

Commercial Landlord-Tenant Law in Florida

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Lease Provisions and Issues: Planning Ahead to Avoid Problems

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Lease Provisions and Issues: Planning Ahead to Avoid Problems

- I. Essential Lease Elements¹
 - A. Parties
 - 1. Lessor: name and address.
 - 2. Lessee: name and address.
 - B. Description of leased property.
 - 1. Street address and city.
 - 2. Legal description.
 - 3. Size of area.
 - 4. Plat attached.
 - 5. Recorded source of lessor's title.
 - 6. Areas not included.
 - C. Term of Lease.
 - 1. Number of years or months.
 - 2. Starting and ending dates.
 - 3. Renewal options.
 - a. Lessor.
 - b. Lessee.
 - c. Term of renewals.^{2 3}
 - d. Number of renewals.
 - e. Method of exercise.
 - f. Time of exercise.
 - g. Change in rent or other terms of lease.
 - h. Holdover to be monthly lease.
 - D. Rent.
 - 1. Fixed.
 - 2. Amount.
 - 3. Date of first payment.
 - 4. Date of subsequent payments.
 - 5. Advance rents.

¹ 4 Florida Jur Forms Legal & Bus. § 16A:15

² *Woodward Tire Co., Inc. v Hartley Realty Inc.*, 596 So. 2d 1114 (Fla. 3d DCA 1992); Held that if no terms are specified then the renewal term continues the landlord-tenant relationship on the same terms as the original lease.

³ *Ferslew v. Relaford*, 351 So. 2d 368 (Fla. 1st DCA 1977); Held that landlord waives his right to prevent tenant's renewal conditioned upon absence of defaults if the landlord has not complained of any of the alleged defaults within a reasonable amount of time.

- a. Amount.
 - b. Period to which applicable.
6. Percentage rent.
 - a. Definition of sales.
 - b. Percentage applied to sales.
 - c. Monthly statements.
 - d. Certified annual statements from public accountant.
 - e. Right to inspect lessee's records.
 - f. Minimum rent payable.
 - g. Rent during periods business not conducted.
 7. Place of payment for all rents.
 8. Security deposit.
 - a. Amount.
 - b. Use by lessor.
 - c. Escrow or use by lessor.
 - d. Whether applicable to last rents.
 - e. Whether interest payable by lessor on deposit.
 - f. Interest rate, if any.
- E. Lessor's duties.
1. Deliver quiet possession of property to lessee.
 2. Warrant good title to property and right to execute lease.
 - a. Mortgage accepted.
 3. Permit lessee to use property for any legal purpose.
 4. Maintain exterior and structural elements in good repair.
 - a. Includes utilities, drains, heating and air conditioning.
 5. Pay taxes, assessments, mortgages and other liens.
 6. Permit lessee to maintain signs of stated dimensions and style.
- F. Lessee's duties.
1. Occupy property and conduct business by stated date.
 2. Maintain business and property in accordance with laws and ordinances.
 - a. Maintain property in clean and orderly condition.
 - b. Maintain sidewalks clear of snow, ice and obstacles.
 - c. Not commit a nuisance on property.
 - d. Noise, dirt, smoke, smell.
 3. Permit access to lessor for inspection during business hours.
 4. Observe all terms and conditions of lease.
 - a. Include rules established by lessor for lessees.
 5. Indemnify lessor for damage to property and injuries to parties on property
 6. Alter property only in accordance with plans submitted for approval.
 7. Return property to lessor in original condition, wear and tear excepted.

- G. Insurance obligations.
 - 1. Lessor's.
 - 2. Lessee's.
 - 3. Type, amount, and carrier.
 - 4. Other party listed as a dditional insured/loss payee.
 - 5. Notice of cancellation to additional party/forced place

- H. Damage to property.
 - 1. Duty of lessor to repair.
 - 2. Right of lessee to terminate lease.
 - a. Stated percentage of damage to property.
 - b. Repairs not made within stated time.
 - 3. Notice to lessor.
 - 4. Right of lessor to terminate lease.⁴
 - a. If damage within stated period of end of lease.
 - b. Right of lessee to exercise renewal option.
 - 5. Abatement of lessee's rent.
 - a. During period of damage.

- I. Condemnation of property.
 - 1. Duty of lessor to restore property to best condition after partial taking.
 - 2. Right of lessee to terminate.
 - a. Upon taking of stated percentage of property.
 - 3. All awards payable to lessor.
 - a. Not prohibit filing of lessee's claim.

- J. Defaults under lease.
 - 1. Notice to other party.
 - 2. Number of days to cure.
 - 3. Right of other party to terminate if not cured.
 - 4. Lessee's insolvency, bankruptcy to be a default.
 - 5. Waiver of breach not a continuing waiver.

- K. Assignments.
 - 1. Right of parties to assign.⁵
 - 2. Continuing obligation of assignor for lease compliance.
 - 3. Right of lessee to sublease.⁶

⁴ *Covelli Family, L.P. d/b/a Panera v. ABG5, L.L.C.*, 977 So. 2d 749 (Fla. 4th DCA 2008). New case law. Hurricanes caused extensive damage to the building Panera was renting from ABG5. ABG5 intended to terminate the lease acc. to the damage or destruction clause (when the damage is to at least 20% of the full insurable value of the building as estimated by a reputable contractor. Here, although ABG5 didn't strictly comply with the termination provision, they were still entitled to cancellation of the K because even acc. to figures most favorable figures to Panera.

⁵ *Corrigan, Lori v. Roosevelt Park*.

⁶ *Catalina, Inc. v. Biscayne Northeast Corp. of Florida* 296 So. 2d 580 (Fla. 3d DCA 1974). (Held that if the lessee seeks the landlord's consent, the landlord cannot unreasonably withhold his consent to the subletting.

- L. General provisions.
 - 1. Amendments.
 - a. Only in writing.
 - b. Signed by parties.
 - 2. Entire agreement between parties.
 - 3. No representations or warranties not stated.
 - 4. Severability of provisions.
 - 5. Applicable law to apply.
 - 6. Notices.
 - a. Addresses.
 - b. Change of address.
 - c. Certified, postage-paid mail.
 - d. Deposit as delivery date.
 - f. Execution of short form of lease for recording.
- M. Execution.
 - 1. Date.
 - 2. Signatures.⁷
 - 3. Witnesses.
 - 4. Acknowledgments-Notary
- N. Radon gas notification.
- O. Lead Paint notification
- P. Recordation of Lease/Memorandum of Lease
 - 1. Lease need not be acknowledged
 - 2. Lease must be acknowledged for recording
 - 3. Recordation is recommended to prevent BFP taking leasehold
- P. Triple Net Lease
 - 1. Lessee pays real estate taxes, insurance and building maintenance.
- Q. Attornment Agreement
 - 1. Attornment is the act of agreement of a tenant accepting one person in place of another as his or her landlord.
 - i. If the tenant attorns to the new owner, the attornment does not terminate the leasehold estate, but instead creates a new relation of landlord and tenant. .
 - 1. Creates direct privity of contract between a new landlord and the tenant.
 - ii. Who benefits from them?
 - 1. Tenants
 - 2. Landlords

⁷ *Corrigan, Lori v. Roosevelt Park*

- R. ADA Issues
1. Purpose of ADA
 - i. Promote broader access to public accommodations by removing any architectural barriers faced by disabled
 2. Lease guidelines needed to comply with ADA
 - i. Commercial leases CANNOT discriminate against the disabled in their full enjoyment of the goods, services, facilities, privileges, advantages or public accommodations.⁸
 1. Public accommodations include a broad spectrum of businesses including banks, stores, gymnasiums, movie theatres etc. THUS, most privately owned businesses are subject to ADA provisions.
 3. Actions that constitute ADA discrimination
 - i. Failure of newly constructed buildings to meet ADA requirements
 - ii. Failure of existing facilities to remove architectural/communication barriers where removal is “READILY ACHEIVEABLE” (Following factors considered)⁹
 1. Nature and cost of needed accommodations
 2. Financial resources of the facility (# of ppl. employed there etc.)
 3. Type of operation of the entity (incl. structure and functions of the workforce)
 - iii. If removal of barriers in existing facilities is not “READILY ACHEIVABLE” then alternative methods must be used to accommodate the disabled¹⁰
 4. Landlord methods to protect himself from liability under the ADA
 - i. Ensure the lease specifies that the tenant will not conduct his business in a way that would make the landlord liable under the ADA
 1. EX: “Tenant agrees not to violate Title III of the ADA in the way it provides services to its customers if another alternative is available.
 5. However, if the tenant’s business does NOT fit the statutory definition of a public accommodation and instead fits into the category of COMMERCIAL FACILITY then the ADA has less stringent requirements for them (i.e. they don’t have to modify existing structures unless the building goes under construction.
 - i. Commercial facilities include factories, warehouses and office buildings
 6. Frequently Contested Issues
 - i. Lease Termination and Acceleration of Rent
 1. Is a landlord entitled to terminate the lease while simultaneously demanding future accelerated rent?

⁸ 42 U.S.C. § 12182(a)

⁹ 42 U.S.C. § 12111(10)(B)

¹⁰ 42 U.S.C. § 12182(b)(2)(A)(v)

- a. In Florida, this remedy is only available when the contract expressly provides for landlord to do so.¹¹
- ii. Mitigation
 1. Landlord has NO obligation to mitigate its damages in the event that tenant breaches the lease.
 2. Instead, Landlord has 3 common law remedies
 - a. Treat the lease as terminated and re-take possession terminating further lessee liability
 - b. Retake possession of the premises on behalf of lessee, holding him liable for the difference between rental stipulated to be paid under lease and what the lessor is able to recover from reletting it.
 - c. Do nothing and hold the lessee liable for rent due as it matures.
- iii. Fixtures
 1. GENERAL RULE
 - a. Unless otherwise provided in the lease, trade fixtures installed by tenant may be removed by him or her at the end of the lease so long as their removal does not substantially injure the realty.¹²
 2. Lease should contain clause specifying which articles may be removable and the tenant's obligations to repair any damage caused by removal.¹³
- iv. Condominium Conversions
 1. Tips for commercial tenants
 - a. Due the large number of condo conversions, tenants must prepare for the difficulties in determining the different parties' lease obligations after a Declaration of Condominium has been recorded.
 - b. Possible issues that could arise after the conversion (and the condo association takes over the common areas)
 - i. effect of a of a post-lease condo conversion of a commercial office building on the landlord, tenant, and condo association
 - ii. whether and to what extent parties are bound by lease and Declaration of Condominium

¹¹ *Wolf v. Buchman*, 425 So. 2d 182, 185 (Fla. 3d DAC 1983);

¹² *Wetjen v. Williamson*, 196 SO. 2d 461 (Fla. 1st DCA 1967).

¹³ *Cenvill Investors, Inc. v. Columbus*, 483 So. 2d 751 (Fla. 4th DCA 1986).

Attachment 1-Sample Commercial Lease

See: 4 Florida Jur Forms Legal & Bus. § 16A:50

LEASE AGREEMENT

Section I. Parties

This lease is made between Jerry Seinfeld, of 210 W. 54th Street, City of St. Petersburg State of Florida, as lessor, and Elaine Benes, of 4201 S. Pasadena Drive, City of St. Petersburg, State of Florida, as lessee.

Section II. Description of Leased Premises

Lessor, by this agreement, leases to lessee and lessee, by this agreement, hires from lessor, the space as presently constituted known as 1010 W. 34th Street, Suite 100, referred to below as the premises, on the first floor in the building known as The Abbey, at 1010 W. 34th Street, in the City of St. Petersburg, State of Florida, referred to below as the building.

Section III. Term

The space is leased for a term to commence on July 1, 2008, and to end on July 1, 2009, or on an earlier time and date as this lease may terminate as provided below, except that, if any termination date falls on a Sunday or a holiday, then this lease shall end at 12:00 noon on the next business day preceding the above-mentioned date.

Section IV. Rent

The total annual rent is the sum of \$24,000, which sum is payable in equal monthly installments, in advance, on the first day of each calendar month during the term.

Lessor acknowledges receipt from lessee of the sum of \$2,000 by check, for rent to and including the first day of July, 2008. If lessor is unable to give possession of the premises on the date of commencement of the term of this lease by reason of the holding over of any lessee or occupant, or because construction, repairs or improvements are not completed, rent shall abate for the period that possession by lessee is delayed. If the delay shall continue for more than 20 days, then lessee may, within 10 days after the expiration of the 30 [day period, give lessor a notice of election to terminate this lease. Unless possession of the premises shall be made available sooner to lessee, this lease shall terminate on the 15th day after the giving of the notice and lessor shall return to lessee the consideration paid. Lessor shall have no obligation to lessee for failure to give possession except as above provided.

Section V. Use and Occupancy

Lessee shall use and occupy the premises as a real estate office and for no other purpose. Lessor represents that the premises may lawfully be used for that purpose.

Section VI. Place for Payment of Rent

Lessee shall pay rent, and any additional rent as provided below, to lessor at lessor's above-stated address, or at any other place that lessor may designate in writing, without demand and without counterclaim, deduction, or setoff.

Section VII. Care and Repair of Premises

Lessee shall commit no act of waste and shall take good care of the premises and the fixtures and appurtenances on it, and shall, in the use and occupancy of the premises, conform to all laws, orders, and regulations of the federal, state, and municipal governments or any of their departments. Lessor shall make all necessary repairs to the premises, except where the repair has been made necessary by misuse or neglect by lessee or lessee's agents, servants, visitors or licensees. All improvements made by lessee to the premises which are so attached to the premises that they cannot be removed without material injury to the premises shall become the property of lessor at the time of installation.

Not later than the last day of the term lessee shall, at lessee's expense, remove all of lessee's personal property and those improvements made by lessee which have not become the property of lessor, including trade fixtures, cabinetwork, movable paneling, partitions and the like; repair all injury done by or in connection with the installation or removal of the property and improvements; and surrender the premises in as good condition as they were at the beginning of the term, reasonable wear and damage by fire, the elements, casualty, or other cause not due to the misuse or neglect by lessee or lessee's agents, servants, visitors or licensees, excepted. All property of lessee remaining on the premises after the last day of the term of this lease shall be conclusively deemed abandoned and may be removed by lessor, and lessee shall reimburse lessor for the cost of the removal. Lessor may have any abandoned property stored at lessee's risk and expense.

Section VIII. Alterations, Additions or Improvements

Lessee shall not, without first obtaining the written consent of lessor, make any alterations, additions or improvements in, to or about the premises.

Section IX. Prohibition Against Activities Increasing Fire Insurance Rates

Lessee shall not do or suffer anything to be done on the premises which will cause an increase in the rate of fire insurance on the building.

Section X. Accumulation of Waste or Refuse Matter

Lessee shall not permit the accumulation of waste or refuse matter on the leased premises or anywhere in or near the building.

Section XI. Abandonment

Lessee shall not, without first obtaining the written consent of the lessor, abandon the premises, or allow the premises to become vacant or deserted.

Section XII. Assignment of Sublease

Lessee shall not, without first obtaining the written consent of the lessor, assign, mortgage, pledge, or encumber this lease, in whole or in part, or sublet the premises or any part of the premises. This covenant shall be binding on the legal representatives of lessee, and on every person to whom lessee's interest under

this lease passes by operation of law, but shall not apply to an assignment or subletting to the parent or subsidiary of a corporate lessee or to a transfer of the leasehold interest occasioned by a consolidation or merger involving such lessee.

Section XIII. Compliance With Rules and Regulations

Lessee shall observe and comply with the rules and regulations set forth below, which are made part of this agreement, and with any further reasonable rules and regulations that lessor may prescribe, on written notice to the lessee, for the safety, care, and cleanliness of the building and the comfort, quiet, and convenience of other occupants of the building.

Section XIV. Elevator Service

Lessor shall furnish passenger elevator service on business days, from 6:00 a.m. to 11:00 p.m., and it is agreed that at all other times there shall be two elevators subject to call.

Section XV. Heat

Lessor agrees to furnish lessee heat on business days adequate and reasonable for the premises leased by this agreement, or when and as required by law.

Section XVI. Water

Lessor agrees to furnish hot and cold water for lavatory purposes without charge. If a further supply of water is required by lessee, lessee shall, at lessee's expense, install, and shall after that maintain at lessee's expense, a water meter to register lessee's consumption of water, and lessee shall pay as additional rent, when and as bills are rendered, for water consumed, at the cost to lessor, and for sewer rents and all other rents and charges based on the additional consumption of water.

Section XVII. Cleaning Services

If the leased premises are used exclusively as offices, lessor agrees to furnish cleaning services customary in the building.

Section XVIII. Air Conditioning

Lessor agrees to furnish air cooling from 7:00 a.m. to 11:00 p.m., on business days, during the season which begins February 1 and ends November 1.

Section XIX. Electricity

Lessor agrees to furnish electricity for usual office requirements; however, lessee shall not use any electrical equipment which in lessor's reasonable opinion will overload the wiring installations or interfere with the reasonable use of the wiring installations by lessor or other lessees in the building.

Section XX. Damages to Building

If the building is damaged by fire or any other cause to such extent that the cost of restoration, as reasonably estimated by lessor, will equal or exceed 75 percent of the replacement value of the building, exclusive of foundations, just prior to the occurrence of the damage, then lessor may, no later than the 5th day following

the damage, give lessee a notice of election to terminate this lease, or if the cost of restoration will equal or exceed 75 of the replacement value and if the premises shall not be reasonably usable for the purposes for which they are leased under this agreement, then lessee may, no later than the 5th day following the damage, give lessor a notice of election to terminate this lease. In event of either election this lease shall be deemed to terminate on the 5th day after the giving of the notice, and lessee shall surrender possession of the premises within a reasonable time after that, and the rent, and any additional rent, shall be apportioned as of the date of the surrender and any rent paid for any period beyond that date shall be repaid to lessee.

In any case in which use of the premises is affected by any damage to the building, there shall be either an abatement or an equitable reduction in rent depending on the period for which and the extent to which the premises are not reasonably usable for the purpose for which they are leased under this agreement. The words "restoration" and "restore" as used in this Section XX shall include repairs. If the damage results from the fault of the lessee, or lessee's agents, servants, visitors, or licensees, lessee shall not be entitled to any abatement or reduction of rent, except to the extent, if any, that lessor receives the proceeds of rent insurance in lieu of the rent.

Section XXI. Waivers of Subrogation

Notwithstanding the provisions of Section VII of this lease, in any event of loss or damage to the building, the premises and/or any of its contents, each party shall look first to any insurance in its favor before making any claim against the other party. To the extent possible without additional cost, each party shall obtain, for each policy of insurance, provisions permitting waiver of any claim against the other party for loss or damage within the scope of the insurance, and each party, to the extent permitted, for itself and its insurers waives all insurance claims against the other party.

Section XXII. Eminent Domain

If the cost of restoration as estimated by lessor shall amount to less than 75 percent of the replacement value of the building, or if, despite the cost, lessor does not elect to terminate this lease, lessor shall restore the building and the premises with reasonable promptness, subject to delays beyond lessor's control and delays in the making of insurance adjustments between lessor and his or her insurance carrier, and lessee shall have no right to terminate this lease except as provided in this lease. Lessor need not restore fixtures and improvements owned by lessee.

If the premises or any part of the premises or any estate in them, or any other part of the building materially affecting lessee's use of the premises, is taken by eminent domain, this lease shall terminate on the date when title vests pursuant to the taking. The rent, and any additional rent, shall be apportioned as of the termination date and any rent paid for any period beyond that date shall be repaid to lessee. Lessee shall not be entitled to any part of the award for the taking or any payment in lieu of the taking, but lessee may file a claim for any taking of fixtures and improvements owned by lessee, and for moving expenses.

Section XXIII. Lessor's Remedies on Default

If lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions of this agreement, lessor may give lessee notice of that default. If lessee does not cure any rent, or additional rent, default within 7 days, or other default within 10 days, after the giving of the notice or if the other default is of such a nature that it cannot be completely cured within that period, and lessee does not commence the curing within the 10 days and then proceed with reasonable diligence and in

good faith to cure the default, then lessor may terminate this lease on not less than 7 days' notice to lessee. On the date specified in the notice, the term of this lease shall terminate and lessee shall then quit and surrender the premises to lessor, but lessee shall remain liable as provided in Section XXIV. If this lease is terminated by lessor in this manner, lessor may at any time after that resume possession of the premises by any lawful means and remove lessee or other occupants and their personal property.

Section XXIV. Deficiency

In any case where lessor has recovered possession of the premises by reason of lessee's default, lessor may, at lessor's option, occupy the premises or cause the premises to be redecorated, altered, divided, consolidated with other adjoining premises, or otherwise changed or prepared for reletting, and may relet the premises or any part of the premises as agent of lessee or otherwise, for a term or terms to expire prior to, at the same time as, or subsequent to, the original expiration date of this lease, at lessor's option, and receive the rent for the reletting. Rent so received shall be applied first to the payment of any expenses that lessor may have incurred in connection with the recovery of possession, redecorating, altering, dividing, consolidating with other adjoining premises, or otherwise changing or preparing for reletting, and the reletting, including brokerage and reasonable attorney's fees, and then to the payment of damages in amounts equal to the rent under this agreement and to the cost and expenses of performance of the other covenants of lessee as provided here. Lessee agrees, in any such case, whether or not lessor has relet, to pay to lessor damages equal to the rent and other sums agreed to be paid by lessee, less the net proceeds of the reletting, if any, and the damages shall be payable by lessee on the several rent days above specified. In reletting the premises, lessor may grant rent concessions, and lessee shall not be credited with those concessions. No such reletting shall constitute a surrender and acceptance or be deemed evidence of a surrender and acceptance. If lessor elects, pursuant to this agreement, actually to occupy and use the premises or any part of the premises during any part of the balance of the term as originally fixed or since extended, there shall be allowed against lessee's obligation for rent or damages as defined here, during the period of lessor's occupancy, the reasonable value of the occupancy, not to exceed in any event the rent reserved and the occupancy shall not be construed as a relief of lessee's liability under this agreement.

Lessee, by this agreement, waives all right of redemption to which lessee or any person claiming under lessee might be entitled by any law now or which may later be in force. Lessor's remedies under this agreement are in addition to any remedy allowed by law.

Section XXV. Effect of Failure to Insist on Strict Compliance With Conditions

The failure of either party to insist on strict performance of any covenant or condition of this agreement, or to exercise any option contained in this agreement, shall not be construed as a waiver of that covenant, condition, or option in any other instance. This lease cannot be changed or terminated orally.

Section XXVI. Collection of Rent From Any Occupant

If the premises are sublet or occupied by anyone other than lessee and lessee is in default under this agreement, or if this lease is assigned by lessee, lessor may collect rent from the assignee, sublessee, or occupant, and apply the net amount collected to the rent reserved here. No such collection shall be deemed a waiver of the covenant against assignment and subletting, or the acceptance of such assignee, sublessee, or occupant as lessee, or a release of lessee from further performance of the covenants contained in this lease.

Section XXVII. Subordination of Lease

This lease shall be subject and subordinate to all underlying leases and to mortgages and trust deeds which may now or later affect the leases or the real property of which the premises form a part, and also to all renewals, modifications, consolidations, and replacements of the underlying leases and the mortgages and trust deeds. Although no instrument or act on the part of lessee shall be necessary to effectuate the subordination, lessee will, nevertheless, execute and deliver further instruments confirming the subordination of this lease as may be desired by the holders of the mortgages and trust deeds or by any of the lessors under the underlying leases. Lessee, by this agreement, appoints lessor attorney in fact, irrevocably, to execute and deliver any such instrument for lessee. If any underlying lease to which this lease is subject terminates, lessee shall, on timely request, attorn to the owner of the reversion.

Section XXVIII. Security Deposit

Lessee shall deposit with lessor on the signing of this lease the sum of \$4000 as security for the performance of lessee's obligations under this lease, including without limitation the surrender of possession of the premises to lessor as provided in this lease. If lessor applies any part of the deposit to cure any default of lessee, lessee shall on demand deposit with lessor the amount applied so that lessor shall have the full deposit on hand at all times during the term of this lease. Lessor shall place security deposit in a separate, interest-bearing account.

Section XXIX. Lessor's Right to Cure Lessee's Breach

If lessee breaches any covenant or condition of this lease, lessor may, on reasonable notice to lessee, except that no notice need be given in case of emergency, cure the breach at the expense of lessee. The reasonable amount of all expenses, including attorney's fees, incurred by lessor in so doing, whether paid by lessor or not, shall be deemed additional rent payable on demand.

Section XXX. Mechanics' Lien

Lessee shall within 30 days after notice from lessor discharge any mechanics' liens for materials or labor claimed to have been furnished to the premises on lessee's behalf.

Section XXXI. Notices

Any notice by either party to the other shall be in writing and shall be deemed to have been duly given only if delivered personally or sent by registered or certified mail in an addressed postpaid envelope. If to lessee, notice shall be sent to the above described building. If to lessor, notice shall be sent to lessor's address as set forth above. In lieu of these addresses, notice shall be sent to lessee or lessor at any other address that lessee or lessor, respectively, may designate in writing. Notice shall be deemed to have been duly given, if delivered personally, on delivery, and if mailed, on the 3rd day after the mailing of such notice.

Section XXXII. Lessor's Right to Inspection, Repair, and Maintenance

Lessor may enter the premises at any reasonable time, upon adequate notice to lessee, except that no notice need be given in case of emergency, for the purpose of inspection or the making of repairs, replacements, or additions in, to, on and about the premises or the building that lessor deems necessary or desirable. Lessee shall have no claim or cause of action against lessor by reason of lessor's entry except as provided in Section XXXIII of this agreement.

Section XXXIII. Interruption of Services or Use

Interruption or curtailment of any service maintained in the building, if caused by strikes, mechanical difficulties, or any causes beyond lessor's control whether similar or dissimilar to those enumerated, shall not entitle lessee to any claim against lessor or to any abatement in rent, and shall not constitute constructive or partial eviction, unless lessor fails to take reasonable measures to restore the service without undue delay. If the premises are rendered untenantable in whole or in part, for a period of five business days, by the making of repairs, replacements, or additions, other than those made with lessee's consent or caused by misuse or neglect by lessee or lessee's agents, servants, visitors, or licensees, there shall be a proportionate abatement of rent during the period of untenability.

Section XXXIV. Conditions of Lessor's Liability

Lessee shall not be entitled to claim a constructive eviction from the premises unless lessee has first notified lessor in writing of the condition or conditions giving rise to the eviction. If the complaints are justified, and lessor has failed within a reasonable time after receipt of the notice to remedy the conditions, lessee is entitled to claim a constructive eviction.

Section XXXV. Lessor's Right to Show Premises

Lessor may show the premises to prospective purchasers and mortgagees and, during the three months prior to termination of this lease, to prospective lessees, during business hours on reasonable notice to lessee.

Section XXXVI. Effect of Other Representations

No representations or promises shall be binding on the parties to this agreement except those representations and promises contained in this lease or in some future writing signed by the party making those representations or promises.

Section XXXVII. Peaceful Enjoyment

Lessor covenants that if and so long as lessee pays the rent and any additional rent as provided in this lease and performs the covenants of this lease, lessee shall peaceably and quietly have, hold, and enjoy the premises for the term mentioned here, subject to the provisions of this lease.

Section XXXVIII. Lessee's Certification as to Force and Effect of Lease

Lessee shall, from time to time, on not less than five days prior written request by lessor, execute, acknowledge, and deliver to lessor a written statement certifying that the lease is unmodified and in full force and effect or that the lease is in full force and effect as modified and listing the instruments of modification; the dates to which the rents and other charges have been paid; and whether or not to the best of lessee's knowledge lessor is in default under this lease and, if so, specifying the nature of the default. It is intended that any such statement delivered pursuant to this Section may be relied on by a prospective purchaser of lessor's interest or mortgagee of lessor's interest or assignee of any mortgage on lessor's interest in the building.

Section XXXIX. Waiver of Jury Trial

To the extent that a waiver of jury trial is permitted by law, the parties waive trial by jury in any action or proceeding brought in connection with this lease or the premises.

Section XL. Section Headings

The section headings in this lease are intended for convenience only and shall not be taken into consideration in any construction or interpretation of this lease or any of its provisions.

Section XLI. Binding Effect on Successors and Assigns

The provisions of this lease shall apply to, bind, and inure to the benefit of lessor and lessee, and their respective heirs, successors, legal representatives, and assigns. It is understood that the term "lessor" as used in this lease means only the owner, a mortgagee in possession, or a term lessee of the building, so that in the event of any sale of the building or of any lease of the building, or if a mortgagee shall take possession of the premises, the lessor named here shall be entirely freed and relieved of all covenants and obligations subsequently accruing under this agreement. It shall be deemed without further agreement that the purchaser, the term lessee of the building, or the mortgagee in possession has assumed and agreed to carry out all covenants and obligations of the lessor under this agreement.

Section XLII. Radon gas notification

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 health department.

Executed on August 11, 2008.

LESSOR

LESSEE

Date:_____

Date:_____