


MEMORANDUM
CITY OF ST. PETERSBURG

TO: The Honorable Chair and City Council Members

FROM: Jeanne Hoffmann, Assistant City Attorney



DATE: April 30, 2009

RE: City v. Fresco's Ristorante LLC

Attached is the Settlement Agreement, First Amendment to the Lease, Amended Rider One and a Revised Exhibit A, regarding the City of St. Petersburg v. Fresco's Ristorante LLC. The documents have been previously provided to David Sockol, the managing partner for the restaurant.

The original lease expires on April 30, 2009. As discussed at the previous closed door session, City Council modified lease term from a remaining five year period to five one year periods upon mutual consent of both the City and Mr. Sockol. Mr. Sockol has taken issue with this lease modification and will request that City Council consider returning the lease term to a five year period.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into by Fresco's Ristorante, LLC ("Fresco's") its officers, agents and employees and the City of St. Petersburg, Florida, its officers, agents and employees ("City") and collectively referred to hereinafter as "Parties."

WITNESSETH:

WHEREAS, on or about February 21, 2007, the City filed a Complaint in the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida, entitled CITY OF ST. PETERSBURG, a Florida municipal corporation vs. FRESCO'S RISTORANTE, LLC, a Florida limited liability corporation, 07-001692-CI-19 (the "Lawsuit"); and

WHEREAS, the Parties hereto desire to resolve their differences as to the Lawsuit without the need for further litigation; and

NOW, THEREFORE, in consideration of these premises, and of the covenants contained herein and for other good and valuable consideration, the adequacy and receipt of which is by all parties hereby acknowledged, the parties hereto, with the intent to be legally bound, agree as follows:

1. Live music in Outdoor Area:

(a) Fresco's will be allowed to play live music in the Outdoor Area (all references to "Outdoor Area" in the settlement agreement refers to the "Outdoor Area" depicted on Exhibit A, attached hereto) until 10 p.m., Monday through Sunday. At 10 p.m. all live music in the Outdoor Area must be discontinued or moved to the Indoor Area, (all references to "Indoor Area" in the settlement agreement refers to the "Indoor Area" depicted on Exhibit A, attached hereto) with all doors, windows, openings, etc. closed, with only two exceptions. The two exceptions are the dates of New Year's Eve and the 4th of July; on New Year's Eve, Fresco's will be allowed to play live music in the Outdoor Area until 1 a.m. and on the 4th of July, Fresco's will be allowed to play live music in the Outdoor Area until 11 p.m. This sub-provision shall be included in a subsequent amendment or modification to the lease.

(b) If Fresco's chooses to play live music in the Outdoor Area, it must be done in full compliance with the law, lease and provisions of this settlement agreement for the duration of the existing lease, plus all option(s) to extend the lease for the additional five year term(s), if Fresco's chooses to exercise the option(s) and is determined not to be in default at the time of the extension(s).

2. Live music in Indoor Area:

(a) Fresco's will be allowed to play live music in the Indoor Area until closing, Monday through Sunday. However, live music played in the Indoor Area after 10 p.m. must be done with all doors, windows, openings, etc., closed. This sub-provision shall be included in a subsequent amendment or modification to the lease.

(b) If Fresco's chooses to play live music in the Indoor Area, it must be done in full compliance with the law, lease and provisions of this settlement agreement for the duration of the existing lease, plus all option(s) to extend the lease for the additional five year term(s), if Fresco's chooses to exercise the option(s) and is determined not to be in default at the time of the extension(s).

3. Recorded music or amplified sound, Indoor or Outdoor Area:

(a) Fresco's will be allowed to have recorded music or amplified sound played in the Outdoor Area until Closing, Monday through Sunday. ("Closing" is 11 p.m. on Sundays through Wednesdays; 2 a.m. on Thursdays through Saturdays). This sub-provision shall be included in a subsequent amendment or modification to the lease.

(b) Fresco's will be allowed to have recorded music or amplified sound played in the Indoor Area until Closing. This sub-provision shall be included in a subsequent amendment or modification to the lease.

(c) If Fresco's chooses to have recorded music or amplified sound in the Indoor or Outdoor Area, it must be done in full compliance with the law, lease and provisions of this settlement agreement, for the duration of the existing lease, plus all options to extend the lease for the additional five year term(s), if Fresco's chooses to exercise the option(s) and is determined not to be in default at the time of the extension(s).

4. Penalties for violation:

(a) With regard to Fresco's playing in the Indoor or Outdoor Area, whether live or recorded music or amplified sound, in the event there is a violation of the law, the lease or any other provisions set forth in the settlement agreement, Fresco's will be either: (1) served with one notice of non-monetary default with a deadline to cure the default, or (2) allowed one "noise-related" municipal ordinance violation where Fresco's has entered a plea of guilty or no contest to the violation, or there is a finding of guilt by the court as to the violation. Failure to cure the first non-monetary default, the receipt of a second non-monetary notice of default, a plea of guilty or no contest or a finding of guilt by the court as to a second "noise-related" municipal ordinance violation, a violation of the lease or any other provisions set forth in the settlement related to playing in the Indoor or Outdoor Area, live or recorded music or amplified sound, will result in the City pursuing all necessary legal remedies allowed by law or provided in the lease.

(b) Any other violations of the law, lease or terms of this settlement agreement will be addressed pursuant to the provisions of the lease agreement for monetary and/or non-monetary defaults.

5. Annual renewal. An amendment to the lease, which will be effective May 1, 2009, shall require that there will be an annual renewal of the lease for each of the next five (5) years which renewal shall occur only by mutual agreement of both Parties to the lease.

6. Compliance. Fresco's shall comply with all laws, including but not limited to the St. Petersburg City Code, the lease, including lease modifications and/or amendments, the rules for the marina and the terms of this settlement agreement at all times, with no exception.

7. Jurisdiction. The Court will retain jurisdiction over this settlement agreement for enforcement purposes.

8. Terms and conditions. In addition to this settlement agreement, new terms and conditions will be set forth in the lease via amendment or modification.

9. Dismissal. The City will voluntarily dismiss the pending case against Fresco's.

10. Fees and costs. Each party bears their own fees and costs.

11. City Council Approval. This settlement is contingent on final approval from City Council. Modifications or amendments to the lease will also need to be approved by City Council and Fresco's.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the date attested below.

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT ("First Amendment") is made and entered into as of this _____ day of _____, 2009 ("Effective Date") by and between the City of St. Petersburg, Florida ("Landlord") and Fresco's Ristorante, LLC, d/b/a Fresco's Ristorante ("Tenant").

WHEREAS, the Landlord and Tenant entered into a lease for Space No. _____ at The Pier dated March 2, 2004, (the lease with all exhibits and riders thereto is hereafter referred to as "Lease"); and

WHEREAS, the Landlord and Tenant wish to amend the Lease as provided below.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Landlord and Tenant hereby agree as follows:

1. The Lease is hereby amended as follows as of the Effective Date:

A. Article 1, Paragraph E. is deleted and the following inserted:

E. Expiration Date and Extension of Term: The initial Expiration Date shall be April 30, 2009, unless this Lease is terminated or the Term extended as provided herein. If Tenant is not in default under this Lease, Landlord and Tenant may mutually agree in writing to extend the Term for a period of one (1) year for each of the five (5) years following the expiration of the initial Term. Tenant shall notify Landlord at least one hundred and twenty (120) days prior to the expiration of the initial Term and each renewal term whether Tenant requests to extend the Term as provided above. If Tenant fails to provide the City with such notice, Landlord may terminate this Lease at the expiration of the then current Term. Tenant shall have no right to extend the Term without the written agreement of the City. The Term of this Agreement shall not exceed April 30, 2014 without the written agreement of the City.

B. Article 1, Paragraph F. is deleted and the following inserted:

F. Permitted Uses: A full service table cloth restaurant and lounge, specializing in table waited Mediterranean, and Italian Nuevo Cuisine and Gulf Coast Cuisine and such other table waited cuisine as may be implemented from time to time as approved by Landlord in writing. Tenant will offer snacks "to-go" for the boating public as well as evening "tapas" and "desserts" for evening after dinner service. Tenant shall not operate as a "fast food" restaurant. Liquor and other beverages also shall be table waited. Tenant shall serve full course meals at lunch and dinner. Tenant shall not use or permit the use of the Premises for any other purpose than that set forth herein. Tenant will be permitted to play live music or recorded music and amplified sound indoors or outdoors provided that Tenant fully complies with the terms and conditions of this Lease, including but not limited to Rider 1 hereto.

C. Article 21, Paragraph I. is deleted and the following inserted:

I. Termination: Notwithstanding anything to the contrary contained in this Lease, Landlord may terminate this Lease (without penalty and without any liability to Tenant) if Landlord (in its sole discretion) commences any project to demolish, renovate, or change the use or character of the Center or any portion thereof; provided, however, that Landlord shall give Tenant at least one hundred eighty (180) days notice prior to such termination. Landlord may also terminate this Lease if any rent control Laws are enacted which require reductions in any Rent payable hereunder or which prohibit or reduce the amount of any increase in Rent provided for in this Lease.

In the event there is no termination of the Lease by Landlord, but Landlord has determined the need to demolish, substantially renovate or change the use or character of the Center, Tenant shall not be entitled to any remedy, including but not limited to damages, and waives any and all claims, demands, fines, costs and expenses, actions, judgments, liabilities and proceedings against Landlord, for the impact on Tenant's permitted use of the Premises, based on the demolition, renovation, or change in use or character of the Center.

D. Article 22, Paragraph A. is deleted and the following inserted:

A. Default. The occurrence of any one or more of the following events shall constitute a "Default" by Tenant and shall give rise to Landlord's remedies set forth in Paragraph B., below, unless otherwise noted: (i) failure to make when due any payment of Rent, unless such failure is cured within five (5) days after notice, (ii) a violation of Paragraph 18, Revised Rider One, (iii) failure to observe or perform any term or condition of this Lease, other than the payment of Rent or Paragraph 18, Revised Rider One, unless such failure is cured within any period of time following notice expressly provided in other Articles hereof, or otherwise within a reasonable time, but in no event more than fifteen (15) days following notice (or such additional time as may be required due to Unavoidable Delays), (iv) making by Tenant or any guarantor of this Lease ("Guarantor") of any general assignment for the benefit of creditors, (b) filing by or against Tenant or any Guarantor of a petition to have Tenant or such Guarantor adjudged a bankrupt or a petition for reorganization or arrangement under any Laws relating to bankruptcy or insolvency (unless, in the case of a petition filed against Tenant or such Guarantor, the same is dismissed within sixty (60) days), (c) appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located in the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days, (d) attachment, execution or other judicial seizure of substantially all of Tenant's assets located on the Premises or of Tenant's interest in this Lease, (e) Tenant's or any Guarantor's convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debtor, or (f) Tenant's or Guarantor's insolvency or admission of an inability to pay its debts as they mature, or (v) a violation by Tenant or any affiliate of Tenant under any other lease or agreement with the Landlord relating to the Center which is not cured within the time permitted to cure thereunder. Pursuant to

Paragraph 18, Revised Rider One, two violations during the Term and the extension of the Term, if applicable, constitute an incurable Default; however, notwithstanding the provisions in Paragraph 18, Revised Rider One, the failure by Tenant to comply with the same term or condition of this Lease on two occasions during any twelve (12) month period shall cause any failure to comply with such term or condition during the succeeding twelve (12) month period, at Landlord's option, to constitute an incurable Default. The notice and cure periods provided herein are in lieu of, and not in addition to, any notice and cure periods provided by Laws; provided, Landlord may at any time and from time to time (in its sole discretion) elect to comply with such notice and cure periods as may be provided by applicable Laws in lieu of the notice and cure periods provided herein.

- E. The original Rider One is deleted and replaced with the revised Rider One attached to this First Amendment and identified as "Revised Rider One."
- F. The original Exhibit A is deleted and replaced with the revised Exhibit A attached to this First Amendment and identified as "Revised Exhibit A."

2. All other terms and conditions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF the parties have caused this First Amendment to be executed by their duly authorized representatives as of the date and year first above written.

WITNESSES: (as to Landlord)

Sign: _____

Print: _____

Sign: _____

Print: _____

CITY OF ST. PETERSBURG, FLORIDA:

By: _____

Patricia Elston

As Its: First Deputy Mayor/City Administrator

Attest: _____

Eva Andujar, City Clerk

(Seal)

WITNESSES: (as to Tenant)

By: _____

Print: _____

By: _____

Print: _____

TENANT: _____

By: _____

Print: _____

Its: _____

APPROVED AS TO CONTENT:

Urban Retail Properties, Co.

By: Don Paul
Pier Project Manager

APPROVED AS TO CONTENT AND FORM:

City Attorney or Designee

REVISED RIDER ONE

Rules

(1) **Common Areas.** Tenant shall not use the ~~Common Areas, including~~ areas adjacent to the Premises, for any purpose other than ingress and egress, and any such use thereof shall be subject to the other provisions of this Lease, including these Rules. Without limiting the generality of the foregoing, ~~Tenant shall not use the Common Areas to canvass, solicit business or information from, or distribute any commercial article or material to, other tenants, occupants or invitees of the Center.~~ Tenant shall not allow anything to remain in any passageway, sidewalk, court, corridor, ~~stairway,~~ entrance, exit, ~~elevator,~~ shipping area, or other area outside the Premises. ~~Janitorial closets, Utility closets, telephone closets, broom closets, electrical closets, storage closets,~~ and other such closets, rooms and areas shall be used only for the purposes and in the manner designated by Landlord, and may not be used by Tenant or its employees, agents, invitees or Contractors, or other parties, without Landlord's prior written consent.

(2) **Deliveries.** Furniture, inventory and all other deliveries may be brought into the ~~Center only at times and in the manner designated by Landlord,~~ Premises in compliance with all Laws, and always at Tenant's sole risk. Landlord may inspect items brought into the ~~Center or~~ Premises with respect to weight or dangerous nature or compliance with this Lease or applicable Laws. ~~Tenant's use of any freight elevators, loading and service areas at the Center shall be subject to scheduling by Landlord. Tenant shall not take or permit to be taken in or out of other entrances or elevators of the Center, any item normally taken, or which Landlord otherwise requires to be taken, in or out through service doors or on freight elevators. Tenant shall move all inventory, supplies, furniture, equipment and other items as soon as received directly to the Premises. Any hand carts used at the Center shall have rubber wheels and side guards and no other material handling equipment may be brought upon the Center except as Landlord shall approve in writing in advance.~~

(3) **Trash.** All garbage, refuse, trash and other waste shall be kept in the kind of container, placed in the areas, and prepared for collection in the manner and at the times and places specified by Landlord, subject to Article 26 respecting Hazardous Materials. If Landlord designates a service to pick up such items, Tenant shall use the same at Tenant's cost. If Landlord shall provide or arrange for such service, Tenant shall pay ~~Tenant's Proportionate Share of~~ the cost thereof (or such other share as Landlord may fairly and reasonably determine) to Landlord on or before the first day of each calendar month in advance. ~~Landlord may include such charges in Common Area Costs. Landlord reserves the right to require that Tenant participate in any recycling program designated by Landlord.~~

(4) **Fire Protection.** If Landlord installs or has heretofore installed a supervised fire sprinkler and/or alarm system for the protection of the ~~Center~~ Premises, Tenant shall pay ~~Tenant's Proportionate Share of~~ the cost thereof (or such other share as Landlord may fairly and reasonably determine) to Landlord on or before the first day for each calendar month in advance. ~~Landlord may include such charges in Common Area Costs.~~

(5) **Pest Control.** Tenant shall use, at Tenant's cost, such pest and rodent extermination contractor as Landlord may direct and at such intervals as Landlord may require. In the alternative, from time to time, Landlord may arrange for pest control (in which case, Tenant shall pay ~~Tenant's~~

~~Proportionate Share of the cost thereof, or such other share as Landlord may fairly and reasonably determine, to Landlord on or before the first day of each calendar month in advance. Landlord may include such charges in Common Area Costs.~~ Tenant shall provide Landlord with evidence of Tenant's compliance with this provision within five (5) days after Landlord's written request.

(6) **Signs and Display Windows.** Tenant shall not place any sign or other thing of any kind outside the Premises (including without limitation, exterior walls and roof), or on the interior or exterior surfaces of glass panes or doors, except such single sign as Landlord shall expressly approve in writing for or in connection with Tenant's storefront. Within the Premises, Tenant shall not: ~~(i) install any sign that advertises any product; (ii) install any sign within twenty-four (24) inches of any window; or (iii) install any sign that is visible from outside the Premises or that is illuminated, without Landlord's prior written approval.~~ If Landlord approves or requires illuminated signs, Tenant shall keep the same illuminated each day of the Term during the hours designated by Landlord from time to time. All Tenant's signs shall be professionally designed, prepared and installed and in good taste so as not to detract from the general appearance of the Premises ~~or the Center~~ and shall comply with applicable Laws and the sign criteria developed by Landlord from time to time. After the initial installation of Tenant's storefront sign as approved in writing by Landlord in accordance with these provisions, Landlord reserves the right to require from time to time that Tenant change or replace such sign in order to comply with any new sign criteria developed by Landlord. The term "sign" in this Rule shall mean any sign, placard, picture, name, direction, lettering, insignia or trademark, advertising material, advertising display, awning or other such item, except that Tenant's storefront sign shall be an actual sign. Blinds, shades, drapes or other such items shall not be placed in or about the windows in the Premises except to the extent, if any, that the character, shape, design, color, material and make thereof is first approved by Landlord in writing.

(7) **Display of Merchandise.** Tenant shall not place or maintain any permanent or temporary fixture or item or display any merchandise: (i) beyond the Premises storefront; ~~or (ii) anywhere inside the Premises within six (6) feet of any entrance to the Premises (except that for any recessed entry of the Premises, Tenant shall not so place or maintain fixtures within three (3) feet of such entrance).~~ All displays of merchandise shall be tasteful and professional.

(8) **Plumbing Equipment.** The toilet rooms, urinals, wash bowls, drains and sewers and other plumbing fixtures, equipment and lines shall not be misused or used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein, and Tenant shall properly install, maintain, clean, repair and replace adequate grease traps.

(9) **Roof, Awnings and Projections.** Except to the extent expressly permitted under Article 1 of this Lease, Tenant shall not install any aerial, antennae, satellite dish or any other device on the roof, exterior walls. ~~or Common Areas of the Center.~~ Tenant may install and have access to rooftop HVAC equipment only to the extent approved or required by Landlord from time to time in connection with Tenant's obligations under Articles 11 and 12 of this Lease. No awning or other projection shall be attached by or for Tenant to the exterior walls of the Premises or the building of which it is a part.

(10) **Overloading Floors.** Tenant shall not overload any floor or part thereof in the Premises ~~or Center including any public corridors or elevators therein,~~ and Landlord may direct and

control the location of safes, vaults and all other heavy articles and require supplementary supports of such material and dimensions as Landlord may deem necessary to properly distribute the weight at Tenant's expense (including expenses for structural review and engineering).

(11) **Locks and Keys.** Upon termination of the Lease or Tenant's right to possession, Tenant shall: (i) return to Landlord all keys, parking stickers or key cards, and in the event of loss of any such items shall pay Landlord therefore; and (ii) advise Landlord as to the combination of any vaults or locks that Landlord permits to remain in the Premises.

(12) **Unattended Premises.** Before leaving the Premises unattended, Tenant shall close and securely lock all doors and other means of entry to the Premises and shut off all lights (except signs required to be illuminated hereunder), water faucets and other utilities in the Premises (except heat to the extent necessary to prevent the freezing or bursting of pipes). This provision shall not imply that Tenant may leave the Premises unattended in violation of the operating requirements set forth elsewhere in this Lease.

(13) **Energy Conservation.** Subject to Rule (6) concerning illumination, Tenant shall not waste electricity, water, heat or air conditioning, or other utilities or services, and agrees to cooperate fully with Landlord and comply with all Laws to assure the most effective and energy efficient operation of the Premises. ~~Center~~

(14) **Food, Beverages, Game and Vending Machines.** Except to the extent expressly permitted under Article 1 of this Lease, Tenant shall not: (i) use the Premises for the manufacture, preparation, display, sale, barter, trade, gift or service of food or beverages, including without limitation, intoxicating liquors; or (ii) install, operate or use any video, electronic or pinball game or machine, or any coin or token operated vending machine or device to provide products, merchandise, food, beverages, candy, cigarettes or other commodities or services including, but not limited to, pay telephones, pay lockers, pay toilets, scales, and amusement devices; provided, however, that Tenant may install vending machines for the sale of non-alcoholic beverages, food, and candy in an area not visible from the sale area or exterior of the Premises for the exclusive use of Tenant's employees.

(15) **Going-Out-Of-Business Sales and Auctions.** Tenant shall not use, or permit any other party to use, the Premises for any distress, fire, bankruptcy, close-out, "lost our lease" or going-out-of-business sale or auction. Tenant shall not display any signs advertising the foregoing anywhere in or about the Premises. This prohibition also shall apply to Tenant's creditors.

(16) **Landlord's Trade Name and Trademarks.** No symbol, design, name, mark or insignia adopted by Landlord for the Premises ~~Center~~ or picture or likeness of the Premises ~~Center~~ shall be used by Tenant without the prior written consent of Landlord, except as provided in Article 10 of this Lease.

(17) **Prohibited Activities.** Tenant shall not: (i) use strobe or flashing lights in or on the Premises or in any signs therefore; (ii) use, sell or distribute any commercial leaflets, handbills, bumper stickers, other stickers or decals, balloons or other such articles in the Premises (or other areas); ~~(iii) operate any loudspeaker, television set, phonograph, radio, CD player or other musical or sound-producing instrument or device so as to be heard outside the Premises;~~ (iii) operate any electrical

or other device which interferes with or impairs radio, television, microwave, or other broadcasting or reception ~~from or in the Center Premises or elsewhere~~; (iv) bring or permit any pet or other animal (except for registered guide or companion dogs) in the Premises ~~Center~~; (v) make or permit objectionable noise, vibration or odor to emanate from the Premises or any equipment serving the same; (vi) do or permit anything in or about the Premises that is unlawful, tends to create or maintain a nuisance, or is contrary to public health, safety or welfare; or (vii) use or permit upon the Premises anything that violates the certificates of occupancy issued for the Premises or the Center.

(18) **Noise Related Activities:**

(A) **Live Music in Outdoor Area:** Tenant will be allowed to play live music in the Outdoor Area, (all references to "Outdoor Area" in the Rules refers to the "Outdoor Area" depicted on Revised Exhibit A, attached hereto) until 10 p.m., Monday through Sunday. At 10 p.m. all live music in the Outdoor Area must be discontinued or moved to the Indoor Area, (all references to "Indoor Area" in the Rules refers to the "Indoor Area" depicted on Revised Exhibit A, attached hereto) with all doors, windows, openings, etc. closed, with only two exceptions. The two exceptions are the dates of New Year's Eve and the 4th of July; on New Year's Eve, Tenant will be allowed to play live music in the Outdoor Area until 1 a.m. and on the 4th of July, Tenant will be allowed to play live music in the Outdoor Area until 11 p.m.

(B) **Live Music in Indoor Area:** Tenant will be allowed to play live music in the Indoor Area until Closing, Monday through Sunday. However, live music played in the Indoor Area after 10 p.m. must be done with all doors, windows, openings, etc., closed.

(C) **Recorded music or amplified sound:** Tenant will be allowed to have recorded music or amplified sound played in the Outdoor Area until Closing, Monday through Sunday. ("Closing" is 11 p.m. on Sundays through Wednesdays; 2 a.m. on Thursdays through Saturdays). Tenant will be allowed to have recorded music or amplified sound played in the Indoor Area until Closing.

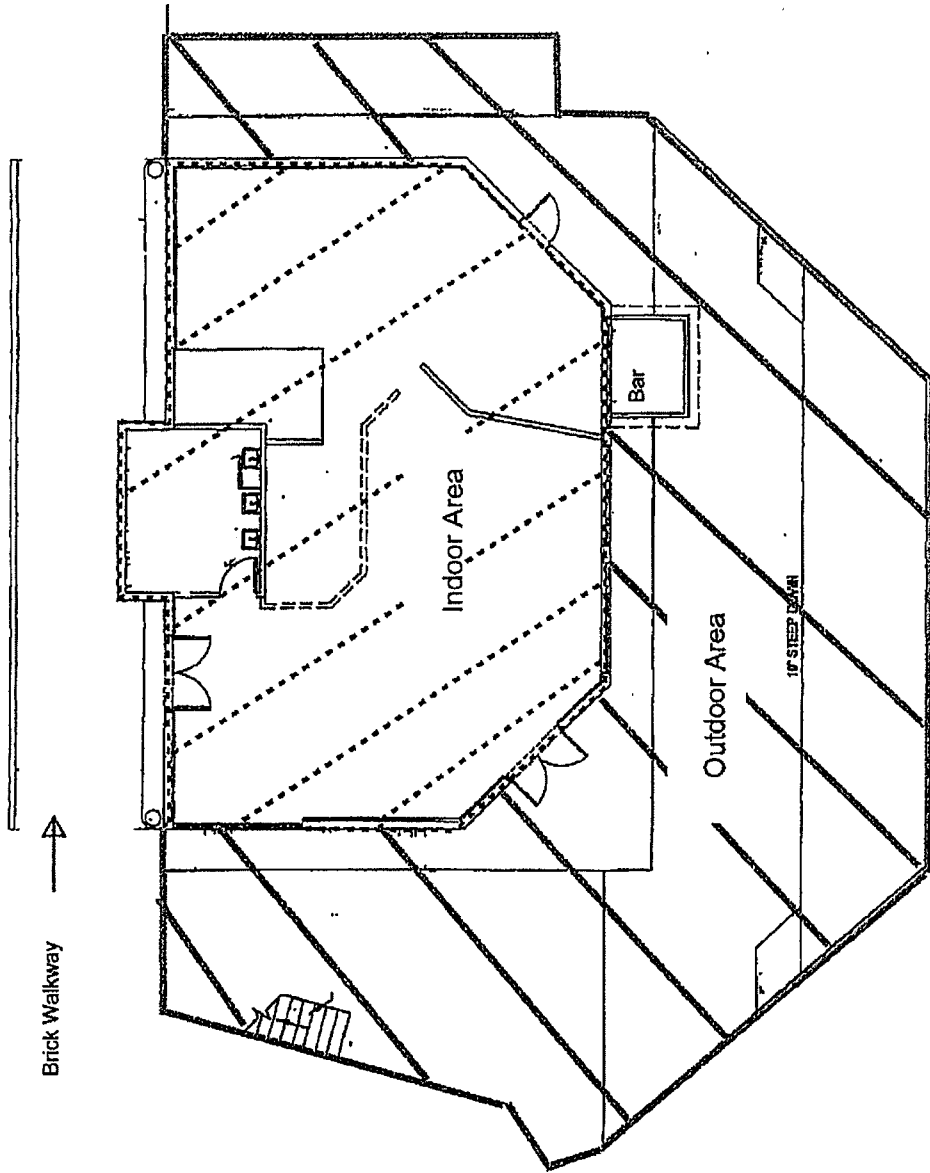
(D) **Penalties for violation:** With regard to Tenant playing in the Indoor or Outdoor Area, whether live or recorded music or amplified sound, in the event there is a violation of the law, the lease or any other provisions set forth in the settlement agreement, Tenant will be either: (1) served with one notice of non-monetary default with a deadline to cure the default, or (2) allowed one "noise-related" municipal ordinance violation where Tenant has entered a plea of guilty or no contest to the violation, or there is a finding of guilt by the court as to the violation. Failure to cure the first non-monetary default, the receipt of a second non-monetary notice of default, a plea of guilty or no contest or a finding of guilt by the court as to a second "noise-related" municipal ordinance violation, a violation of the lease or any other provisions set forth in the settlement related to playing in the Indoor or Outdoor Area, whether live or recorded music or amplified sound, will result in the Landlord pursuing all necessary legal remedies allowed by law or provided in the lease.

(19) **Parking.** Tenant and Tenant's employees shall park their cars only in those portions of the parking area designated by Landlord for tenant and employee parking and shall use such areas only for parking cars (or at Landlord's option, Landlord may require that any or all such employees park off-site). Tenant shall furnish Landlord with a list containing the description and automobile license numbers (and State of issuance) of the cars of Tenant and its employees within five (5) days of any request by Landlord, and Tenant shall thereafter advise Landlord of any changes, additions or deletions to such list. Landlord reserves the right to: (i) adopt additional requirements pertaining to parking, including without limitation, a parking system with charges favoring carpooling for tenants and their employees, and any other parking system by validation, metering or otherwise; (ii) provide trolley and shuttle service to and from the Center to parking lots designated by Landlord; (iii) assign specific spaces, and reserve spaces for small cars, handicapped individuals, and other tenants, customers of tenants or other parties (and Tenant and its employees and visitors shall not park in any such assigned or reserved spaces); and (iv) restrict or prohibit full size vans and other large vehicles. In case of any violation of these provisions or any applicable Laws, Landlord may: (a) refuse to permit the violator to park, and remove the vehicle owned or driven by the violator from the ~~Center~~ Premises without liability whatsoever, at such violator's risk and expense and/or (b) charge Tenant such reasonable rates as Landlord may from time to time establish for such violations, which shall be at least Fifty Dollars (\$50.00) per day for each vehicle that is parked in violation of these Rules. These provisions shall be in addition to any other remedies available to Landlord under this Lease or otherwise.

(20) **Responsibility for Compliance.** Tenant shall be responsible for ensuring compliance with these Rules, the Lease, rules for the City of St. Petersburg Marina and settlement agreement between the Landlord and Tenant entitled CITY OF ST. PETERSBURG, a Florida municipal corporation vs. FRESCO'S RISTORANTE, LLC, a Florida limited liability corporation, 07-001692-CI-19 as they may be amended, by Tenant, Tenant's employees, agents, invitees, suppliers, and Contractors and by other occupants of the Premises and their employees, agents, invitees, suppliers, and Contractors.

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REVISED
EXHIBIT A
Fresco's



↑
East