



**IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA**

**PIRATES BAR & GRILL,**  
**Plaintiff,**

v.

**DAUPHIN ISLAND PROPERTY OWNERS ASSOCIATION, and FICTITIOUS DEFENDANTS A, B, and C, whether singular or plural, are those persons, firms, corporations, associates, partnerships, or other entities whose wrongful conduct caused or contributed to Plaintiff’s injuries; all of whose names and true legal identities are otherwise unknown at this time but who will be added by amendment but who will be added by amendment when ascertained, jointly and severally; Defendants.**

**CIV. ACTION NO.** \_\_\_\_\_

**PLAINTIFF RESPECTFULLY REQUESTS A TRIAL BY JURY.**

**COMPLAINT**

COMES NOW, the Plaintiff, hereinafter referred to as “Pirates Bar & Grill” and files this civil action against the Defendant, Dauphin Island Property Owners Association, hereinafter “DIPOA” and Fictitious Defendants A, B, and C. In support of this action, the Plaintiff avers the following:

1. The named Plaintiff, Pirates Bar & Grill is a domestic non-profit corporation that actively conducts business in Dauphin Island, Mobile County, Alabama.
2. Defendant, DAUPHIN ISLAND PROPERTY OWNERS ASSOCIATION (hereinafter “DIPOA), is a domestic non-profit corporation that actively conducts business to “promote the development/betterment of Mobile County (Dauphin Island).” At all relevant times hereto, Defendant was doing business in Mobile County, Alabama.
3. Fictitious Defendants A, B, and C, whether singular or plural, are those persons, firms, corporations, associates, partnerships, or other entities whose wrongful conduct caused or contribute to Plaintiff’s injuries; all of whose names and true legal identities are

otherwise unknown at this time but who will be added by amendment when ascertained, jointly and severally.

4. The Dauphin Island Property Association was organized to serve the interests of Caucasian property owners in 1963.
5. The DIPOA consisted of board members, active property owners, and served several functions including holding meetings to discuss the collective interests of the members of the association.
6. In the years to come, the DIPOA would evolve to allow members of all races, creeds, and colors to become members of the association.
7. DIPOA, a non-profit organization, would hold properties as income producing assets, including the property 100 Orleans Drive, Dauphin Island, Alabama.
8. In 2015 Pirates Bar and Grill, LLC, entered into a rental agreement with the DIPOA.
9. As of the date of the initial lease agreement between the Plaintiff and the Defendant, DIPOA, the 100 Orleans Drive property rented for \$800 per month.
10. Pirates Bar and Grill LLC, a business operating in a multi-level property, office space, a pool, and an adjoining beach area.
11. Pirate's Bar & Grill grew into a staple of entertainment life on Dauphin Island.
12. In 2022, Pirate's Bar & Grill hosted its first large stage music concert event. This event featured semi-major country music artists. The country music artists, like other genres featured lyrics about coming of age, sexual relationships, pre-marital dating, partying, and even rural life and conflict.
13. The 2022 music concert would be the first in a scheduled series of music events at the property.
14. The 2022 event earned tens of thousands in revenue. As a pilot event, welcomed droves of people that enjoyed performances, beverage and food service.
15. While serving a demographic in Alabama that arguably represents a cross-section of gun owners, hunters, and country music lovers, the event was a logistic and safety success with a mere two instances of minor altercation and one reported gun confiscation.
16. The DIPOA did not request additional insurance from the Plaintiff for this event. The DIPOA did not attempt to cancel the event at any time. Moreover, no special meetings,

public postings, forced property entries, or attempts to evict the Plaintiff are noted during this time despite these occurrences.

17. In the months that followed, Pirate's Bar & Grill continued to grow in popularity and as a landmark destination for beachgoers on the island.
18. In March of 2023, DIPOA attempted to renew the lease with the Plaintiff.
19. Repeated motions of the DIPOA attempted to stall the renewal of the current lease on numerous occasions by implementing new terms that were seemingly unattainable.
20. The proposed renewal represented a 900% increase in base rent. Additionally, the proposed renewal required an additional \$2000 in rental fees for access to a beach area that remained open to members of the association.
21. As of the date of the agreement, despite paying complete rent on the property, DIPOA still maintained unsubsidized office space on the property of the Plaintiff. DIPOA has yet to repair broken sewage lines in a banquet hall that constitutes over 20 percent of the property. It is estimated that this office space and uninhabitable space represents five percent of the rental space available to the Plaintiff.
22. Pirate's Bar & Grill gave notice to the DIPOA of several failures to maintain the property and dangerous conditions that the landlord, DIPOA, was bound to repair.
23. Following the receipt of the proposed renewal and 900% rental increase, Plaintiff served the Defendants with written notice of the longstanding breaches and dangerous conditions on the property.
24. Plaintiff specifically requested that the listed repairs be made as a condition of the renewal.
25. In 2019, the Defendant signed and accepted the renewal of the lease with written notice and acceptance of the requirement that all repairs be completed within six months of renewal.
26. The listed repairs included:
  - a. Pool Bathroom - repaired to be in compliance with state, local and MCHD code requirements.
  - b. Commercial Water Heater – Replace 119 gal. 208v with appropriate recuperation time for commercial grade kitchen.
  - c. Back Service doors – To be replaced with commercial grade doors and crash bars.

- d. Pool Leak – To be permanently fixed by Lessor. Lessor agrees to pay the water bill amount that exceeds \$750/mo. from March – October until the pool leak is mitigated.
  - e. Lower-Level Floors – Replace floors with water resistant covering designed for commercial/retail traffic.
  - f. Bottom Floor Plumbing – Drain system to be repaired on the bottom floor to create a functional drain system.
  - g. Walk-in Freezer – To be repaired in standard for commercial restaurant freezer with the ability to hold at -10\* F to insure proper food preservation.
  - h. Slab for Dumpster – To be constructed in compliance with local building codes.
  - i. Electrical Feeds – Lessor will replace secondary 208v 3 phase power feed that supplies the building.
  - j. Gravel for Back Driveway – This shall be repaired in compliance with MCHD standards.
  - k. Wheel Room Doors – Doors will be replaced with half wall and upper window unit so weatherproofing can be accomplished.
27. As of the date of this Complaint, a number of repairs have been completed due to Plaintiff's investment or other resources.
28. Plaintiff's business has remained operational despite several make-shift modifications to isolate dangerous conditions and inhabitable areas of the property caused by the willful and bad faith actions of the Defendants.
29. August 9, 2023, Plaintiff obtained a contracts for performances in a continuation of the music series.
30. Plaintiff also began finalizing insurance coverage for the special event without knowledge or request of the DIPOA.
31. August 9, 2023, a proposal for the second music event was presented to the DIPOA board without objection.
32. Plans and applications for the event were submitted to the city on August 15, 2023. August 17, 2023 all requests and applications for the event were approved by the city.

33. August 17, 2023, the DIPOA board had not responded to notice of the event. Plaintiff requested a response in open meeting per terms of the lease for proposed elevated risk use of the property.
34. August 17, 2023, Plaintiff was informed that they were allegedly in an unsubstantiated morality clause violation. That assertion raised by a former board president failed to pass board vote. The next baseless accusation was that Plaintiff had failed to secure the necessary insurance for the event.
35. August 21, 2023, the DIPOA requested that the Plaintiff complete an additional application for insurance and produce the same to the insurance agent for the association. This request was in excess of the standard special event insurance in progress for the Plaintiff.
36. No response from the agent of the association followed.
37. On August 24, 2023, the application listing all artists of various genres, including “hip hop” was submitted to the board along with flyers for the event.
38. Immediately following this submission, the association rescheduled a regular meeting. Following that meeting, the association requests an additional \$5,000,000 in special insurance coverage without a formal request or inquiry from an insurance agent for the association. This amount of insurance coverage is not industry standard and not readily available by any common insurance agency. This request was issued with a 24-Hour deadline.
39. Plaintiff obtained and submitted the secondary insurance requested by the DIPOA at 10:57PM the same night. The insurance submission was denied 27 minutes later at 11:24PM without just cause or contact from an actual insurance agent.
40. Following the denial, a response was given that the initial and secondary policy submission lacked “assault and battery” coverage.
41. August 25, 2023, Plaintiff received confirmation from their insurance agent and the president of DIPOA that the properties were sufficiently covered and “assault and battery coverage” were not required.
42. August 25, 2023 a second request for review of the secured insurance coverage was made and fulfilled.
43. Plaintiff attempted to continue with their planned event.

44. Plaintiff later received information that members of the DIPOA and listed Defendants were making false public and private statements declaring that the planned and approved event was canceled.
45. Plaintiff also received information that published false statements were being made by several members of the DIPOA and listed Defendants regarding the dangers of “hip hop” artists and the concert potentially resulting in wrongful death lawsuits. Private statements and media posts were made declaring that the event had been canceled.
46. Plaintiff received direct contact from its slated music artists questioning whether the event would still be held. Additional efforts were made by the DIPOA to exclude the “hip hop” performance citing alleged “immorality” of artists that had yet to perform and maintain the country music performances. This proposal also failed a board vote.
47. Plaintiff also endured unlawful entry by several members of the DIPOA and listed Defendants onto the property without just cause. Further, the aforementioned Defendants attempted to dissuade event employees and citizens from preparing for the event without invitation or cause.
48. The Plaintiff’s second music concert was held despite direct opposition and obstruction by several members of the DIPOA and listed Defendants.
49. The Plaintiff incurred increased costs in securing the oppressive insurance policies. Additionally, the music event saw reduced attendance and revenue based on prior projections due to the efforts of the DIPOA and the listed Defendants.
50. Further, the Plaintiff lost valuable relationships for future music series events due to the obstructionist and discriminatory efforts of the listed Defendants.
51. Following the event, the DIPOA board attempted to unilaterally terminate the Plaintiff’s lease and evict the Plaintiff without cause.
52. Several members at the open meetings where the Plaintiff’s lease was a topic of discussion made discriminatory and disparaging remarks calling for the closure of the Plaintiff’s business solely for allowing the performance of “hip hop” music.
53. No evidence of any altercation, confiscation of injury, arrest, or disturbance was noted at the event. Specifically, no incidents in comparison to those that were experienced during the previous year’s events.

54. To date, several unsuccessful attempts have been made to terminate the lease of the Plaintiff by the listed Defendants.
55. Further, Plaintiff was recently cited for health code violations for repairs and conditions that were made known to the Defendants at least 8 years ago.
56. Plaintiff has lost several documented clients, event contracts, and other revenue streams due to Defendants' persistent disregard for contractual obligations.
57. As of the date of this Complaint, the Defendants' obstructionist practices, defamation, libel, bad faith, harassment, willful action and oppressive acts have resulted in several damages to the Plaintiff exceeding the statutory threshold for this Court.

### **COUNT ONE – MATERIAL BREACH AFFECTING HEALTH AND SAFETY**

58. Plaintiff adopts and incorporates paragraphs 1 through 54 as if stated in full herein. Without waiving any additional claims or remedies, Plaintiff presents this claim pursuant to ALA. CODE § 35-9A-401. Plaintiff avers that Defendants are in material breach of the aforementioned lease agreement. Over an 8-year period, Plaintiff has been made to suffer significant damages, loss of property use and enjoyment. Defendants' several breaches have resulted in conditions that have a material effect on the health and safety of all persons that encounter several areas of the building. Further, such breaches are the proximate cause of several impending health code violations.
59. Notably, the Defendants' breaches have caused the Plaintiff to function without full use of the property, proper refrigeration and air condition in high temperatures, raw sewage leaks in common areas that are part of the intended rental space of the property, excessive water bills and loss of use of the swimming pool and other structural and safety hazards on the premises. Defendants entered into a lease agreement citing and confirming the necessity of repairs to the aforementioned conditions. As of the date of this Complaint, Defendants have failed to make nearly any material repairs as required by the lease agreement and addendum.

### **COUNT TWO – BREACH CAUSING UNLAWFUL INTERRUPTION OF USE**

60. Plaintiff adopts and incorporates paragraphs 1 through 56 as if fully stated herein. Without waiving the aforementioned claims and any future claims, Plaintiff presents this claim pursuant to ALA. CODE § 35-9A-407. Plaintiff avers that Defendants' actions

constitute material breach and unlawful interruption of use of the property. Defendants have allowed several conditions to endure over a period of years. These conditions have endured far in excess of any statutorily required notice and reasonable repair period. Defendants have not only allowed unsafe and unsanitary conditions to exist due to failure to repair, they have also engaged in wanton financial extortion without remedy for loss use and risk. Defendants have also acted with wanton disregard for Plaintiff's quiet enjoyment of the property by unlawfully entering the property on multiple occasions in an effort to keep Plaintiff from securing certain entertainment acts. The combined unrepaired conditions and unlawful entry into the property rendered certain parts of the property permanently uninhabitable and others unavailable for their current intended use. Statute specifically provides remedy for any interruption of heat, water, or necessary utilities including plumbing.

### **COUNT THREE – BREACH OF QUIET ENJOYMENT AND USE OF PROPERTY**

61. Plaintiff adopts and incorporates paragraphs 1 through 57 as if fully stated herein.

Without waiving the aforementioned claims and any future claims, Plaintiff presents this claim pursuant to ALA. CODE § 35-9A-407, 442. Plaintiff avers that Defendants' unlawful entrance upon the property to thwart what they believed to be a "hip hop" event not only constituted a breach of quiet enjoyment but also an intentional obstruction of reasonable use. The Defendants' several efforts to have the event cancelled failed. They proceeded to enter upon Plaintiff's property without lawful purpose and verbally and physically harass the Plaintiff, Plaintiff's agents, and contracted artists.

62. This harassment and intentional obstruction caused the Plaintiff to suffer current, future, and special damages in the form of lost revenue, professional partnership interference, and lost patronage. Additionally, the obstructionist activity of the DIPOA and listed Defendants also caused Plaintiff to incur significant legal costs and fees.

### **COUNT FOUR – RETALIATORY CONDUCT**

63. Plaintiff adopts and incorporates paragraphs 1-59 as if fully stated herein. Without waiving any of the foregoing and future claims, Plaintiff avers the following claim pursuant to ALA. CODE § 35-9A-204. Defendants have been placed on notice over the

last four years of dangerous conditions on the premises. Plaintiff has submitted written and personal notice to the DIPOA board on several occasions.

64. Defendants' aversion to certain demographics of people and entertainment have caused them to engage in unlawful practices, obstruction of professional activity, and even intentional acts have caused the Defendant significant damages and infliction of emotional distress.

#### **COUNT FIVE – MATERIAL BREACH OF CONTRACT**

65. Plaintiff adopts and incorporates paragraphs 1-61 as if fully stated herein. Plaintiff avers that the several actions of the Defendants constitute numerous material breaches of express contract terms. These breaches have caused the Plaintiff to suffer compensatory damages, future damages, special damages, and overall loss of use of the property for its intended purpose.

#### **COUNT SIX – BREACH OF WARRANTY OF INHABITABILITY**

66. Plaintiff adopts and incorporates paragraphs 1-62 as if fully stated herein. Plaintiff avers that the several actions of the Defendants constitute numerous material breaches of express contract terms and intentional acts. The sum total of years of contractual violations have rendered the leased property de jure and at times per se inhabitable. Consequently, the property is effectively unfit for its intended use due to the actions of Plaintiffs. These breaches have caused the Plaintiff to suffer compensatory damages, future damages, special damages, and overall loss of use of the property for its intended purpose.

#### **COUNT SEVEN – BAD FAITH**

67. Plaintiff adopts and incorporates paragraphs 1-63 as if fully stated herein. Plaintiff avers that the several actions of the Defendants constitute numerous material breaches of express contract terms and intentional acts. The sum total of years of contractual violations have occurred with wanton disregard for the safety of the Plaintiff, its agents, and its patrons. Further, the intentional acts of obstruction, defamation, libel, and failure to perform despite repeated notice are prima facie evidence of bad faith on part of the Defendants. The aforementioned actions also indicate that several intentional actions were taken only after the

Plaintiff associated with a certain demographic of entertainment which has been expressly deemed “immoral” by certain members of the DIPOA. To date, the Plaintiff continues to suffer loss as a result of these acts of the Defendants.

**PRAYER FOR RELIEF**

WHEREFORE, premises considered, the Plaintiff demands that this Court award compensatory damages, consequential damages, future damages, and special damages for the several breaches of contract and intentional actions of the Plaintiffs. Further, Plaintiff’s request that this Court order injunctive relief to stay any efforts of the Defendants to eject the Plaintiff from the property during the pendency of this action. Finally, Plaintiff demands a monetary award in damages in the amount of \$1,600,000.

Respectfully Submitted,

**/s/ Marcus T. Foxx**

MARCUS T. FOXX (FOX011)

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**/s/ Moshae Elise Donald**

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**DEFENDANT WILL BE SERVED BY PRIVATE PROCESS SERVER.**

Dauphin Island Property Owners Association  
100 Orleans Drive  
Dauphin Island, Alabama 36528

STATE OF ALABAMA        )  
COUNTY OF MOBILE        )

**LEASE AGREEMENT**

THIS LEASE AGREEMENT (hereinafter referred to as the “Lease”) is made and entered into this 16<sup>th</sup> day of March, 2023 by and between **DAUPHIN ISLAND PROPERTY OWNERS ASSOCIATION, INC.** (hereinafter referred to as “Lessor”), and **PIRATE’S BAR AND GRILL, LLC** (hereinafter referred to collectively as “Lessee”).

**WITNESETH:**

Lessor, in consideration of the rents herein reserved and of the covenants and agreements herein contained to be performed by Lessee, does hereby let unto the Lessee the following described real property in the Town of Dauphin Island, County of Mobile, State of Alabama, (hereinafter referred to as the "**Premises**") and more particularly described as follows, to-wit:

That certain real property located and known generally as the "Isle Dauphine Complex", to include the clubhouse, grill, pool, pool deck, cabana area, pro shop, together with access to certain common areas, being more particularly described on the attached Exhibit "A".

**I. TERM**

1.0 Term. The Premises are leased for continuous use and occupancy by the Lessee for operation as a restaurant, bar, pool, entertainment venue, outdoor recreation area, and event venue, for and during the term of thirty-six (36) months, beginning on the 16<sup>th</sup> day of March, 2023 (the "**Commencement Date**"), and ending on the 15th day of March, 2026, unless sooner terminated or later renewed as set forth hereinbelow (the "**Term**").

1.1 First Right of Refusal. If the Lessor decides to continue to lease the property beyond the termination date of this lease, the Lessee will have the first right of refusal. Specifically, if the Lessor proposes to lease the premise to a third party, or any part of it, beyond the termination date, the Lessor will notify the Lessee of the terms of a proposed lease to a third party no less than sixty (60) days before the termination of the lease. The Lessee will have the right to accept or refuse to continue leasing the premises on the same lease terms proposed to the third party. The Lessee must accept the lease terms offered to the third party not later than thirty (30) days before the expiration of this lease, or any right to continue to lease the property on the terms offered to a third party will terminate.

**II. CONDITION, POSSESSION, AND USE OF LEASED PREMISES**

2.0 Condition of Leased Premises. Lessee has inspected the Premises and the adjacent or related sidewalks, ramps, loading docks, driveways, and parking areas and is fully familiar with and accepts the condition thereof and the mechanical systems serving the Premises and hereby accepts the Leased Premises in its existing "as is" condition, except for those items as listed on the attached Exhibit "B", which are to be replaced/repaired by the Lessor within six months (6) of the

attached Exhibit "B", which are to be replaced/repaired by the Lessor within six months (6) of the execution of this lease in accordance with those terms as stated therein. Lessee requests a walk through with pictures denoting DIPOA property and personal property before signing of the lease.

2.1 Possession and Quiet Enjoyment. The Lessor covenants that Lessee, on paying the fixed minimum rent, and any additional rent specified herein (hereinafter collectively or independently referred to as "**Rent**"), and performing all the covenants and agreements herein contained shall peaceably and quietly have, hold and enjoy the Premises; provided, however, the Lessor shall not be liable for the failure or inability of the Lessee to obtain possession of said Premises, provided the Lessor shall exercise due diligence and effort to place the Lessee in possession. So long as Lessee is not in default under the covenants and agreements of this Lease, Lessee's quiet and peaceable enjoyment of the Premises shall not be disturbed or interfered with by Lessor, Agent, or any person claiming by, through or under Lessor. Lessor shall have an unrestricted right of access to the beachfront as described in the "Premises."

2.2 Approved Use. The Premises shall be used and occupied as a restaurant, bar, pool, entertainment venue, outdoor recreation area, and catered event venue. Any other lawful use must be approved in writing by Lessor. The restaurant will be open and operational during customary lunch and supper hours at least five (5) days per week for six (6) months per year. It will be open and operational during lunch and supper hours three (3) days each for the remaining six (6) months. Exceptions for opening hours may be granted due to catastrophic events, unforeseen safety issues, lack of reasonable access to the facilities, utility failure due to circumstances beyond the control of the Lessee or other circumstances which prevent reasonable operation of the facility and fall outside any routine maintenance, obligations described herein.

Upon presentation of a valid membership card, by a dues paying DIPOA member, the Lessee shall provide to such members a ten percent (10%) discount on all food and non-alcoholic beverages purchased at any restaurant, bar, or other facility operated by the Lessee on the leased premises.

It is expressly understood the Lessee may charge non DIPOA members and non-dues paying property owners an admission fee to the pool. Children two years of age and under shall be admitted free of charge. Members of the DIPOA will be admitted to the pool area free of any charge on presentation of a valid membership card and corresponding identification. Upon the presentation of a valid membership card the Lessee will allow the admission of the card owner and up to three (3) others including members and guest.

Lessee will allow the Lessor to conduct customary monthly meetings, as published to the membership, without any notice, and any other meeting with 24-hours notice given to the lessee, on the premises in the lower-level of the Clubhouse, or at any other location mutually agreed upon by the parties. Lessee shall allow the Lessor to conduct its annual meeting on the 2<sup>nd</sup> Saturday of May each year at 11:00 AM.

2.3 Tenant's Exclusive Use of Premises. So long as Lessee continuously operates the Premises for the use specified in Section 2.2, Lessor shall not lease space within the Premises to anyone for the purpose of operating a restaurant, bar, pool, entertainment venue, outdoor recreation area, and catered event venue, without Tenant's prior written approval.

2.4 Prohibited Uses. Lessee will not permit the Premises to be used in any manner which would render the insurance thereon void or the insurance risk more hazardous. In the event that Lessee, using reasonable business judgment, has reason to believe its use of the Premises will increase insurance risk or void the insurance policy maintained by Lessor on the Premises, Lessee shall, at least fourteen (14) days prior to instigating such use, notify Lessor in writing of such potential increased risk. Thereafter, Lessor shall contact representatives of its insurance carrier and shall notify Lessee if such use is uninsurable and if insurable the Lessor shall notify the Lessee of any increase in insurance premium attributable to such increased insurance risk. Furthermore, Lessor shall provide Lessee with any insurance documentation so that Lessee can be in compliance with any such requirements. In the event it is determined that Lessee's use of the Premises increased the premium for any casualty or other insurance maintained by Lessor, Lessee shall on demand of Lessor pay the amount of such increase to Lessor as additional Rent. In no event shall Lessee be required to pay such increased insurance premium unless Lessor or Agent have provided Lessee with reasonable notice in writing in sufficient time for Lessee to discontinue the use which was the cause of such increase. Lessee shall not use or occupy the Premises, or permit the Premises to be used or occupied, contrary to any statute, rule, order, ordinance, requirement, or regulation applicable thereto, or which would cause structural damage to the improvements, or which would constitute a public or private nuisance.

**Lessee acknowledges, understands, and agrees that Lessor provides no security personnel or lifeguard personnel to Lessee, the Leased Premises, or Lessee's invitees and that Lessor shall have no duty, responsibility, or obligation to provide security or lifeguards to Lessee, the Leased Premises, or Lessee's invitees.**

2.5 Compliance with Law. Lessee, at Lessee's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations, and requirements of federal, state, county, and municipal authorities pertaining to nuisances, fire, health, safety, sanitation, or any other use of the Premises by Lessee and with the recorded covenants, conditions, and restrictions, regardless of when they become effective, and Lessee will not by any act or omission render Lessor liable for any violation thereof.

**Lessee expressly agrees not to use the Lease Premises for any illegal or immoral purpose or activity, including but not limited to the sale, use, or consumption of illegal drugs or the sale of alcohol in violation of the laws, rules, and regulations of the State of Alabama and/or the Town of Dauphin Island.**

2.6 Signs. Lessee shall have the right to maintain a sign identifying its business upon the exterior of the Premises, provided that the size, configuration, and location of the sign is first approved by Lessor in writing, which approval shall not be unreasonably withheld, and provided further that such sign conforms to the requirements of applicable law.

2.7 Common Areas. The Lessee shall regularly clean and remove all garbage, litter, refuse, and waste from all areas of the Lease Premises, and all Common Areas (as defined in the Exhibit "A") including without limitation, parking lots and walkways, and shall regularly empty all waste receptacles on the Premises and common areas, including without limitation, those in the parking lots and walkways as needed, but in no event less than once per day. Lessee shall maintain the Premises

and Common Areas in a clean, orderly condition at all times.

2.8 Waste Removal. Lessee shall, at its sole cost, employ a reputable service to remove trash at least twice weekly from three (3) large dumpsters to be stored in the dumpster area. Lessee agrees to take additional measures should the volume of trash require more receptacles, and more frequent removal. A slab is required for the third dumpster per the health department. See Exhibit "B."

2.9 Pest Control. Lessee shall maintain pest control within the Lease Premises.

### III. RENT

(a) Minimum Rent. Lessee shall pay to Lessor for the lease term rental of Three Hundred and Six Thousand (\$306,000) Dollars payable in Thirty-six (36) monthly installments of Eight Thousand Five-Hundred and No/100 (\$8,500.00) Dollars.

3.0 Security Deposit. Upon the execution of this Lease, Lessee shall deposit with Lessor the sum of One Thousand Dollars (\$1000) as a security deposit for the performance of Lessee's obligations hereunder. Upon the breach of any term or condition of this Lease by Lessee, Lessor may use any and all of the security deposit, as needed, to cure such violation or breach and doing so will not act as a waiver of Lessee's breach or limit Lessor's other rights and remedies. In the event any or all of the security deposit is used in such manner, Lessee shall replenish the full amount of the security deposit within ten (10) days of written demand to do so. Upon termination of the Lease, security deposit funds will be returned by Lessor to Lessee on condition that (1) Lessee has met all the terms and conditions of the Lease, including but not limited to, the obligation to pay rent and the duties of maintenance, repair, and replacement and (2) that the Lease Premises are in good and operable working order, having been maintained and repaired properly during the term of the lease.

3.1 Monthly Installments. Beginning on the Commencement Date, a rental payment for the initial month of the Term becomes due and payable, and each month thereafter said amount shall be due and payable in advance on the first (1) day of each month through the remainder of the Term.

3.2 Late Fee. In addition to all other payments provided for in this Lease, Lessee shall be assessed with and shall pay a late charge of Ten (10%) Percent of the installment amount, for each rental installment which is delinquent for ten (10) days or more.

3.3 Remittance. All payments due from Lessee under the terms of this Lease shall be made without deduction, set-off, discount, or abatement in lawful money of the United States of America, and unless otherwise provided for by Lessor shall be remitted by hand-delivery or by first-class mail to:

Dauphin Island Property Owner's Association, Inc.  
PO Box 39  
Dauphin Island, AL 36528

#### IV. TAXES

4.0 Lessor Responsible for Ad Valorem Taxes. Lessor shall pay all ad valorem taxes during the Term of the Lease.

4.1 Lessee Responsible for All Sales, Use and Other Taxes. Lessee shall be responsible for payment of all taxes related to the operation of the business, including, but not limited to, sales tax, use tax, occupational taxes, business license fees and any other fees incurred due to the operation of the business on the Premises.

#### V. INSURANCE

5.0 Lessor Responsible for Hazard Insurance. Lessor shall keep the building and improvements (other than Lessee's personal property) insured for their full replacement value against loss or damage by fire and such other risks as are included in a standard "all risks" policy, including without limitation, windstorms, hail, explosions, vandalism, theft, malicious mischief, civil commotion, water damage, sprinkler leakage and floods ("**Insurance Coverage**"). However, as set forth in Paragraph 2.4 above, any increases to the insurance premiums paid by Lessor due to the use or activities of Lessee on the Premises, shall be paid by Lessee.

5.1 Liability Insurance. Lessee shall maintain at Lessee's expense commercial general liability insurance covering the leased Premises and operations of Lessee. The limits of said policy will be \$2,000,000 general liability and \$1,000,000 per occurrence, which shall include full coverage for the Lessee and Lessor for all claims arising out of injury, accident, or death resulting from or related to the use of the leased premises. Said policies shall provide full coverage to the Lessor for any claims brought by invitees, employees of the Lessee, or the general public for same and shall contain a waiver of subrogation clause. Such policy shall require that Lessor be given thirty (30) days advance notice in the event of cancellation or material change and shall furnish to Lessor a copy of the complete Insurance Policy and a Certificate of Insurance, listing Lessor as an additional insured, as evidence of compliance with this requirement. The Lessee shall provide the Lessor proof of all required insurance within seven (7) days of the execution of this lease agreement and at any other time at the request of the Lessor.

The Lessee shall be responsible for insuring and the replacement of its contents and personal property.

If alcohol is served by the Lessee on the leased premises, the Lessee shall procure and maintain a liquor liability insurance policy with limits no less than \$100,000.00 naming the Lessor as an additional named insured with a waiver of subrogation clause for the benefit of the Lessor. The policies will not have exclusions for liquor liability claims resulting from or related to assault, motor vehicle accidents, or drowning.

The Lessee shall maintain Workman's Compensation insurance covering its employees with a waiver of subrogation clause for the benefit of the Lessor.

## VI. MAINTENANCE AND ALTERATIONS

6.0 Maintenance. Lessor agrees to repair and replace when repairs are deemed unrepairable and keep in good order and serviceable condition, the those portions of the premises as follows: (a) the pool and all appurtenances associated therewith, the roof, roof drains, all exterior and supporting interior walls, foundations, and structural portions thereof; and (b) all pipes, plumbing, and sewage systems, all heating and air conditioning systems, all electrical systems, wires, and conduits, as well as all fixtures used in connection with the Leased Property or belonging thereto except those items classified as "Removable Trade Fixtures" as defined in Section 6.1 hereto; and (c) and all common elements. There is excepted from this covenant, however, the repair or replacement of broken plate or window glass or other damage caused by negligence of Lessee its employees, agents, contractors, customers, invitees and licensees, and interior repainting and redecoration of the premises. Except as otherwise stated herein, Lessee agrees to maintain and keep in good order and serviceable condition, the remaining portions of the premises. General maintenance includes cleaning, daily upkeep of premises, pool chemicals, and all water necessary to keep pool level at the correct level.

Lessor agrees to repair and replace according to the following procedure: Any equipment, structure, or other repair or replacement request of the Lessee shall be made in writing to the DIPOA President or a designee. Notwithstanding an emergency (as defined below) the Lessor shall approve or reject such request in writing within 48 hours. Failure to reject such request within 48 shall constitute approval of the request. Upon approval, Lessee is authorized to contact construction or repair entities from a list of approved service providers, which shall be provided to the Lessee by the Lessor within a reasonable time after said approval, so as to facilitate repairs on behalf of the Lessor, and to bind the Lessor for payment of the specifically approve repair or replacement. Furthermore, any repair that is approved by Lessor and conducted on it's behalf shall be at least equal in quality and class to the original work and shall be made in compliance with all applicable laws, building codes, and regulations.

In the event that an emergency repair is necessary, whereby the likelihood of potential injury or damage to person or property is imminent, Lessee, upon reasonable notification to Lessor, may correct the condition or conduct the repair for the purpose of mitigating any potential further damage without prior approval of Lessor. Any such cost for said emergency repair made by Lessee shall be subsequently reimbursed to Lessee by Lessor.

6.1 Improvements. All improvements and additions to the Premises shall inure to the benefit of the Premises and become the property of the Lessor, with the exception of such additions as are usually classified as furniture and removable trade fixtures. The term "Removable Trade Fixtures" shall mean (i) Tenant's inventory, furniture, signs, business equipment and other personal property, and (ii) anything affixed to the Premises by Lessee at its expense for purposes of trade (except replacement of similar work or material originally installed by Lessor) which can be removed without material injury to the Premises unless such thing has, by the manner in which it is affixed, become an integral part of the Premises. Said furniture and removable trade fixtures are to remain the property of the Lessee and may be removed by the Lessee upon the expiration of this Lease, provided all terms, conditions, and covenants of the Lease have been complied with by the Lessee and said Lessee restores the Premises to its original condition, natural

wear and tear excepted. Lessee shall make no improvements, alterations, or additions to the leased premises costing over \$1,000.00 without the prior approval of the Lessor which consent shall not be unreasonably withheld. There shall be no rent set off for any improvements made by the Lessee except those made at the sole discretion of the Lessor and approved in writing before any improvement is made. Any purchases of removable trade fixtures made by the Lessee shall remain his personal property provided receipts are presented as proof of purchase.

6.2 Utilities. Lessee shall arrange and pay for all necessary utility services to the leased premises and shall pay for all water, sewage service charges, fuel, electricity, gas, and garbage dumpster charges used in or at the leased premises for any purpose.

## VII. DAMAGE OR DESTRUCTION

7.0 Lessor's Option to Rebuild. In the event the Premises shall be damaged or destroyed by fire, flood, windstorm, riot, insurrection or other casualty, without fault of the Lessee, then and in that event, the Lessor shall have the option, within thirty (30) days from the time such damage shall have occurred, to elect whether Lessor shall or shall not repair and restore said Premises to its original shape and condition, and the Lessee shall be notified of such election in writing.

7.1 Lessee's Rights Upon Repair. Should Lessor elect to make such repairs or restorations, the same shall be completed as soon after such election is made as is practicable, and from the time such damage occurs until the repairs are completed, an equitable abatement of rent shall be allowed.

7.2 Lessee's Right to Terminate. Should Lessor fail to elect to repair or restore the Premises, Lessee may, at Lessee's election, within sixty (60) days after the expiration of the thirty (30) day period described in Subsection 7.0, terminate this Lease, provided that notification of such election shall be given to Lessor in writing. Additionally, Lessee shall have the right to terminate this Lease by written notice to Lessor if either (a) Lessor does not complete repairs and restoration within a practicable amount of time after the date of such fire or other casualty, or (b) during the last twelve (12) months of the Term of this Lease, more than 25% of the floor area of the Premises is damaged or destroyed by fire or other casualty.

## VIII. REMEDIES.

8.0 Default. Upon the happening of any or more of the events as expressed below in (a) to (i) inclusive, which shall separately and severally constitute a default hereunder, the Lessor shall have the right at the option of the Lessor to: (1) annul and terminate this Lease and thereupon re-enter and take possession of said Premises, or (2) re-enter and relet said Premises from time to time, as agents of the Lessee, and such re-entry and/or re-letting shall not discharge the Lessee from any liability or obligations hereunder, except that net rents (that is, gross rents less the expense of collecting and handling, and less commissions) collected as a result of such re-letting shall be a credit on the Lessee's liability for Rent under the terms of this Lease. Nothing herein, however, shall be construed to require the Lessor to re-enter and re-let in such event, nor shall

anything herein be construed to postpone the right of the Lessor to sue for rents, whether matured by acceleration or otherwise, but on the contrary, the Lessor is hereby given the right to demand, collect and/or sue therefore at any time after default.

(a) In the event the Lessee should fail to pay any one or more of said installments of Rent as and when the same becomes due or fail to pay on demand any amount due to Lessor under the terms and provisions of this Lease, whether characterized as additional rent or otherwise.

(b) In the event Lessee should remove, attempt to remove, or permit to be removed from said Premises, except in the usual course of trade, the goods, furniture, effects, or other property of the Lessee brought thereon.

(c) In the event an execution or other legal process is levied upon the goods, furniture, effects, or other property of the Lessee brought on said Premises or upon the interest of the Lessee in this Lease.

(d) In the event a petition in bankruptcy or a petition under the Bankruptcy Act, or any amendment thereto, is filed by or against the Lessee or the Lessee is adjudicated as bankrupt.

(e) In the event an assignment for the benefit of creditors is made by the Lessee.

(f) In the event a decree or order appointing a receiver of Lessee's property is issued.

(g) In the event the Lessee, before the expiration of said Term, without the written consent of the Lessor, vacates said Premises or abandons the possession thereof, or uses the same for purposes other than the purposes which the same are hereby let, or ceases to use said Premises for the purposes herein specified.

(h) In the event that Lessee shall cause or allow a mechanic's or material men's lien to accrue against the Premises.

(i) In the event the Lessee violates any of the other terms, conditions or covenants herein contained to be kept, observed, and performed by Lessee.

8.1 Remedies Cumulative. No remedy contained herein or otherwise conferred upon or reserved to Lessor shall be considered to exclude or suspend any other remedy, but the same 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, and every power and remedy given by this Lease to Lessor may be exercised from time to time and so often as occasion may arise or as may be deemed expedient.

8.2 No Waiver. The delay or failure of Lessor to insist, in any one or more instances, upon strict performance of any of the covenants of this Lease, or to exercise any option

herein contained, shall not be construed as a waiver or consent of any further or succeeding breach of such covenant or option, but the same shall continue and remain in full force and effect. The receipt by the Lessor of Rent, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Lessor of any provision hereof shall be deemed to have been made unless expressed in writing, and signed by the Lessor or Agent.

8.3 Lessor's Right to Cure. Lessor may, but shall not be obligated to, cure any default by Lessee including, but not limited to, Lessee's failure to obtain insurance, make repairs, or satisfy lien claims, after complying with the notice provisions established in Subsection 16.7; and whenever Lessor so elects, all costs and expenses paid by Lessor in curing such default, including without limitation reasonable attorney's fees, shall be additional Rent due on the next rent date after such payment.

8.4 Acceleration of Rent. Upon default, breach of condition, or upon the termination of this Lease or re-entry upon said Premises for any one or more of the causes set forth above, or upon any termination of this Lease or re-entry of said Premises, the Rent hereunder for the entire Term and any other indebtedness payable under the provisions hereof shall be and become immediately due and payable and without regard to whether or not possession of the Premises shall have been surrendered to or taken by the Lessor.

8.5 Notice of Default. Except for default for the non-payment of rent, Lessor shall not have the right to terminate this Lease by reason of any default of Lessee, nor shall Lessor be entitled to avail itself of any remedy provided herein or by law unless Lessor shall have given to Lessee written notice of the existence of such default and Lessee shall have failed for a period of ten (10) days following the fiving by Lessor or such written notice to correct such default.

Except in the case of nonpayment of rent, if the default is of such nature that it cannot be completely remedied within ten (10) days, then such default shall not be enforceable against Lessee if Lessee shall have commenced the curing of such default within said ten (10) day period and shall proceed with reasonable diligence and good faith to the curing thereof, but if such default shall not have been cured withing sixty (60) days, the Lessee shall in that event be deemed to have failed to cure said default.

## IX. SURRENDER

9.0 Surrender. Upon the termination of this Lease, or any extension thereof, whether by forfeiture, lapse of time or otherwise, or upon the termination of Lessee's right to possession of the Premises, Lessee will at once surrender and deliver up the Premises, together with all improvements thereon, unless said improvements are removable trade fixtures, to Lessor in good condition and repair, reasonable wear and tear excepted. All additions, hardware, non-trade fixtures and all improvements, temporary or permanent, in or upon the Premises upon such termination of this Lease by lapse of time or otherwise, without compensation or allowance or credit to Lessee, shall be property of the Lessor unless Lessor requests their removal in writing at or before the time of such termination of this Lease. If Lessor so requests removal of said additions, hardware, non-trade fixtures and improvements Lessee shall repair any injury or damage to the Premises that may result from such removal, or which are necessary to restore the Premises to its original condition as on the Commencement Date, reasonable wear and tear excepted. If Lessee does not make such removal at said termination of this Lease, or within twenty (20) days

after such request, whichever is later, Lessor may remove the same and deliver the same to any other place of business of Lessee, and Lessor may make the aforesaid repairs to the Premises, and Lessee shall pay the cost of such removal, delivery, and repairs to Lessor on demand as additional Rent.

9.1 Removal of Lessee's Property. Upon the termination of this Lease, or any subsequent extension thereof, by lapse of time or otherwise, Lessee may remove Lessee's signs, trade fixtures, and all of Lessee's personal property and equipment,; provided, however, that Lessee shall repair any injury or damage to the Premises, which may result from such removal. If Lessee does not remove Lessee's furniture, machinery, trade fixtures, signs, and all other items of personal property of every kind and description from the Premises prior to the end of the Term, however ended, Lessor may at its option, remove and deliver the same, and Lessee shall pay the cost of such removal, including the repair of any injury or damage to the Premises resulting from such removal, and delivery to Lessor on demand as additional Rent hereunder, or Lessor may treat such property as having been conveyed to Lessor with this Lease as a Bill of Sale, without further payment or credit by Lessor to Lessee.

9.2 Holding Over. Should Lessee remain in the Premises after expiration of this Lease without having executed a new written lease, Lessor shall have the option to treat Lessee either (a) as one not lawfully entitled to possession of the Premises and shall thereupon be entitled to take all lawful action to remove Lessee, or (b) as a tenant for the next ensuing calendar month and for each ensuing month thereafter, in which case said tenancy may be terminated by either party as of the end of any month upon thirty (30) days prior written notice, and Lessee shall pay monthly Rent at the rate set at Lessor's sole discretion for each such month. No such holding over shall give rise, whether by operation of law or otherwise, to any term or tenancy other than as set forth in this paragraph. Nothing contained in this Subsection 9.2 shall be construed to give Lessee the right to hold over after the expiration of this Lease, and Lessor may exercise any and all remedies at law or in equity to recover possession of the Premises.

## **X. ASSIGNMENT AND SUBLETTING**

10.0 Consent Required. Lessee shall not, without Lessor's prior written consent, (a) assign, convey or mortgage this Lease or any interest under it, (b) allow any transfer thereof or any lien upon Lessee's interest by operation of law, (c) sublet the Premises or any part thereof, or (d) permit the use or occupancy of the Premises or any part thereof by anyone other than Lessee. Any violation hereof is agreed and understood to constitute a substantial and material breach of condition of this Lease, with all the rights thereunto pertaining as in the case of default or any other cause hererul der.

10.1 Continued Liability of Lessee. No permitted assignment or subletting shall relieve Lessee of Lessee's covenants and agreements hereunder, and Lessee shall continue to be liable as principal and not as a guarantor or surety to the same extent as though no assignment or subletting had been made.

## **XI. INDEMNITY**

11.0 Indemnity. The Lessee will indemnify and save harmless the Lessor, including its

agents, employees, and board members, from all fines, suits, claims, demands and actions of any kind of nature, by reason of any breach, violation or non-performance of any condition hereof on the part of the Lessee. The Lessee will indemnify, protect and save harmless the Lessor herein from any loss, cost, damage, or expense caused by injuries to persons or property while in, on, or about the premises, unless arising from the breach of Lessor's obligations hereunder, and any and all property of said Lessee which may be located or stored in the premises shall be at the sole risk of said Lessee. Lessor will indemnify and save harmless the Lessee from all fines, suits, claims, demands, actions, damages or expenses of any kind of nature, by reason of any breach, violation or non-performance of any condition hereof on the part of the Lessor.

## **XII. EMINENT DOMAIN AND CONDEMNATION**

12.0 Taking of Whole. If the whole of the Premises shall be taken by any Public Authority for public or quasi-public use or under any statute or by right of eminent domain, then when possession shall be taken thereunder of said Premises, the Term hereby granted and all rights of the Lessee hereunder shall immediately cease and terminate, and the Lessee shall not be entitled to any part of any award that may be made for such taking and Lessee hereby assigns to Lessor all of Lessee's right, title, and interest in any such award, nor shall Lessee be entitled to any damages therefore, except that the Rent shall be adjusted as of the date of such termination of the Lease.

12.1 Acceptable Partial Taking. If but a part of the Premises shall be taken by any Public Authority for public or quasi-public use or under any statute or by right of eminent domain, this Lease shall continue in full force and effect as to the property remaining, provided such remaining property is adequate for continued enjoyment by the Lessee for the uses and purposes provided for hereunder, and Lessee shall not be entitled to any award that may be made for such taking, nor shall such taking constitute a termination of this Lease or a constructive eviction of Lessee. However, the rent payable hereunder shall be adjusted as of the time of such taking to equitably reflect the change in the size of said remaining property.

12.2 Condemnation Order. In the event the improvements on the Premises here are condemned by any Public Authority, it is agreed and understood that upon notice of such order of condemnation that Lessor has the option or election to (a), terminate this Lease as provided herein or (b) make the required repairs. If Lessor elects to terminate this Lease, he shall give notice thereof in writing to Lessee within thirty (30) days of the date of the receipt of the order of condemnation from the Public Authority, and the Lessee shall then have thirty (30) days from the receipt of Lessor's notice to exercise his election to (a) surrender possession of the Premises or (b) continue in possession and make the required repairs at Lessee's expense. If the repairs are made by either Lessor or Lessee as herein provided, during the actual period of such repairs it is agreed that there shall be proportionate abatement of rent; provided, however, that nothing contained herein shall be construed as prohibiting, limiting, diminishing or altering Lessor's right to contest, deny, protest or in any other way attack, question or defend the matters involved in such condemnation, both as to the facts and the authority of said Public Authority, and in that event the options or elections provided for hereinabove shall be exercisable in the manner so described only after the matters in

contest have been judicially determined. Lessor shall give notice to Lessee of his election to contest the order of condemnation within thirty (30) days after receipt of same.

### **XIII. LIENS AND ENCUMBRANCES**

13.0 Mortgage. The rights and interest of Lessee under this Lease shall at all times be subject and subordinate to the lien of any mortgage or mortgages now in effect or later placed upon the Premises, and to all advances made or hereafter to be made upon the security thereof, and to the interest thereon, and all renewals, replacements, and extensions thereof. Lessee binds and obligates itself to execute and deliver such further instrument or instruments subordinating this Lease to the lien of any such mortgage or mortgages at any time the same may or shall be desired by any mortgagee or proposed mortgagee. It is further agreed and understood, however, that whether this Lease is subordinate to any such mortgage or not, Lessee's absolute right to quiet enjoyment of the Premises hereby shall be maintained so long as Lessee shall pay all Rent and perform all duties required hereunder.

13.1 Estoppel Certificate. Lessee shall at any time upon not less than ten (10) days prior written request from Lessor execute, acknowledge, and deliver to Lessor, in form reasonably satisfactory to Lessor and/or Lessor's mortgagee, a written statement certifying, to the extent true, that Lessee has accepted the Premises, that this Lease is unmodified and in full force and effect (or if there have been modifications), that the Lessor is not in default hereunder, the date to which the Rent and other charges have been paid in advance, if any, or such other accurate certification as may reasonably be required by Lessor or Lessor's mortgagee, and agreeing to give copies to any such mortgagee of all notices exchanged between Lessee and Lessor. It is intended that any such statement delivered pursuant to this subsection may be relied upon by any prospective purchaser of the Premises, mortgagee of the Premises, and their respective successors and assigns.

13.2 Encumbering Title. Lessee shall not do any act which shall in any way encumber the title of Lessor in and to the Premises, nor shall the interest or estate of Lessor in the Premises be in any way subject to any claim by way of lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by Lessee. Any claim to or lien upon the Premises arising from any act or omission of Lessee shall accrue only against the leasehold estate of Lessee and shall be subject and subordinate to the paramount title and rights of Lessor in and to the Premises.

13.3 Right to Contest. Lessee shall not permit the Premises to become subject to any mechanic's, laborer's or materialmen's lien on account of labor or material furnished to Lessee or claimed to have been furnished to Lessee in connection with work of any character performed or claimed to have been performed on the Premises by or at the direction of Lessee; provided, however, that Lessee shall have the right to contest in good faith and with reasonable diligence, the validity of any such lien or claimed lien if Lessee shall give to Lessor such security as may be deemed satisfactory to Lessor to insure payment thereof and to prevent any sale, foreclosure, or forfeiture of the Premises by reason of non-payment thereof; provided, further, that on final determination of the lien or claim for lien, Lessee shall immediately pay any judgment rendered, with all proper costs and charges, and shall have the lien released and any judgment satisfied.

13.4 Payment of Expenses and Other Charges. In the event Lessee fails to pay charges

for alterations, improvements or repairs, taxes, or insurance, or any other payments required by it to be made hereunder other than rent, or if Lessee refuses or neglects to repair or maintain the Lease Premises as required hereunder as soon as reasonably possible after written demand, Lessor may in its sole discretion make any such payment or any such repairs without liability to Lessee for any loss or damage that may accrue to Lessee or Lessee's property or business, and the amount so paid for such costs incurred shall be immediately due to Lessor by Lessee, together with the interest at the rate of twelve percent (12%) per annum from the date such payment or cost was made or incurred by the Lessor.

#### **XIV. EASEMENTS**

14.0 Notice to Lessee. No representation on the part of the Lessor is here contained concerning the existence or non-existence of any rights-of-way, party wall agreements, zoning ordinances, easements, prescriptions, or covenants running with the land affecting the property or improvements here and to the extent only as such may be determined by a physical inspection of the property and/or as such may be of record in the Probate Court of Mobile County, Alabama, the Lessee takes possession hereunder charged with notice thereof, and is bound to recognize all such rights-of-way, party wall agreements, easements, prescription and covenants running with the land, and zoning ordinances, and to indemnify and hold the Lessor harmless for any violations or breaches thereof by said Lessee.

#### **XV. ATTORNEY'S FEES**

15.0 To Be Paid by Lessee. In the event of employment of an attorney for the collection of any amount due hereunder, or for the institution of any suit for possession of the Premises, or for advice or service incident to the breach of any other condition of this Lease by the Lessee, or on account of bankruptcy proceedings by or against Lessee, or legal process being issued against the furniture and effects of the Lessee located upon the Premises, or the leasehold interest of the Lessee, the Lessee agrees to pay and shall be taxed with a reasonable attorney's fee, which fee shall be a part of the debt evidenced and secured by this Lease.

#### **XVI. MISCELLANEOUS**

16.0 Inspection. So long as Lessor gives at least 24 hours' oral notice to Lessee, Lessor shall have the right to visit and inspect said Premises at all reasonable times, to show said Premises to prospective tenants and purchasers, to display "For Sale" signs on said Premises, and during the last six (6) months of this Lease to display "For Rent" signs on said Premises.

16.1 Successors in Interest. All of the covenants, agreements, conditions, and undertakings contained in this Lease shall extend and inure to and be binding upon the heirs, executors, administrators, successors, and assigns of the respective parties hereto, the same as if they were in every case specifically named, and where in this Lease reference is made to either of the parties hereto, it shall be held to include and apply to wherever applicable, the heirs, executors, administrators, successors, and assigns of such party. Nothing contained herein shall be construed to grant or confer upon any other person or persons, firm, corporation or governmental authority, other than the parties hereto and their respective representatives, any right, claim or privilege by virtue of any covenant, agreement, condition or undertaking contained in this Lease, nor shall this provision be construed as to permit the assignment of the Lease or subleasing of the Premises,

except on the conditions imposed hereunder.

16.2 Severability. If any term, covenant or condition of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, and condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

16.3 Entire Agreement. This lease and the Exhibits, and Rider, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Lessor and Lessee concerning the leased premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this lease shall be binding upon Lessor or Lessee unless reduced to writing and signed by them.

16.4 Notices. Except under those circumstances where it is requisite that notice be given to the Lessee at the Premises, any notice, demand, communication, or election to exercise any option hereunder, whether intended for the Lessor or for the Lessee, shall be in writing, and may be served or delivered in person, or by a prepaid U.S. Registered or Certified Mail, to the address of the party intended as the recipient thereof as such address is stated herein, or to such other address as the parties hereto may from time to time designate in writing, and as to notice to Lessor, a copy thereof shall be mailed or delivered to said Agent.

Address of Lessor:  
P.O. Box 39 Dauphin Island Al  
36528

Address of Lessee:  
100 Orleans Drive Dauphin Island AL  
36528

16.5 Riders. All riders attached hereto are by reference made a part hereof and any terms or conditions of such riders in conflict or inconsistent with this Lease shall supersede and control this lease.

16.5 Captions. The captions contained in this Lease are for convenience only and are not a part of this Lease, nor in any way limit or amplify the terms and provisions of this Lease.

16.6 Time of Essence. Time is of the essence of this Lease, and all provisions herein relating thereto shall be strictly construed.

16.7 Governing Law. This Lease shall be subject to and governed by the laws and regulations of the State of Alabama.

IN WITNESS WHEREOF, Lessor and Lessee have executed these presents by affixing hereunto their respective hands and seals on the date first above written.

**LESSOR:**

**DAUPHIN ISLAND PROPERTY OWNERS ASSOCIATION, INC.**

By: Domenic P. Carlucci

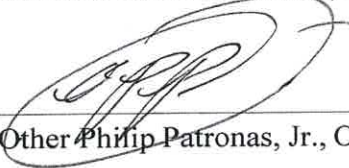
Domenic Carlucci, President

By: Sally Acuff

Sally Acuff, Secretary

**LESSEE:**

**PIRATES BAR AND GRILL, LLC**

By: 

Other Philip Patronas, Jr., Owner

**EXHIBIT A**  
**Leased Premises and Common Area Description**

The "Premises" and/or "Leased Premises" shall include the building generally known as the "Isle Dauphine Club", including all three floors thereof, and associated walkways, breezeways, and area to the south, all as depicted on the schematic drawing attached hereto. The "Premises" shall not include the Dauphin Island Property Owners Association office, or any other areas not shown.

For the period lasting from the inception of the lease term, Lessee will have access to the north of the Premises shown on the attached schematic, and as marked. Parking for Lessee and the adjoining DIPOA properties of the grill/pool/cabana, and the golf course will be on a "first come, first served" basis for all parking spaces in the existing parking lot to the east of the grill/pool/cabana, those spaces north of the Isle Dauphine Club, and all other parking areas, with the exception of two (2) reserved parking spaces directly in front of the DIPOA office. Lessee may not charge for parking.

The parking lot shall be known as "Common Areas" and shall not be part of the "Premises" or "Leased Premises".

## EXHIBIT B

Items to be repaired by Lessor within Six (6) months of signed lease with the exception of Items 1-7, which are to be completed by March 15, 2023 or as soon as possible.

1. Pool bathrooms – To be repaired in compliance with State, Local and MCHD code requirements.
  2. Commercial Water Heater – To be replaced with 119 gal 208v with appropriate recuperation time for a commercial high-volume kitchen.
  3. Back Service doors – To be replaced with commercial grade doors with windows and crash bars.
  4. Pool Leak – To be permanently fixed by Lessor. Furthermore, Lessor agrees to pay the water bill amount that exceeds \$750/mo. from Mar-Oct until the pool leak is mitigated. Once said leak is fixed and it is confirmed by Lessee that the water bill is reduced to normal operating amounts, then this requirement shall be removed.
  5. Lower-Level Floors – To be replaced with a durable water-resistant floor covering designed for high volume traffic.
  6. Plumbing on Bottom Floor – Drain system to be repaired on the bottom floor to create a functional drain system of all elements.
  7. Walk-in Freezer (1/2 cost) – To be repaired to be in standard for a commercial restaurant freezer with the ability to hold at -10°F to insure proper Food Preservation
- 
8. Slab for Dumpster – To be constructed and placed in compliance with local building codes.
  9. Electrical Feeds – Lessor will replace secondary 208v 3 phase power feed that supplies the building.
  10. Gravel for Back Driveway – This shall be repaired to be in compliance with the MCHD standard for drainage.
  11. Wheel Room Doors. Doors will be replaced with half wall and upper window unit so weatherproofing can be accomplished along old sill plate.

STATE OF ALABAMA)  
COUNTY OF MOBILE

**LEASE GUARANTY**

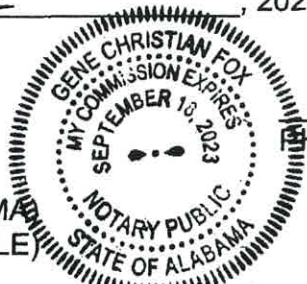
In consideration of One Dollars (\$1.00) in hand received and in order to induce

**DAUPHIN ISLAND PROPERTY OWNERS ASSOCIATION, INC.**

(hereinafter referred to as "Landlord") to execute and deliver a certain lease dated \_\_\_\_\_, 2023 by and between Landlord and **PIRATES BAR AND GRILL, LLC** (hereinafter referred to as "Tenant"), relating to certain demised premises located at: 100 Orleans Drive, Dauphin Island, Alabama 36528, and more particularly described in said Lease, to which this personal guaranty is Exhibit "A".

The undersigned (hereinafter referred to as "Guarantor"), does hereby guarantee the prompt, full and faithful performance by Tenant of all agreements, covenants, obligations and acts to be performed by Tenant under the provisions of said lease during the initial term and during any extension or renewal thereof, and covenants and agrees that, in the event of Tenant's default or defaults, upon Landlord's demand, promptly to fulfill and perform any and all agreements, covenants, obligations and acts of Tenant in said lease contained, Guarantor agrees that Landlord and Tenant may alter, modify or otherwise amend said lease without necessity of any notice to or joinder to Guarantor or any of them, and Landlord may deal with Tenant as Landlord may elect without diminishing or discharging the liability of Guarantor assumed hereunder. The Guarantor expressly waives notice of any default by Tenant under the said lease and all other notice to which Tenant or guarantor might otherwise entitled or which may be required by law, waives necessity of attempting or exhausting recourse against Tenant or Guarantor. The said Guarantor further consents to any assignment or subletting, in whole or in part, of the lease or leased premises by Landlord or Tenant, their subtenants or assignees, and this guaranty shall enure to the benefit of the successor and assigns of Landlord. The Guarantor hereby appoints the Secretary of State of the State of Alabama as his agent for service of process in any action brought on this Guaranty in said State and agrees to submit to the jurisdiction of any court in the State.

*3rd* IN WITNESS WHEREOF, the Guarantor has signed and sealed this Guaranty as of the day of *April*, 2023,

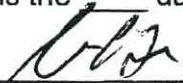


*[Signature]*  
\_\_\_\_\_  
PHILLIP PATRONAS, JR.

STATE OF ALABAMA  
COUNTY OF MOBILE

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that **PHILLIP PATRONAS, JR.**, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this date that, being informed of the contents of said instrument, he executed the same on the day the same bears date.

GIVEN under my hand and official seal on this the 3<sup>rd</sup> day of April, 2023.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: 9/18/2023