payment obligations) or rights of either party arising during or attributable to the period prior to expiration or earlier termination of this Lease shall survive such expiration or earlier termination.
- (j) **Short Form Lease.** LESSEE shall not record this Lease. The parties shall join in the execution of a memorandum or so-called "short-form" of this Lease for the purpose of recordation, at the request of either party; any recording costs associated with the memorandum or short form of this Lease shall be borne by the party requesting recordation.
- (k) **Time of the Essence.** Time shall be of the essence in interpreting the provisions of this Lease.
- (l) **Permits and Approvals.** If LESSEE is unable to secure all required licenses, permits and approvals from applicable governmental authorities necessary for it to perform the Leasehold Improvements or to operate its business in the Leased Premises, then LESSEE may terminate this Lease upon written notice to LESSOR.
- (m) **Consent.** Except as otherwise specifically set forth herein, (i) wherever in this Lease LESSOR or LESSEE is required to give its consent or approval, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (ii) if no written response to a request for consent or approval is provided within ten (10) days from the receipt of the request, then the consent shall be presumed to have been given.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

WITNESSES:

CITY OF FORT LAUDERDALE

\_\_\_\_\_

By \_\_\_\_\_  
John P. "Jack" Seiler, Mayor

\_\_\_\_\_  
[Witness-print or type name]

By \_\_\_\_\_  
Lee R. Feldman, City Manager

\_\_\_\_\_  
[Witness-print or type name]

ATTEST:

(CORPORATE SEAL)

\_\_\_\_\_  
Jeff Modarelli, City Clerk

Approved as to form:  
Cynthia A. Everett, City Attorney

\_\_\_\_\_  
Gustavo J. Ceballos, Assistant City Attorney

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by JOHN P. "JACK" SEILER, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida.  
(SEAL)

\_\_\_\_\_  
Signature: Notary Public, State of Florida

\_\_\_\_\_  
Name of Notary Typed, Printed or Stamped

Parking Garage Shop Lease  
Shop No. 108 & 112  
Lessee: E & J Dining, Inc. d/b/a Mr. Nick's Sub Shoppe  
Term: 11.08.2017 – 11.07.2022



☒ Personally Known

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by LEE R. FELDMAN, City Manager of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida.

(SEAL)

\_\_\_\_\_  
Signature: Notary Public, State of Florida

\_\_\_\_\_  
Name of Notary Typed, Printed or Stamped

☒ Personally Known

Parking Garage Shop Lease  
Shop No. 108 & 112  
Lessee: E & J Dining, Inc. d/b/a Mr. Nick's Sub Shoppe  
Term: 11.08.2017 – 11.07.2022

AS TO LESSEE:

WITNESSES:

[Signature]  
Jose Calderon  
[Witness-print or type name]

\_\_\_\_\_  
[Witness print/type name]

(CORPORATE SEAL)

E AND J DINING, INC., a Florida Corporation

By Cy Ry  
Craig Ray President  
[Print Name and Title]

ATTEST:

\_\_\_\_\_  
Type or Print Name and Title

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of October, 2017, by C. Earl Ray, President of E AND J DINING, INC. He is personally known to me or has produced Florida ID as identification and did not take an oath.

(SEAL)



MILENA L. ZEVALLOS  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# FF178445  
Expires 11/20/2018

[Signature]  
Notary Public, State of Florida  
(Signature of Notary taking  
Acknowledgment)

Milena L Zevallos  
Name of Notary Typed,  
Printed or Stamped

My Commission Expires:

11-20-2018/FE 178445  
Commission Number

Parking Garage Shop Lease  
Shop No. 108 & 112  
Lessee: E & J Dining, Inc. d/b/a Mr. Nick's Sub Shoppe  
Term: 11.08.2017 – 11.07.2022