

## **AGREEMENT FOR LEASE OF AIRSPACE**

THIS AGREEMENT FOR LEASE OF AIRSPACE ("Agreement") is made as of the 1st day of January, 2019, by and between the CITY OF HERMOSA BEACH (the "City"), a municipal corporation, and PIERSIDE PROPERTIES, LLC, a California limited liability company ("Tenant").

### **RECITALS**

**A.** The City owns that certain real property located in the City of Hermosa Beach, California, more specifically described as Lot 23, Block 13, Hermosa Beach Tract as per map recorded in Book 1, Pages 25-26 of Maps, in the Office of the County Recorder of Los Angeles County, and more commonly known as 51 Pier Avenue (the "Property").

**B.** The Property is encumbered by an Easement Agreement recorded on July 10, 1975 as document number D6721 in the Office of the County Recorder of Los Angeles County, for the benefit of adjacent property owned by the Tenant (the "Easement"), which Easement includes a perpetual easement for non-exclusive pedestrian ingress and egress over and across the Property, together with the right to construct certain improvements on the Property, including air rights, in favor of Tenant.

**C.** Pursuant to the Easement, in or around 1977, Tenant's predecessor-in-interest constructed two open-air, elevated pedestrian bridges (the "Northern Bridge" and the "Southern Bridge") across the Property. The Northern Bridge and Southern Bridge connect two (2) buildings owned by Tenant on either side of the Property ("Tenant's Buildings") and provide access between the second stories of Tenant's Buildings. Tenant's predecessor-in-interest also constructed two (2) walkways pursuant to the Easement (the "Eastern Walkway" and the "Western Walkway") allowing pedestrians access along the second floor interior side of the buildings, in addition to a balcony overhang which has been used in the operation of a restaurant in Tenant's eastern building ("Front Balcony Overhang").

**D.** By way of an Agreement for Rent dated August 27, 1991, between the City and Tenant's predecessor-in-interest and issuance of Conditional Use Permit Resolution 91-5442, Tenant's predecessor-in-interest was permitted to enclose the Northern Bridge and use it for restaurant purposes for a term of ten (10) years.

**E.** On or about October 10, 2000, City issued an encroachment permit to Tenant's predecessor-in-interest allowing for outdoor dining appurtenant to the restaurant located on the second floor of the Tenant's Building to the east of the Property.



F. After expiration of the August 27, 1991 Agreement for Rent, Tenant's predecessor-in-interest and Tenant continued to occupy and use the Northern Bridge for restaurant purposes on a month-to-month basis.

G. Tenant's predecessor-in-interest and Tenant have used the Eastern Walkway and the Front Balcony Overhang as part of operation of the restaurant that occupies the second floor of the easterly of Tenant's Buildings and Tenant's restaurant lessee has obtained an encroachment permit from the City for its use of the Front Balcony Overhang.

H. By this Agreement, Tenant desires and City is willing to lease to Tenant the air rights for the continued existence and use as part of a restaurant the Northern Bridge, the Southern Bridge, the Eastern Walkway and the Front Balcony Overhang and to supersede the prior encroachment permit under which Tenant's restaurant lessee was offering outdoor dining.

I. The rights under this Lease pertain to the Lease dated December 31, 2014 between Tenant and Culinary Craft Inc. (the "Restaurant Lease").

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

**Section 1. Lease of Air Space.**

The City agrees to lease a portion of the Property consisting of the air rights for the Northern Bridge, the Southern Bridge, the Eastern Walkway and the Front Balcony Overhang (collectively, the "Leased Property") to Tenant, subject to the terms, provisions, covenants and agreements contained herein. The Leased Property is depicted on the map attached hereto as Exhibit A and incorporated herein by reference.

For avoidance of doubt, the term "Leased Property" does not include the non-exclusive pedestrian ingress and egress rights, together with the right to construct certain improvements, on, across and above the Property, including air rights, granted to the Tenant pursuant to the Easement, which rights are separate from, and are in no way limited or reduced by, the terms and conditions of this Agreement.

**Section 2. Term.**

The term of this Agreement shall commence as of January 1, 2019 and expire on December 31, 2019, subject to extension pursuant to Section 4, below, unless terminated by either party hereto as provided herein.



### **Section 3. Rent.**

Tenant shall pay to City as rent for the Leased Property an amount equal to fifty percent (50%) of the Base Rent payable to Tenant pursuant to Tenant's then-existing lease or leases for the portion of the second floor of Tenant's Buildings currently occupied by the Tower 12 restaurant, and which is designated as "Existing Restaurant" on the map attached hereto as Exhibit A ("Rent"). Base Rent shall not include reimbursements to Tenant by Tenant's lessee for Common Area Maintenance Expenses ("CAM"), property taxes, insurance, or any similar reimbursements typically found in a Triple-Net ("NNN") lease. If the second floor of Tenant's Buildings is leased by a single tenant, Rent shall be calculated by taking the price per square foot then in effect under such lease, taking into account any provisions therein regarding percentage rent, multiplied by 884 square feet. If the second floor of Tenant's Buildings is leased by multiple tenants, Rent shall be calculated by taking the weighted average price per square foot then in effect under the respective leases, taking into account any provisions therein regarding percentage rent, multiplied by 884 square feet. Rent shall be due and payable in advance on the first day of each month during the term of this Agreement. Rent for any period during the term of this Agreement which is for less than one month shall be a pro rata portion of the monthly installment. Rent shall be payable without notice or demand and without any deduction, offset or abatement in lawful money of the United States to the City at the address stated herein for notices or to other persons or such places as the City may designate to Tenant in writing.

Immediately upon full execution of this Agreement, Tenant shall pay to City the sum of \$6,767.38, reflecting the amount past due for the Northern Bridge for the months of May through December 2018. Tenant and City agree that this payment represents the full amount due to City by Tenant for the entire period prior to January 1, 2019, the effective date of this Agreement. In addition, immediately upon full execution of this Agreement (which City and Tenant anticipate will occur in mid-May 2019), Tenant shall pay to City the sum of \$12,199.20, which is the aggregate monthly rent payable for January, February, March, April and May of 2019. Therefore, the total amount payable by Tenant to City upon full execution of this Agreement is \$18,966.58. Thereafter, commencing on June 1, 2019, Tenant shall commence the monthly payment of monthly rent in accordance with the first paragraph of this Section 3.

Tenant shall provide City with a copy of all leases for the second floor of Tenant's Buildings, and shall maintain accounts and records sufficient to identify and account for the calculation of Rent due under this Agreement. All such records shall be made available at the request of the City, with reasonable notice, during regular business hours, for inspection. Such records shall be retained by Tenant for a period of three (3) years after the expiration of this Agreement.



**Section 4. Extensions to Term.**

Tenant shall have the option to extend the term of this Agreement for three additional terms of five (5) years each, provided that, at the time of the exercise of each option to extend, Tenant shall not be in default of any provisions of this Agreement beyond any applicable notice and cure period. Tenant may exercise its option to extend by delivering written notice of such exercise to City not less than six (6) months prior to the expiration of the immediately preceding term. Rent for any applicable extension term shall be calculated in the same manner as provided in Section 3 herein.

**Section 5. Use.**

In addition to the uses allowed under the Easement, Tenant agrees to use the Leased Property only for dining (food and beverage) purposes in connection with the adjacent restaurant use, provided that no tables, chairs or similar furniture shall be placed on the Eastern Walkway (it being understood that the existing wide handrail along the edge of the Eastern Walkway may remain in place and may be replaced with a similar fixture or furnishing, provided that the handrail is modified within a reasonable period following the full execution of this Agreement to add a code-compliant barrier at the edge of the flat surface on the handrail that is not less than four (4) inches in height).

Tenant shall not cause nor permit any condition of hazardous waste or toxic substances in, on or about the Leased Property.

Tenant hereby accepts the Leased Property in its "AS-IS" condition, existing as of the date of this Agreement, subject to all applicable zoning, municipal, county and state laws, ordinances, regulations governing or regulating the use of the Leased Property and accepts this Agreement subject thereto and to all matters disclosed thereby. Tenant hereby acknowledges that neither the City nor any representative of the City has made any representation or warranty to Tenant as to the suitability of the Leased Property for the conduct of Tenant's business.

**Section 6. Repair and Maintenance.**

Tenant shall at its own expense, repair and maintain, during the term of this Agreement, the Leased Property in good order, condition and repair. Tenant shall cause the Improvements within the Leased Property to be maintained and shall regulate its use and occupancy at all times, and the actions and activities of all persons within the Improvements in the Leased Property, so that its use will not pose a hazard or a danger to persons or property within the public right of way laying below and in the vicinity of the Leased Property.



## **Section 7. Alterations and Additions.**

Except as provided in Section 6, above, Tenant shall not, without the City's prior written consent, which consent shall not be unreasonably withheld, make any alterations, improvements or additions in or about the Leased Property other than as expressly provided in this Agreement or as allowed in the Easement. In any event, Tenant shall pay, when due, all claims for labor and materials furnished to or for Tenant at or for use in the Leased Property. Tenant shall not permit any mechanic's liens or materialism's liens to be levied against the Leased Property for any labor or material furnished to Tenant or claimed to have been furnished to Tenant. Nothing contained herein shall limit or otherwise affect the Tenant's right to install and maintain improvements pursuant to the Easement.

Unless otherwise agreed to by the parties hereto, all alterations, improvements or additions which are made on the Northern Bridge by the Tenant with respect to the uses described in Section 5, above) shall be removed at the expiration of this Agreement, and Tenant shall not be required to remove any improvements constructed pursuant to the Easement). Title to all personal property or to fixtures which may be removed without damage to the Leased Property shall remain in the Tenant or in such person as may be legally entitled thereto.

City agrees to allow Tenant to utilize heaters and to install awnings on the Southern Bridge in such size, number, locations and configuration as are approved in advance by City, such approval not to be unreasonably withheld. Tenant shall obtain building permits as may be required for these improvements. The heaters and awnings shall not become fixtures, but shall be removed at the expiration of this Agreement unless otherwise agreed by the parties.

## **Section 8. Taxes.**

Tenant shall pay all real property taxes resulting from Tenant's improvement and use of the Leased Property. "Real property taxes" is defined herein to include all real property taxes, possessory interest taxes and general and special taxes levied and assessed against the premises or against Tenant's improvement of and occupancy of the Leased Property.

## **Section 9. Utilities.**

Tenant shall make all arrangements and pay for all water, gas, heat, light, power, telephone and other utility services supplied to the Leased Property.





**Section 10. Insurance; Indemnity.**

**A. Obligations of Tenant.**

During the term of this Agreement, the Tenant at its own cost and expense shall:

(1) Keep or cause to be kept a policy or policies of insurance against loss or damage to the Leased Property resulting from fire, lightning, vandalism, malicious mischief, riot and civil commotion, and such perils ordinarily included as risk under standard insurance policies within the classification of fire and extended coverage to the extent of full replacement value thereof; and

(2) Maintain or cause to be maintained public liability insurance against claims or bodily injury or death, or damage to property occurring upon, in or about the Leased Property, such insurance to afford protection to a limit of not less than \$1 million per occurrence; and

(3) Maintain or cause to be maintained workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to ensure employers against liability for compensation under the Workers' Compensation Insurance and Safety Act now in force in California, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such worker's compensation insurance shall cover all persons employed by Tenant in connection with its use of the Leased Property.

**B. General Provisions.**

All policies or certificates issued by the respective insurers for insurance as required herein shall provide that such policies or certificates shall not be canceled or materially changed without at least thirty (30) days prior written notice to the City. Copies of such policies or certificates shall be deposited with the City together with appropriate evidence of payment of premiums therefor. The insurance policies provided under subsections A (1) and (2) of this Section 10 shall name the City as additional insured on said policies. At least thirty days prior to expiration dates of expiring policies, copies of renewal or new policies or certificates shall be deposited with the City. All insurance companies must be rated (B++:XIII) or better in Best's Insurance Rating Guide.

Such insurance shall be primary for losses arising out of Tenant's occupancy and use of the Leased Property. Neither the City nor any of its insurers shall be required to contribute to any such loss.



C. Indemnity and Hold Harmless.

Tenant shall indemnify, defend with counsel reasonably acceptable to City, and hold City harmless from and against any and all claims arising from Tenant's use or occupancy of the Leased Property or from the conduct of its business or from any activity, work, or things which may be permitted or suffered by Tenant in or about the Leased Property including all damage, costs, attorney's fees, expenses and liabilities incurred in the defense of any claim or action or proceeding arising therefrom, excepting only damages and liabilities arising from the negligence or willful misconduct of the City. Except for the City's willful or negligent misconduct, Tenant hereby assumes all risk, damage to property or injury to person in or about the Leased Property from any cause, and Tenant hereby waives all claims in respect thereof against the City.

D. Exemption of City from Liability.

Tenant hereby agrees that City shall not be liable for any injury to Tenant's business or loss of income therefrom or for damage to the goods, wares, merchandise or other property of Tenant, Tenant's employees, invitees, customers or any other persons in or about the Leased Property nor shall City be liable for injury to any such person, in all cases except to the extent caused by the City's willful or negligent acts or omissions.

**Section 11. Damage to Improvements.**

If the Improvements within the Leased Property are destroyed or damaged by any acts of war, the elements, including earthquake or fire, to such an extent as to render the Improvements untenable in whole or in substantial part, it shall be solely the Tenant's obligation to rebuild or repair the Improvements. Notwithstanding any provision herein, Tenant shall be responsible for all costs related to the building or repairing of the Improvements, whether such damage is insured or uninsured. No construction shall be undertaken by Tenant on the Leased Property without first obtaining any and all planning approvals and/or building permits required by law.

**Section 12. Relocation.**

Tenant hereby acknowledges that Tenant's lawful possession of the Leased Property pursuant to this Agreement occurred after the date of the City's acquisition of the Leased Property, and that the termination of this Agreement by its terms shall not be deemed a "notice to vacate" as contemplated under Government Code section 7260. Tenant, therefore, expressly agrees that Tenant has no rights whatsoever to relocation assistance and/or relocation compensation and hereby expressly waives and releases any and all claims to such relocation assistance and/or compensation.

### **Section 13. Default.**

In the event of any default by Tenant, the City shall have all rights and remedies available at law or in equity. If any rents or any part thereof shall remain unpaid when these rents shall become due, or if Tenant violates or defaults under any of the provisions of this Agreement, Tenant shall cure such default upon receipt of written notice from City. If the default is reasonably capable of being cured within thirty (30) days, Tenant shall have such period to effect a cure prior to exercise of remedies by City. If the nature of the alleged default is such that it cannot reasonably be cured within such thirty (30) day period, the cure shall be deemed to have occurred within such thirty (30) day period if (i) the cure is commenced at the earliest practicable date following receipt of the notice; (ii) the cure is diligently prosecuted to completion at all times thereafter; (iii) at the earliest practicable date (in no event later than thirty (30) days after the curing party's receipt of the notice), Tenant provides written notice to City that the cure cannot practicably be completed within such thirty (30) day period; and (iv) the cure is completed at the earliest practicable date. In no event shall City be precluded from exercising remedies if a default is not cured within sixty (60) days after the first notice of default is given. Subject to the foregoing, if Tenant fails to cure a default in accordance with the foregoing, City, at its option and its exclusive discretion, may terminate this Agreement by giving the notice required herein, and reenter the Leased Property. A waiver by the City of any default shall not be deemed to be a waiver of any subsequent default.

### **Section 14. Termination and Surrender.**

This Agreement shall terminate upon the expiration of the Term if not renewed. Further, the City may terminate this Agreement, in its sole discretion, by written notice to Tenant (the "City Notice of Determination"), upon the occurrence of any of the following events: (a) Tenant commits a material default which is not cured within the applicable time period provided for in Section 13, above; or (b) the Restaurant Lease expires without renewal or is terminated, whether by operation of law or otherwise unless Tenant has a replacement tenant in occupancy of the Leased Property within one hundred twenty (120) days following such expiration or termination of the Restaurant Lease. Commencing ten (10) days following Tenant's receipt of the City Notice of Termination, this Agreement shall terminate and Tenant shall no longer have the right to use the Leased Property for the uses set forth in Section 5, above.

Upon termination of this Agreement for whatever reason, any alterations, fixtures and improvements shall be governed by Section 7, above.

In the event Tenant has failed to remove its personal property as provided in Section 7, above, within one hundred twenty (120) days of the termination of this Agreement, then City may remove or cause the removal of such personal property and Tenant shall reimburse City for all such costs of removal, including City's administrative expenses. Until paid by Tenant, said costs shall constitute a lien on the





property owned by Tenant, which is commonly known as 49 Pier Avenue and 53 Pier Avenue, Hermosa Beach. Tenant hereby agrees to execute a Memorandum of Rental Agreement reasonably acceptable to the City and Tenant in recordable form to be recorded against Tenant's property, which discloses this provision of this Agreement.

Notwithstanding anything to the contrary in this Agreement, Tenant may terminate this Agreement, in its sole discretion, by written notice to the City (the "Tenant Notice of Determination"), upon the occurrence of any of the following events: (a) the City commits a material default under this Agreement; or (b) the Restaurant Lease expires without renewal or is terminated, whether by operation of law or otherwise. Commencing ten (10) days following the City's receipt of the Tenant Notice of Termination, this Agreement shall terminate and Tenant shall no longer have the right to use the Leased Property for the uses set forth in Section 5, above.

**Section 15. Assignment and Sublease.**

Tenant shall not assign this Agreement, or sell the Leased Property, or any part thereof or interest therein, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Any attempt to sell or assign without consent of the City shall be deemed a default by Tenant.

**Section 16. Entry by City.**

The City, by its officers, agents, employees or contractors, may at all reasonable times during business hours have access to and enter the Leased Property to view the conditions of them and to require any and all necessary repairs and alterations thereto for the public safety and well-being. This right shall in no way eliminate Tenant's obligation of maintaining the Leased Property in a clean, safe and secure fashion.

**Section 17. Law Governing.**

This Agreement shall be governed by the laws of the State of California, subject to the waivers, exclusions and provisions herein contained.

**Section 18. Notices.**

All notices, statements, demands, requests, consents, approvals, authorizations, agreements, or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if personally served or



sent by United States mail, first class, postage prepaid shall be deemed effective five (5) days after deposit in the United States Postal System, and addressed as follows:

To City: City of Hermosa Beach  
1315 Valley Drive  
Hermosa Beach, California 90254  
Attention: City Manager

To Tenant: James C. Matthews  
Pierside Properties, LLC  
114 Pacifica, Suite 310  
Irvine, California 92618

or at such other address as either shall later designate for such purpose by written notice to the other party.

**Section 19. Waiver.**

The waiver by the City of any breach by the Tenant of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

**Section 20. Costs of Litigation.**

In the event that either the City or the Tenant shall bring or commence an action to enforce the terms and conditions of this Agreement or to obtain damages against the other party arising from any default under or in violation of this Agreement, then the prevailing party shall be entitled to and shall be paid reasonable attorney's fees and court costs therefor, as awarded by a court of competent jurisdiction.

**Section 21. Severability.**

If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by any court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants or conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

**Section 22. Binding Effect.**

This Agreement, and the terms, provisions, promises, covenants, and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.



**Section 23. Business Improvement District.**

Tenant's Principal Member, Luis Serrano, and Ron Newman ("Tenant's Principals") shall provide support in the form of personal involvement and leadership to spearhead and establish a Property and Business Improvement District pursuant to California Streets & Highways Code Section 36601 *et seq.* ("PBID"). Such good faith efforts by Tenant's Principals to influence and encourage other property owners to join the PBID efforts are integral to increase the likelihood of success. Tenant's Principals shall be personally involved for two years from the execution of this Agreement, or the establishment of the PBID, whichever is earlier. Tenant shall document its efforts to City in writing on a periodic basis.

**Section 24. Effect on Easement.**

Notwithstanding anything to the contrary in this Agreement, including, but not limited to, Sections 1, 5, 6, 7 and 14, above, nothing contained in this Agreement shall affect in any way Tenant's rights and interests under the Easement, it being acknowledged and agreed that the Easement shall continue and remain in full force and effect during and following the expiration or earlier termination of this Agreement in perpetuity.

**Section 25. Releases.**

In consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which are acknowledged by each party, the City and Tenant specifically promise, agree and release as follows, which promises, agreements and releases are effective as of the date of this Agreement:

**A. City Release.**

Except as to such rights or remedies as may be created by this Agreement and the Easement, the City hereby releases, remises and forever discharges Tenant and its agents, employees, representatives, administrators, attorneys, trustees, beneficiaries, directors, officers, board members, affiliates, parents, partnerships, partners, shareholders, members, managers, assigns, heirs and successors in interest (collectively, the "Tenant Parties"), and each of them, from any and all suits, actions or causes of action, in law or in equity, debts, liens, contracts, agreements, promises, liabilities, claims, demands, damages, losses, costs or expenses, of any nature whatsoever, whether known or unknown, suspected or unsuspected (collectively, the "Claims"), as a result of any act, event or omission occurring prior to the date of this Agreement that arises out of, is connected with or incidental to the Property and Tenant's use of the Property and its adjacent property (collectively, the "Released Claims"), including without limitation any and all Claims by the City (a) relating to the rent and other charges allegedly payable by Tenant with respect to Tenant's use of the



Property and the improvements thereon prior to the date of this Agreement and (b) that the Easement is not valid and perpetual in duration.

B. Tenant Release.

Except as to such rights or remedies as may be created by this Agreement, Tenant hereby releases, remises and forever discharges the City and its officers, elected and appointed officials, agents, employees, representatives, administrators, attorneys, assigns and successors in interest (collectively, the "City Parties"), and each of them, from any and all Released Claims.

C. Limitations on Releases.

The Parties acknowledge and agree that the releases in Sections 25.A and 25.B, above, are expressly limited to Released Claims and do not include any other Claims of any kind, including without limitation any Claims for the breach of this Agreement or the Easement.

D. Waiver of Civil Code Section 1542.

With respect to the Released Claims, the City and Tenant each specifically waives the benefit of the provisions of Section 1542 of the California Civil Code, which provides as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Each party hereto has been advised by its attorneys of the meaning of Section 1542 of the California Civil Code, and of the implications of waiving the benefits thereof. The



City and Tenant agree that this waiver is an essential part of this Agreement, which would not have been entered into without such provision.

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

CITY OF HERMOSA BEACH

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:


\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:  
BEST BEST & KRIEGER

\_\_\_\_\_  
Michael Jenkins, City Attorney

PIERSIDE PROPERTIES, LLC,  
TENANT

By: Westbrook Management LLC,  
Its: Manager

By:   
Name Luis A. Serrano  
Its: Manager



# EXHIBIT A LEASED PROPERTY

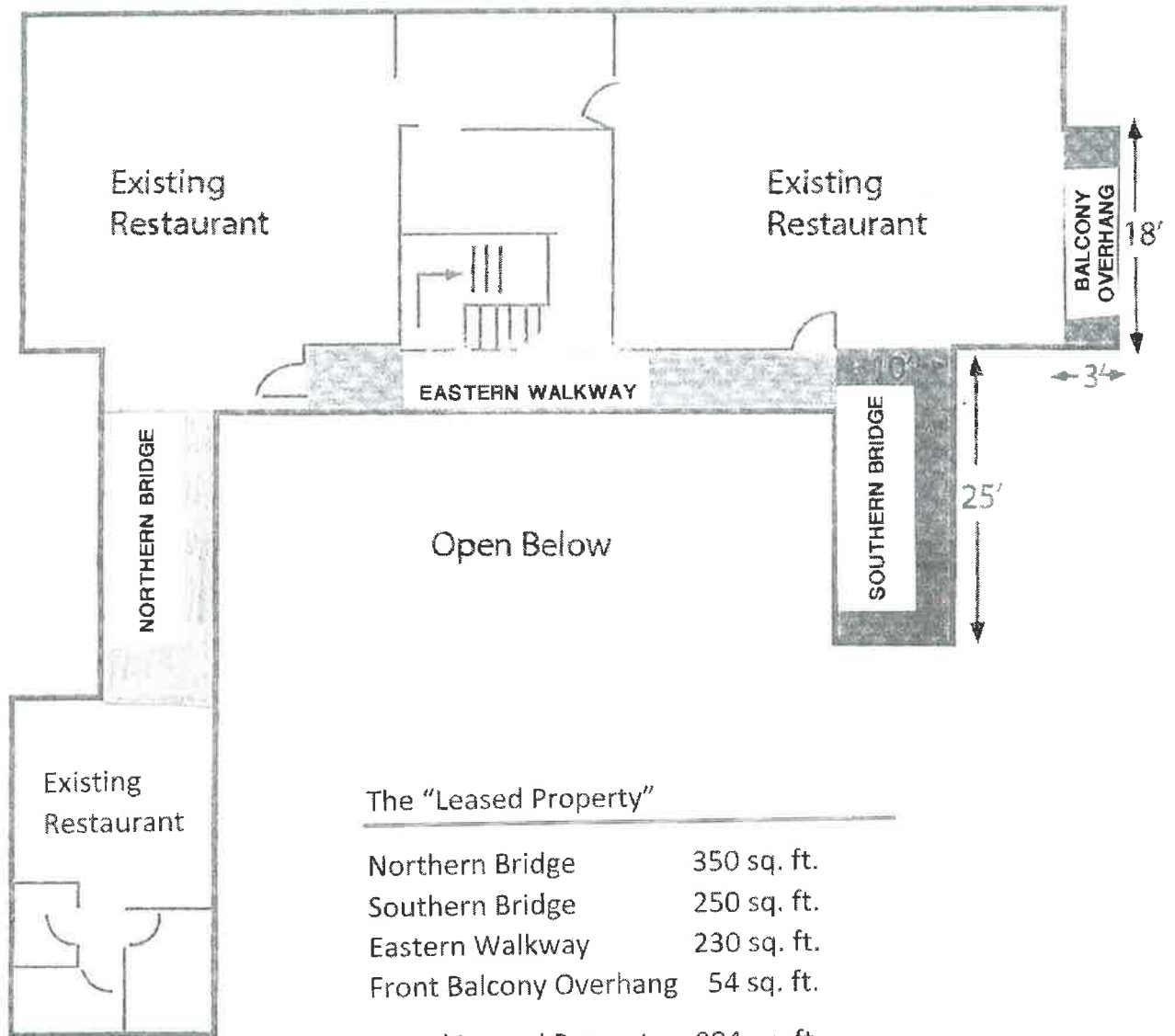


EXHIBIT "A"