

**STATE OF FLORIDA  
COUNTY OF ESCAMBIA**

**LEASE AGREEMENT**

THIS LEASE AGREEMENT ("Lease Agreement") is made and entered into the \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the City of Pensacola ("City"), a municipal corporation of Florida, and Kaple Holdings, Inc. ("Tenant"), a corporation duly authorized by the State of Florida to transact business in the State of Florida.

**WITNESSETH:**

WHEREAS, the Tenant owns and operates a restaurant business located at 16 Palafox Place pursuant to a lease ("16 Palafox Place Lease") dated May 21, 2010 between the Community Redevelopment Agency of the City of Pensacola ("CRA") and Tenant, as amended and restated, such lease having been assigned to Cat-Den, LLC on December 27, 2016, due to a sale by the CRA to Cat-Den, LLC of 16 Palafox Place; and

WHEREAS, the Tenant desires to expand Tenant's restaurant business operations to include an outdoor seating area on City-owned property located in the back of the 16 Palafox Place property, such area ("Leased Premises") comprising 19.57 ft x 32.3 ft of improved land as aerially depicted in Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, the Leased Premises are located in the City-owned Jefferson Street Parking Garage, Escambia County Property Appraiser Parcel Reference # 000S009001002228; and

WHEREAS, the City has received a request from the Pensacola Downtown Improvement Board dated October 19, 2017 in support of the proposed outdoor seating area lease; and

WHEREAS, the City's primary interest in this Lease Agreement is to support local economic development and to efficiently operate the Leased Premises; and

WHEREAS, the City and Tenant now desire to enter into this Lease Agreement.

**NOW, THEREFORE**, in consideration of one hundred dollars (\$100.00) the receipt and sufficiency of which is hereby acknowledged, and of the covenants and conditions set forth below and other good and valuable consideration, City and Tenant agree as follows:

- 1. RECITALS.** The recitals above are true and correct, are material inducements to entering into this Lease Agreement, and are hereby made a part of this Lease Agreement.
- 2. USE OF PREMISES.** Tenant shall be entitled to use of the Leased Premises solely for the operation of an outdoor restaurant seating area.
- 3. TERM.** This Lease Agreement shall be coterminous with the 16 Palafox Place Lease. Upon expiration or non-renewal of the 16 Palafox Place Lease, this lease and Lease Agreement

shall terminate without further action by the parties. There shall be no automatic renewal of this Lease Agreement.

4. **RENT.** The rent for this exterior area Leased Premises shall be at \$1580, per year, divided into twelve (12) monthly payments of \$131.67 ("Rent Payment"), based on an approximated 632 square feet no later than the first (1<sup>st</sup>) day of each month. There shall be an annual increase of two percent (2%) on the rent, extending through any renewal of the 16 Palafox Place Lease term.

5. **TAXES.** During the Term, the Tenant agrees that Tenant shall pay on or before the last day on which payment may be made without penalty or interest, all lawful taxes, assessments and other user fees, however named, specifically including any ad valorem tax, which may become a lien upon or which may be charged, assessed, imposed, or levied by the State of Florida, Escambia County, the City of Pensacola, any district or other governmental body upon the Leased Premises or arise in connection with the Tenant's occupancy or use thereof, or upon any taxable interest of the Tenant acquired in this Lease Agreement, or any taxable possessory right that the Tenant may have in or to the Leased Premises occurring as a result of its occupancy thereof, regardless of whether Tenant or City is billed. Tenant recognizes and agrees that the Leased Premises are exempt from ad valorem taxes and other taxes unless leased by the City to an entity like the Tenant that is subject to such taxation.

6. **NET LEASE.** Notwithstanding anything contained herein to the contrary, the parties agree that this Lease Agreement shall be construed as a "net lease" whereby the Tenant shall be solely responsible for any expense or cost relating to the Leased Premises, this Lease Agreement or the Tenant's use of the Leased Premises during the Term of this Lease Agreement, including, without limitation, taxes (ad valorem and personal property taxes, sales or use taxes, or otherwise); insurance (as described herein); utilities; repairs, replacement and maintenance, and security requirements.

7. **TENANT IMPROVEMENTS.** Tenant may at Tenant's sole cost and expense install or construct within the Leased Premises improvements necessary to transact Tenant's business under this Lease Agreement including the installation of poles for lighting, floor drain, tree gates, and green wall, and removal of an existing plinth, as depicted in Exhibit B attached hereto and incorporated herein by this reference. Title to the improvements shall vest with the City upon completion. However, Tenant shall submit to City detailed plans and specifications for any contemplated improvements or alterations and any fixtures, and shall not construct any additional improvements or alterations or alter or add to any improvements without prior written consent of City.

8. **CONDITION OF PREMISES.** The Leased Premises are leased to Tenant "AS IS," without any additional services or improvements to be rendered by City. Neither the City nor the City's officers, employees or agents have made any representations or promises with respect to the Leased Premises or services to be provided by the City in connection with Tenant's occupation or use, except as expressly set forth herein. The taking of possession of the Leased Premises "as-is" by the Tenant shall be conclusive evidence that the Leased Premises were in an acceptable and safe condition at the time possession was initially taken by the Tenant regardless

of any subsequent claim by the Tenant to the contrary.

**9. OUTSIDE STORAGE PROHIBITED.** Outside storage of product and materials is prohibited unless approved in advance by the City, which approval shall not be unreasonably withheld.

**10. MAINTENANCE.** During the Term, the Tenant shall maintain the Leased Premises in good working condition. All maintenance, repairs and upkeep for improvements installed, constructed or placed at the Leased Premises by or for the benefit of Tenant, as well as general housekeeping of the Leased Premises, shall be the responsibility of Tenant.

**11. UTILITIES.** The Tenant shall be responsible for procuring all utility services including, but not limited to, water service, sewer service, electrical service, gas service, fuel, janitorial service, trash removal service, data communication service and telephone service. Tenant shall be responsible for procuring all utility services necessary for Tenant's occupation and use, and operations on the Leased Premises, and shall be responsible for promptly paying those persons or entities furnishing or providing Tenant with services. Tenant shall arrange for direct billing with the appropriate utility provider. Construction, installation and maintenance of any improvements to utility infrastructure required to support Tenant's operations shall be at the sole cost and expense of Tenant.

**12. INSURANCE.** Tenant shall procure and maintain at all times during the term of this Lease Agreement, insurance of the types and to the limits specified herein issued by insurer(s) qualified to do business in Florida whose business reputation, financial stability and claims payment reputation is reasonably satisfactory to City. Each policy of insurance shall list the City as an Additional Insured. Tenant and City understand and agree that the minimum limits of insurance herein required may become inadequate following the initial term of this Lease Agreement, and, therefore agree that the minimum limits may be increased to commercially reasonable limits upon the commencement of any renewal term.

Unless otherwise agreed, the amounts, form and type of insurance shall conform to the following minimum requirements:

#### WORKER'S COMPENSATION

Tenant shall purchase and maintain Worker's Compensation Insurance Coverage for all Workers' Compensation obligations required by law. Additionally, the policy, or separately obtained policy, must include Employers Liability Coverage of at least \$100,000 each person - accident, \$100,000 each person - disease, \$500,000 aggregate - disease.

#### COMMERCIAL GENERAL LIABILITY COVERAGE

Tenant shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability forms filed by the Insurance Services Office. The City shall not be considered liable for premium payment, entitled to any premium return or dividend and shall not be considered a member of any mutual or reciprocal company. Minimum limits of \$1,000,000 per occurrence, and in the aggregate for liability must be provided, with umbrella insurance coverage making up any difference between the policy limits of underlying policy coverage and

the total amount of coverage required. Coverage must be provided for bodily injury and property damage liability for premises and operations, products and completed operations, contractual liability and independent contractors. Fire Legal Liability shall be endorsed onto this policy in an amount of at least \$100,000 per occurrence. The coverage shall be written on occurrence-type basis and the City must be listed as an additional insured, and the policies endorsed in a form acceptable to the City.

#### LIQUOR LIABILITY INSURANCE

Liquor Liability Insurance must be provided, including coverage for bodily injury and property damage arising out of the furnishing of alcoholic beverages. Minimum limits for this coverage are \$1,000,000 each common cause and in the aggregate. The City of Pensacola must be listed as an additional insured

#### PROPERTY INSURANCE

Tenant shall maintain in force at all times, property insurance coverage which insures any improvements on the Leased Premises against fire, windstorm, flood (if commercially available) extended coverage and Standard Insurance Office (ISO) defined "Special Perils" of physical damage. City shall be an Additional Insured under such policies with coverage afforded to the City which is at least as broad as that provided to Tenant/Named Insured under the policy for the terms and conditions of such policy, and such policies shall be so endorsed in a form acceptable to the City. The amount of coverage will be 100% of the replacement cost. Tenant further agrees that, subject to the provisions of this Lease Agreement, if during the term of this Lease Agreement, the Tenant's leasehold improvements should be damaged or destroyed by fire or other perils, such damage shall be repaired and equipment replaced at the sole expense of Tenant and Tenant's business operations shall be restored to normal as promptly as possible.

#### CERTIFICATES OF INSURANCE, AND COPIES OF INSURANCE POLICIES

Tenant's required insurance shall be documented in Certificates of Insurance and endorsements to each policy that list this Lease and provide that City shall be notified at least thirty (30) days in advance of cancellation, nonrenewal or adverse change or restriction in coverage. Tenant shall furnish copies of Tenant's insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies prior to the Commencement Date of this Lease. Certificates shall be on the "Certificate of Insurance" form equal to an ACORD 25, as determined by the City and acceptable to the City. Tenant shall replace any canceled, adversely changed, restricted or non-renewed policies with new policies reasonably acceptable to City and shall file with City Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction, and provide copies of each new or renewal policy to the City. If any policy is not timely replaced, in a manner reasonably acceptable to City, and copies timely provided to City, Tenant shall, upon instructions of City, cease all operations under the Lease until directed by City, in writing, to resume operations. The "Certificate Holder" address should read: City of Pensacola, Risk Management, Post Office Box 12910, Pensacola, FL 32521.

#### REQUIRED INSURANCE PRIMARY

Each party's required coverage shall be considered primary, and all other insurance shall be considered as excess, over and above the responsible party's required coverage.

### LOSS CONTROL AND SAFETY

Tenant shall retain control over its employees, agents, servants and subcontractors, as well as control over its invitees, and its activities on and about the Leased Premises and the manner in which such activities shall be undertaken and to that end, Tenant shall not be deemed to be an agent of City. Reasonable precaution shall be exercised at all times by Tenant for the protection of all persons, including employees, and property.

### **13. INDEMNITY.**

The Tenant shall indemnify and hold harmless the City of Pensacola, its officers and employees, from any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Tenant and persons employed or utilized by the Tenant in the performance of this contract. The Tenant's obligation shall not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance.

Tenant shall also indemnify and hold City harmless of and from any damages, claim, cost, expense, penalty, reimbursement or other adverse financial consequence to the City arising out of or relating to Tenant's failure to meet the obligations described in this Lease.

Tenant's obligations under this paragraph are not limited in amount, and specifically are not limited to the amount of any insurance.

**14. DAMAGES.** In the event the Leased Premises are damaged or destroyed due to fire, flood, hurricane, force majeure event or other disaster, casualty or cause not due to the fault of Tenant, its officers, employees, contractors, agents, or invitees, City shall be responsible for all necessary repairs or reconstruction and shall undertake all such repairs or reconstruction as expediently as practical. Tenant shall promptly, upon demand by City, assign, transfer and pay over to City any claims or insurance proceeds relative to the Property Insurance and Pollution Insurance policies required in this Lease relative to the costs to repair the Leased Premises, or replace the Leased Premises. In the case of insured losses, permanent repairs or reconstruction will not be affected until such time as any insurance claim is settled. In the event the repair or reconstruction schedule for the damaged facility does not meet Tenant's operational requirements, City will undertake sufficient and reasonable temporary repairs to allow Tenant to resume operations as expeditiously as reasonably possible.

Repair, reconstruction or replacement of any and all improvements installed, constructed or placed by or for the benefit of Tenant shall be the responsibility of the Tenant. Additionally, the City shall have no liability or responsibility for any damage to or loss of any gear, equipment, supplies, materials or other product owned by Tenant or being stored at any facility assigned for the use and benefit of the Tenant on behalf of a customer or client of the Tenant.

In the event that the Leased Premises should be totally destroyed by fire, hurricane, wind, flood, or other casualty, or in the event the Leased Premises should be so damaged that rebuilding or repairs cannot be completed within one hundred eighty (180) days after the date of such damage, either City or Tenant may, at its option, by written notice to the other given not more than thirty (30) days after the date of such fire or other casualty, terminate this Lease Agreement. In such event, the Rent shall be abated during the unexpired portion of this Lease effective with the date of such fire or

other casualty.

**15. EVENTS OF DEFAULT.** Any of the following events shall constitute an Event of Default of this Lease Agreement by the Tenant:

(i) If any rent, fees, charges or other monetary obligations are not received by the City within ten (10) business days after receipt of written notice of non-payment from City; or

(ii) If the Tenant fails to observe, keep or perform any of the other terms, covenants, agreements or conditions of this Lease Agreement for a period of ten (10) business days after receipt of written notice from City; or

(iii) If the Tenant files a voluntary petition for bankruptcy, or otherwise seeking the benefit of, any bankruptcy, reorganization, arrangement or insolvency law, or makes a general assignment for the benefit of creditors; or

(iv) If the Tenant is adjudicated bankrupt; or

(vi) If any act occurs which deprives the Tenant permanently of the rights, powers and privileges necessary for the proper conduct and operation of Tenant's business; or

(vii) If at any time the Tenant uses or permits the Leased Premises to be used for any purpose which has not been authorized by this Lease Agreement; or

(viii) If the Tenant uses or permits the use of the Leased Premises in violation of any law, rule or regulation; or

(ix) If the Tenant attempts to or does mortgage or pledge Tenant's interest hereunder; or

(x) If Tenant's interest under this Lease Agreement is being sold under execution or other legal process; or

(xi) If Tenant's interest under this Lease Agreement is being modified or altered by any assignment or unauthorized subletting or by operation of law; or

(xii) Any of the goods or chattels of Tenant used in, or incident to, the operation of Tenant's business in the Leased Premises being seized, sequestered, or impounded by virtue of, or under authority of, any legal proceeding; or

(xiii) Tenant's failure to take occupancy of the Leased Premises when same is tendered by City to Tenant.

**16. REMEDIES ON EVENT OF DEFAULT.** Upon the happening or during the continuance of any Event of Default specified above, the City will provide written notice to Tenant identifying the specific Event of Default ("Notice of Default Event"). Tenant shall have fifteen (15) days following receipt of such written notice to correct the Event of Default. If said Default remains or is not corrected within this time period, the City may then, at its sole and absolute discretion, avail itself of any remedy provided by law and/or equity, including without limitation, any one or more of the following remedies:

(i) Without initially terminating this Lease Agreement, City may reenter and take possession of the Leased Premises, and the Tenant shall continue to timely make such payments as required under this Lease Agreement. The City may thereafter enter into a new lease of the Leased Premises with any party, or operate the same on its own behalf, provided, however, that any rent payments received from any third party shall reduce the amount due from Tenant dollar-for-dollar. Immediately prior to commencement of the City's operation of the Leased Premises or the effective date of the new lease, as applicable, the City shall notify the Tenant of such event;

(ii) The City may immediately terminate this Lease Agreement and enter the Leased

Premises and exclude the Tenant from possession of the Leased Premises, declare all rents, fees, taxes and other charges and amounts which are then due and payable and costs of the City to prepare the Leased Premises for reletting to be immediately due and payable;

(iii) The City may take whatever other action at law or in equity that City considers to be necessary or desirable in order to collect any amounts then due and thereafter to become due from Tenant, or to enforce performance and observance of any obligation, agreement or covenant of Tenant under this Lease Agreement, or may exercise all rights and remedies that are available under Florida and federal law. No method of entry authorized herein and made by the City shall cause or constitute a default of this Lease Agreement or be deemed to constitute an interference with the possession or use of the Leased Premises by the Tenant if made in accordance with the terms of this Lease Agreement and applicable law.

**17. CONDEMNATION.** If all or substantially all of the Leased Premises shall be taken by eminent domain, condemnation or in any other manner for public or quasi-public use or purpose, other than for temporary use or occupancy, then this Lease Agreement shall be amended to exclude the part so taken from the Leased Premises. If any part of the Leased Premises are taken or condemned under power of eminent domain by any governmental authority during the Term of this Lease Agreement, and as a result of such taking, the parties mutually agree that the part so taken causes the Leased Premises to be no longer commercially viable for the Tenant's operation, the Tenant shall have the option to cancel this Lease Agreement, as long as the City cannot offer the Tenant suitable replacement premises. If the Leased Premises is the subject of a taking, City and Tenant shall be entitled to pursue and collect their respective damages. Nothing contained herein shall prohibit Tenant from instituting separate proceedings to pursue a separate claim against the condemning authority for Tenant's relocation costs and the book value of any leasehold improvements to the Leased Premises paid for by Tenant, so long as such claim will not affect or diminish any award or compensation otherwise recoverable by the City.

**18. FORCE MAJEURE.** Neither the City nor the Tenant shall be deemed to be in breach of this Lease Agreement if either party is prevented from performing any obligations required of it hereunder by reason of strikes, boycotts, shortages of materials, labor disputes, embargoes, shipwrecks or obstructions to navigation, acts of God, act of public enemy, acts of superior governmental authority, floods, windstorms, riots, rebellion, or any other similar circumstances for which it is not reasonably responsible and which is not within its control. .

**19. TIME IS OF THE ESSENCE.** Time is of the essence of this Lease Agreement, and in case Tenant shall fail to perform the covenants on its part to be performed at the time fixed for the performance of such respective covenants by the provisions of this Lease Agreement, City may declare Tenant to be in default of such Lease.

**20. QUIET ENJOYMENT.** Tenant shall peaceably and quietly hold and enjoy the Leased Premises, subject to the provisions and conditions of this Lease Agreement. The City will at all times use reasonable efforts to maintain reasonable accessibility to the Leased Premises and to minimize interference with Tenant's business when exercising the City's rights under this Lease. Should the City significantly interfere with Tenant's use of the Leased Premises, provided such interference is not arising out of Tenant's use of the Leased Premises, and provided that as a result of the interference a material portion of the Leased Premises is rendered un-tenantable or

inaccessible for a period of ninety (90) days, then Tenant shall have the option to terminate this Lease Agreement on thirty (30) days' notice and have no further obligations hereunder, save and except for payments then accrued.

**21. INDEPENDENT CONTRACTOR.** The parties hereto agree that Tenant is an independent contractor and as such is not subject to the direction or control of the City except that Tenant shall be required to comply at all times with the City's general rules and regulations governing City property. This Lease Agreement shall not be construed so as to establish a joint venture or partnership between the parties hereto.

**22. INTERRUPTION OF SERVICES.** The City does not warrant the provision of utilities or services or the use of the Leased Premises or other facilities contemplated herein will be free from interruptions caused by repairs, renewals, improvements or alterations; strikes or lockouts; accidents; electrical failures, interruptions or surges, the inability of the City to obtain utilities or supplies; or any other cause beyond the reasonable control of the City. No such interruption shall constitute grounds for termination of this Lease Agreement by the Tenant, or render the City liable to Tenant for damages resulting from such interruption or relieve the Tenant from performing Tenant's obligations under this Lease Agreement.

**23. UTILITY LINE EASEMENTS.** The City reserves to itself and others the right to locate, relocate, construct, install, repair, operate, replace and maintain sewers and utilities upon and across the Leased Premises at locations which do not unreasonably interfere with the Tenant's use of the Leased Premises. The City also reserves to itself and others the right to maintain existing utilities and other facilities.

**24. NO INDIVIDUAL CITY LIABILITY.** No City official, officer, agent, director, employee or representative shall be held contractually or personally liable under this Lease Agreement because of any breach of the Lease Agreement or operation of the Lease Agreement.

**25. NO ASSIGNMENT, NO SUB-LEASING.** Tenant shall not assign, sublease, or otherwise transfer any of the rights or obligations of Tenant under this Lease Agreement, assign or otherwise transfer any interest in or to the Leased Premises or any improvement located thereon, without prior written consent of the City, which will not be unreasonably withheld. Any assignment or sublease shall not release the Tenant from any of Tenant's obligations or responsibilities under this Lease Agreement.

**26. CONSENT OF OWNERSHIP.** Any change in Tenant's ownership involving the transfer of shares comprising fifty-one percent (51%) or more of the Tenant's outstanding voting shares shall be considered a change in ownership which shall require written approval of the City for continuation of this Lease Agreement, which shall not be unreasonably withheld. Such approval shall be given at the sole discretion of the City regardless of any other provision of this Lease Agreement to the contrary. In the event of a change in corporate ownership of Tenant, the City shall be provided no less than sixty (60) calendar days advance written notice of any anticipated change in ownership, during which time the City may conduct any investigation the City deems appropriate to determine the prospective ownership entity's suitability as a tenant and ability to perform Tenant's obligations under this Lease Agreement, consult with Tenant



regarding the outcome of such investigation, and obtain a conditional approval to execute a lease assignment between the parties upon receipt by the City of such legal instruments as may be required to document such change in ownership. Consent to lease assignment is solely at the discretion of the City based on the City's prior written approval.

**27. TERMINATION BY CITY.** This Lease Agreement may be terminated by the City as otherwise provided herein upon default by Tenant.

**28. SURRENDER.** Upon the expiration or termination of this Lease Agreement for any cause, Tenant shall peaceably deliver up the Leased Premises to the City in the same or better condition as existed on the date of execution of this Lease Agreement, ordinary wear and tear excepted.

**29. TITLE TO IMPROVEMENTS.** Title to Improvements shall vest with the City upon completion of the construction of the Improvements. Upon expiration or termination of the Term, in the City's sole discretion, all buildings, fixtures and other improvements built on, or made to, the Leased Premises by the Tenant shall remain on the Leased Premises except that, if so requested by the City, the Tenant shall remove any buildings, fixtures or other improvements built on or made to the Leased Premises by Tenant within ten (10) days after the expiration of the Term. Upon surrender of the Leased Premises, Tenant shall remove all equipment, trade fixtures and personal property belonging to it or leased from third parties which have not assumed the characteristics of a permanent fixture. All personal property of Tenant not removed from the Leased Premises upon termination or natural expiration of this Lease Agreement shall be deemed abandoned and shall become property of the City, unless the City elects not to assume ownership, in which case the City may dispose of the same or store the same for Tenant's benefit, in either case at Tenant's sole cost and expense.

**30. DAMAGE TO PROPERTY BY TENANT.** Tenant shall return to City all property in the same condition as at the date of execution of this Agreement, including both major and minor repairs, or replacements as necessary. Any damage caused to the Leased Premises or City property by the removal of any of the Tenant's equipment, trade fixtures, improvements, or personal property shall be repaired by the Tenant at its sole expense within a reasonable period from the time the damage occurs.

**31. NO HOLDING OVER.** Failure of the Tenant to surrender the Leased Premises in accordance with the provisions herein elsewhere contained upon termination or cancellation of this Lease Agreement, and the subsequent holding over by Tenant, with or without the consent of the City, shall result in the creation of a tenancy at will, at double the fair market value for rent as determined by City appraisal or City property comparables, payable commencing at the time of the date provided herein for the surrender. This provision does not give Tenant any right to hold over at the expiration of the term of this Lease Agreement, and shall not be deemed, the parties agree, to be a renewal of the Lease Agreement term, either by operation of law or otherwise.

**32. UNAUTHORIZED USE.** Tenant shall not use or permit the use of the Leased Premises or any other property of the City for any purposes not authorized by this Lease Agreement.

**33. BROKERAGE COMMISSION.** Tenant warrants that there are no claims for broker's commissions or finder's fees in connection with its execution of this Lease Agreement, and agrees to indemnify and save the City harmless for any liability that may arise from such claim, including reasonable attorney's fees.

**34. PROTECTION AGAINST LIENS AND ENCUMBRANCES.** Tenant agrees to keep the Leased Premises free and clear of any and all liens and encumbrances of any nature arising out of the use and occupancy of the Leased Premises by the Tenant, Tenant's agents, employees, invitees, licensees, customers, contractors, subcontractors, and suppliers. Tenant shall not incur any indebtedness giving rise to a lien on the Leased Premises, or Tenant's right therein and the existence of any claim or lien of record for a period in excess of thirty (30) days after written notice thereof to Tenant or thirty (30) days after knowledge thereof, or constructive knowledge thereof, by Tenant, shall constitute a material breach of this Lease Agreement.

**35. NON-DISCRIMINATION.** Tenant agrees that Tenant shall use the Leased Premises in compliance with all non-discrimination requirements imposed by any applicable federal, state or local law. Tenant also agrees Tenant will not discriminate against any employees or applicant for employment due to race, religion, color, creed, sex, age, national origin, disability, veteran or family status, and neither will Tenant fail to make reasonable accommodation for disabled employees.

**36. PERMITS AND LICENSES.** Tenant shall be responsible for obtaining all local, state and federal permits, approvals, and/or licenses as may be necessary for it to operate the Leased Premises according to the terms of this Lease Agreement. Tenant shall maintain, in accordance with applicable law, permits, approvals and licenses it has obtained throughout the Term and shall submit copies to the City if requested to do so at no cost to the City.

**37. COMPLIANCE WITH GOVERNMENTAL REGULATIONS.** Tenant shall comply with and shall cause its officers, employees, agents, invitees, guests, contractors and any other persons over whom it has control, including, but not limited to all persons invited or welcomed by the Tenant for any purpose, to comply with all applicable municipal, state and federal laws, ordinances, and rules and regulations.

**38. COMPLIANCE FINES OR PENALTIES.** Tenant shall defend, hold harmless and reimburse the City for any fine or penalty assessed against the City that is imposed as a result of the Tenant's failure to comply with any applicable municipal, state or federal law, ordinance, rule or regulation.

**39. RIGHT TO INSPECTION.** It is understood and agreed by Tenant that City reserves the right to seek enforcement of local, state and federal laws, regulations and policies, and as such Tenant shall, at all times, grant bona fide representatives of the City access to the Leased Premises for inspection and enforcement. City, or any of its authorized agents or employees, shall have the right to enter upon the Leased Premises during reasonable hours and upon reasonable notification, to inspect same for any reason or in order to make inquiry or ascertain whether Tenant is complying with the terms of this Lease Agreement. Any such inspection shall not interfere with the conduct of Tenant's business.

**40. ENTRY.** Except in the case of an emergency, the City shall give Tenant reasonable prior written notice before entering the Leased Premises and before commencing any work that would reasonably be expected to disturb Tenant's business operations on the Leased Premises. No method of entry authorized herein and made by the City shall constitute grounds for the termination of this Lease Agreement by the Tenant or be deemed to constitute an interference with the Tenant's possession or use of the Leased Premises.

**41. INSPECTION OF RECORDS.** City shall have the right to inspect the books, records or other data of the Tenant, provided such inspection is made during regular business hours.

**42. NOTICES, CONSENTS AND APPROVALS.** Any notices, consents or approvals required or otherwise contemplated by this Lease Agreement or by law to be sent to the City shall be provided in writing and signed by a duly authorized representative of the party on whose behalf they are given. Such notices, consents or approvals shall be deemed to be validly and sufficiently served at the time a properly addressed letter is transmitted by nationally recognized overnight delivery service, such as Federal Express Corporation or UPS, or certified mail, return receipt requested, addressed to the parties at the addresses provided in this Section below.

To the City:

**City of Pensacola  
Attn: City Administrator  
222 West Main Street  
Pensacola, Florida 32502**

To the Tenant:

Ian C. Kaple  
Kaple Holdings, Inc.  
118 South Baylen Street  
Pensacola, FL 32502

Either party shall change the above address by providing written notice to the other party.

**43. ADMINISTRATION OF AGREEMENT.** The City Administrator shall serve as administrator of this Lease Agreement on behalf of the City. The Administrator of this Lease Agreement on behalf of the Tenant shall be Ian C. Kaple.

**44. MEMORANDUM OF LEASE AGREEMENT.** Tenant shall execute and deliver a recordable memorandum or short-form of this Lease Agreement, and shall record such memorandum of Lease Agreement in the official records of the Escambia County Clerk of the Court, at Tenant's expense, and providing a copy to the City of such recorded instrument, within thirty (30) days of executing this Lease Agreement.

**45. ESTOPPEL CERTIFICATES.** Within thirty (30) days after a written request from the City, Tenant shall certify, by a duly executed and acknowledged written instrument, to any mortgagee of purchaser or proposed mortgagee or proposed purchaser of the Leased Premises or

any other person, firm or corporation specified by the City, as to the validity and force and effect of this Lease Agreement, the existence of any default on the part of any party hereunder, and the existence of any offset, counterclaim or defense thereto on the part of Tenant, as well as to any other matters as may be reasonably requested by the City, all without charge and as frequently as the City deems necessary. Tenant's failure or refusal to deliver such instrument within such time shall be conclusive upon Tenant that: (i) Tenant has not transferred or assigned the Lease Agreement or any interest therein or sublet the Leased Premises Leased or any portion thereof; (ii) the Lease Agreement is in full force and effect and has not been modified or amended, except as represented by City; (iii) Tenant has accepted possession of the Leased Premises and any improvements required by the terms of the Lease Agreement to be made by the City have been completed to the satisfaction of Tenant; (iv) no Rent under the Lease Agreement has been paid more than one month in advance of its due date; (v) Tenant has no defense, counterclaim, charge, lien or claim of offset under the Lease Agreement or otherwise against Rents and charges due or to become due thereunder; and (vi) there are no uncured defaults or events which with the giving of notice or passage of time, or both, would become defaults in the City's performance or obligations under the Lease Agreement.

**46. FURTHER ASSURANCES.** Tenant agrees that Tenant will, from time to time, sign, execute and deliver, or cause to be signed, executed and delivered, and to do or make, or cause to be done or made, upon the request of the City, any and all agreements, instruments, papers, acts or things, supplemental, confirmatory or otherwise, as may be reasonably required by City.

**47. CONSTRUCTION.** Both City and Tenant acknowledge that they have each had meaningful input into the provisions and conditions contained in this Lease Agreement. Therefore, any doubtful or ambiguous provisions contained herein shall not be construed against the City. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Lease Agreement: words importing the singular number shall include the plural number and vice versa; captions and headings herein are for convenience of reference only and shall not constitute a part of this Lease Agreement nor shall they affect its meaning, construction or effect; words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neutral genders, and words of the neutral gender shall be deemed and construed to include correlative words of the masculine and feminine genders; and references in this Lease Agreement to particular "articles," "sections" or "paragraphs" are references to articles, sections or paragraphs within this Lease Agreement, unless otherwise indicated. Days are measured in calendar days unless expressly listed in business days.

**48. SURVIVAL.** Any Tenant obligations and duties that by their nature extend beyond the expiration or termination of this Lease Agreement shall survive the expiration or termination of this Lease Agreement and remain in effect. Without limiting the foregoing, all obligations for the payment of fees or other sums accruing up to the expiration or termination of this Lease Agreement shall survive the expiration or termination of this Lease Agreement.

**49. SEVERABILITY.** In the event any covenant, conditions or provision of this Lease Agreement is illegal, invalid or unenforceable by any court of competent jurisdiction, under present or future laws effective during the term of this Lease Agreement, such determination,

then and in that event, will not materially prejudice either the City or the Tenant as to their respective rights or other obligations contained in the valid covenants, conditions or provision of this Lease Agreement that shall remain and continue in full force and effect.

**50. VENUE.** Venue for any claim, action or proceeding arising out of this Lease Agreement shall be Escambia County, Florida.

**51. STATE LAW APPLICATION.** The laws of the State of Florida shall be the law applied in resolution of any action, claim or other proceeding arising out of this Lease Agreement.

**52. PUBLIC RECORDS ACT.** The parties acknowledge and agree to fulfill all obligations respecting required contract provisions in any contract entered into or amended after July 1, 2016, in full compliance pursuant to Section 119.0701, *Florida Statutes*, and obligations respecting termination of a contract for failure to provide public access to public records. The parties expressly agree specifically that the contracting parties hereto shall comply with the requirements within Attachment "A" attached hereto and incorporated by reference.

**53. NON-WAIVER.** A waiver by the City of any of the provisions, conditions, or covenants of this Lease Agreement shall not be deemed by the Tenant at any time thereafter to be a waiver of the same or any other provision, condition, or covenant herein contained, or to be a waiver of the requirement for the strict and prompt performance thereof. No notice by the City is required to restore or revive any right, power, remedy, privilege or option following a waiver by the City of any requirement, obligation or default of the other.

**54. NON-WAIVER OF IMMUNITY.** Nothing contained in this Lease Agreement shall be construed as modifying, limiting, restricting or otherwise adversely affecting the sovereign immunity defenses and limitations available to the City under Section 768.28, *Florida Statutes*, and other sovereign immunity limitations of applicable law.

**55. RIGHTS AND REMEDIES CUMULATIVE.** The rights and remedies of City hereunder shall be cumulative and shall be in addition to rights as otherwise provided at law or in equity, and failure on the part of City to exercise promptly any such rights afforded it by said laws shall not operate to forfeit any such rights.

**56. OPTIONS AND POWERS INDEPENDENT.** The exercise of one of the options, rights, or powers given to the City shall not preclude the exercise of any other option, right, power or remedy, except in those cases where it is expressly so provided.

**57. REMEDIES NOT EXCLUSIVE.** No remedy in favor of the City under this Lease Agreement, particularly regarding default, is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or existing in law or equity. No delay or omission to exercise any right upon breach shall impair any such right nor shall be construed to be a waiver thereof.

**58. PREVAILING PARTY ATTORNEY'S FEES.** The prevailing party in any action, claim or proceeding arising out of this Lease Agreement shall be entitled to attorney's fees and costs from the losing party.

**59. STATUTORILY MANDATED NOTIFICATION.** As required by Section 404.056(8), *Florida Statutes*, City notifies Tenant as follows: "RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health department."

**60. ASBESTOS.** Asbestos is an incombustible, chemical-resistant, fibrous mineral form of impure magnesium silicate often used for fire proofing, electrical insulation and building materials. When the materials containing asbestos are disturbed causing the asbestos to flake and the asbestos fibers to become airborne, the fibers can be inhaled causing serious health risks. In the event any renovations, changes, alterations or improvements are made to the Leased Premises which would disturb or involve materials in the Leased Premises containing asbestos, all federal, state and local laws involving the removal shall be followed.

**61. EXHIBITS.** All exhibits, schedules or attachments, and all exhibits, schedules or attachments thereto, as may be referenced in this Lease Agreement are by this reference incorporated herein and shall be deemed to be a part of this Lease Agreement as if fully set forth herein.

**62. BINDING CONTRACT.** This Lease Agreement shall bind and inure to the benefit of the successors of the respective parties hereto.

**63. NO THIRD PARTY BENEFICIARIES.** Nothing in this Lease Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Lease Agreement.

**64. ENTIRE AGREEMENT.** The parties hereto understand and agree that this Lease Agreement contains the entire agreement and understanding between the City and the Tenant for the use of the Leased Premises by Tenant. The parties understand and agree that neither party nor its agents have made any representations or promises with respect to this Lease Agreement except as expressly set forth herein; and that no claim or liability shall arise for any representations or promises not expressly stated in this Lease Agreement. Any other written or oral agreement regarding the Leased Premises is expressly nullified upon the execution of this Lease Agreement unless otherwise specifically provided herein.

**65. AMENDMENTS.** This Lease Agreement may not be altered, changed or amended, except by written instrument signed by both parties hereto in the same formality as the execution of this Lease Agreement. The terms, provisions, covenants, and conditions contained in this Lease Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise

expressly provided herein.

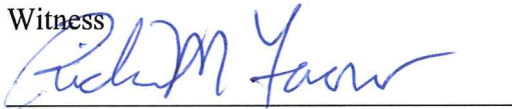
**66. COUNTERPARTS.** This Lease Agreement may be signed in any number of counterparts, each of which shall be deemed an original so long as it bears the signature of the authorized representatives of each party.

**67. CORPORATE TENANCY.** The undersigned officer of Tenant hereby personally warrants and certifies that Tenant is a corporation in good standing and is authorized to do business in the State of Florida. The undersigned officer of Tenant hereby further personally warrants and certifies that he or she, as such officer, is authorized and empowered to bind the corporation to the terms of this Lease Agreement by his or her signature thereto. The Tenant, as of the date of execution of this Lease Agreement, hereby represents and warrants to the City that it has the corporate power to enter into this Lease Agreement and to perform all acts required to be performed by the Tenant and that the execution and delivery of this Lease Agreement have been duly authorized by all necessary corporate action.

IN WITNESS WHEREOF, the parties have set their hands and seal the date first written above.

CITY OF PENSACOLA

Witness

  
\_\_\_\_\_

\_\_\_\_\_  
Ashton J. Hayward, III, Mayor

ATTEST:

Witness

  
\_\_\_\_\_

\_\_\_\_\_  
Ericka L. Burnett, City Clerk

Legal in form and valid as drawn:

\_\_\_\_\_  
City Attorney

Approved as to content:

\_\_\_\_\_  
Assistant City Administrator

KAPLE HOLDINGS, INC.

  
\_\_\_\_\_

Witness:

\_\_\_\_\_  
President

Phyllis Martin

Witness:

[Signature]

ATTEST:

[Signature]

Corporate Secretary

SEAL



**Attachment "A"**

**PUBLIC RECORDS:** Consultant/Contractor/Vendor shall comply with Chapter 119, Florida Statutes. Specifically, Consultant/ Contractor/Vendor shall:

- A. Keep and maintain public records required by the City to perform the service.
- B. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following the completion of the Agreement if Consultant/ Contractor/Vendor does not transfer the records to the City.
- D. Upon completion of the Agreement, transfer, at no cost, to City, all public records in possession of Consultant/Contractor/Vendor or keep and maintain public records required by the City to perform the service. If Consultant/Contractor/Vendor transfers all public records to City upon completion of the Agreement, Consultant/ Contractor/Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant/Contractor/Vendor keeps and maintains public records upon completion of the Agreement, Consultant/Contractor/Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request of the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

Failure by Consultant/Contractor/Vendor to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Agreement by City.

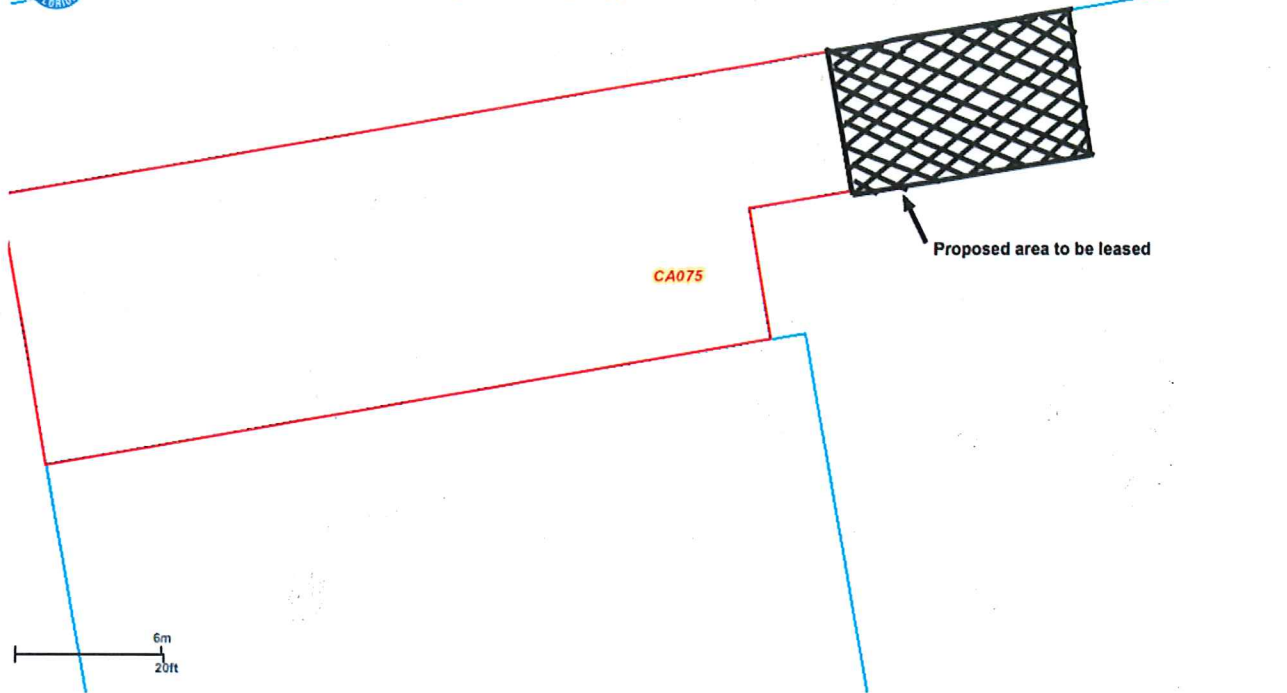
**IF CONSULTANT/CONTRACTOR/VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: THE OFFICE OF THE CITY ATTORNEY, (850) 435-1715, [PUBLICRECORDS@CITYOFPENSACOLA.COM](mailto:PUBLICRECORDS@CITYOFPENSACOLA.COM), 222 WEST MAIN STREET, PENSACOLA, FL 32502.**

Exhibit A

Leased Premises



 Chris Jones - Escambia County Property Appraiser



Search

Select

App

Sup

Incl

Meas

Map C

Layer

Form

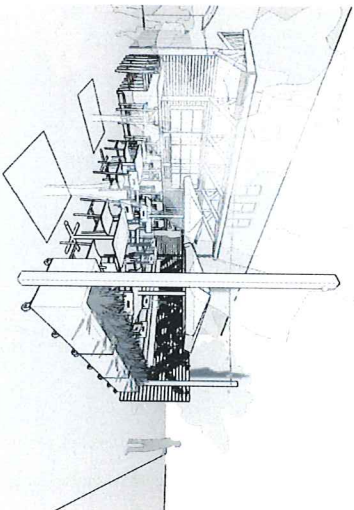
**Exhibit B**  
**Improvements**

# Wine Bar Outdoor Dining

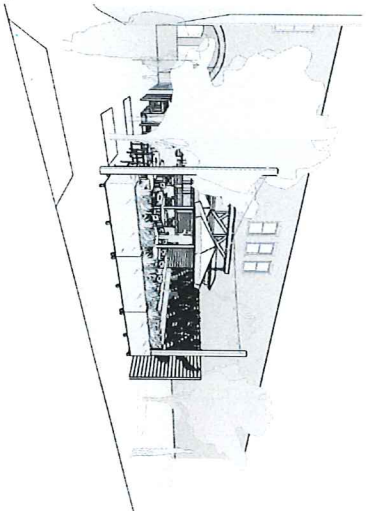
OUTDOOR DINING STRUCTURE FOR IAN KAPLE  
 16 Palafox Place, Pensacola, FL 32502



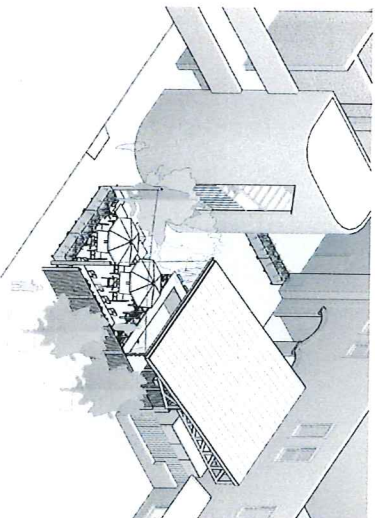
SITE MAP



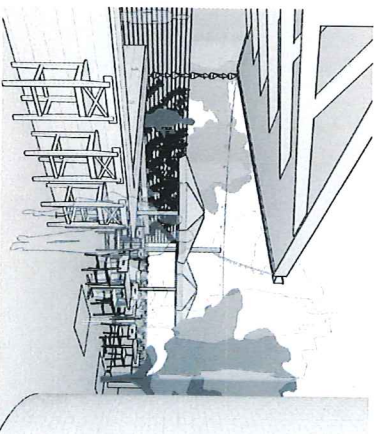
4 VIEW FROM SIDEWALK



3 VIEW FROM PARKING LOT



2 AXO BIRD'S EYE



1 VIEW FROM WINE BAR CORRIDOR

## BUILDING DATA

**APPLICABLE CODES:** BUILDING CODE  
**CONSTRUCTION TYPE:** TYPE IV UNREINFORCED MASONRY  
**OCCUPANCY CLASSIFICATION:** RESTAURANT (RA)  
**ZONE:** PC-A DOWNTOWN NEURAL COMMERCIAL  
**LOADS:** X  
**OCCUPANT LOAD:**  
**DETAILED SCHEDULE:**  
 16 PALAFOX PLACE, PENSACOLA, FL 32502  
 NEW CONSTRUCTION  
 1/18/2018

## GENERAL NOTES

1. TO THE BEST OF OUR KNOWLEDGE, THESE DRAWINGS COMPLY WITH THE APPLICABLE CODES AND REGULATIONS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS, APPROVALS, AND REGULATIONS FROM THE LOCAL, STATE, AND FEDERAL AUTHORITIES. THESE REGULATIONS REFER TO THE EDITION IN EFFECT AT THE TIME OF CONTRACTING. REVISED CONTRACT DOCUMENTS, DIMENSIONS AND NOTES SHALL BE PROVIDED TO THE CONTRACTOR. REPORT ANY DISCREPANCIES TO THE ARCHITECT IMMEDIATELY WITHOUT DELAY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS, APPROVALS, AND REGULATIONS FROM THE LOCAL, STATE, AND FEDERAL AUTHORITIES. THESE REGULATIONS REFER TO THE EDITION IN EFFECT AT THE TIME OF CONTRACTING. REVISED CONTRACT DOCUMENTS, DIMENSIONS AND NOTES SHALL BE PROVIDED TO THE CONTRACTOR. REPORT ANY DISCREPANCIES TO THE ARCHITECT IMMEDIATELY WITHOUT DELAY.
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## INDEX OF DRAWINGS

Sheet Number	Sheet Title
0001	TITLE SHEET
0101	STRUCTURAL NOTES, FOUNDATION & ROOF PLANS
0201	FLOOR PLANS, EXTERIOR ELEVATIONS
0301	SECTIONS & DETAILS
0401	MECHANICAL & ELECTRICAL
0501	PLUMBING & POWER BASE SHEET

## PRICING SET

CERTIFICATION



**dalrymple sails**  
 ARCHITECTURE  
 521 E. GULF BLDG.  
 PENSACOLA, FL 32502  
 P. 904.437.4277  
 F. 904.437.4277  
 WWW.DALRYMPLE.COM

AS 07/12/15

## Wine Bar Outdoor Dining

16 Palafox Place, Pensacola, FL 32502

**G001**

PROJECT NO: 150718

SHEET TITLE: TITLE SHEET

DRAWN BY: CECILIO RT  
 CHECKED BY: JSS

ISSUE DATE: 2017-08-28  
 REVISIONS: 00  
 DATE: 0000