

IN THE CIRCUIT COURT OF THE  
11<sup>TH</sup> JUDICIAL CIRCUIT, IN AND FOR  
MIAMI DADE COUNTY, FLORIDA

CASE NO. 2016-5479 CA 01

DEZER INTRACOASTAL MALL, LLC,

Plaintiff,

vs.

SEAHORSE GRILL, LLC,

Defendant.

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**FINAL JUDGMENT**

THIS MATTER came before the Court on December 4, 2017. The Court heard opening statements of the parties and thereafter, by oral stipulation made in open court, accepted the Exhibits submitted by the parties as evidence, including the Lease and its Riders. The parties by oral stipulation agreed that the Lease and its Riders were clear and unambiguous, and that no parol evidence would be applicable. The parties agree that Paragraph 8 of the Rider governs the calculation of allowable increases to the Operating Expenses that the Landlord may charge to the Tenant.

The Court having given careful consideration to the Opening Statements and the effect and proper weight of the admissible evidence presented by the parties through the stipulated exhibits makes the following findings of fact and conclusions of law:

**I. PROCEDURAL HISTORY**

1. On March 3, 2016, Plaintiff, Dezer Intracoastal Mall, LLC (“Landlord”) filed a Summons and Complaint against Defendant, Seahorse Grill, LLC (“Tenant”) seeking: a) eviction against Tenant; and b) damages against Tenant arising from an alleged breach of a commercial real estate lease (“Lease”).

2. On March 15, 2016, Tenant filed its Answer and Affirmative Defenses including, *inter alia*, full payment. Tenant also plead the right to recover attorney's fees in the event it is determined that Tenant is the prevailing party.

3. On June 28, 2016, Tenant was granted leave to amend its affirmative defenses, to include defenses for failure to state a cause of action, defective notice, waiver, estoppel, prior breach of lease, breach of duty of good faith and fair dealing, unconscionability, ratification, course of history and dealing, unclean hands and setoff. Landlord filed a Reply to the Amended Affirmative Defenses denying same.

## **II. FINDINGS OF FACT**

### *(1) The Lease*

4. On October 14, 2011, MSW Intracoastal Mall, LLC ("MSW") entered into a ten (10) year Lease with two (2) five years options for the total of twenty (20) years with Tenant for property located at the Intracoastal Mall, 3913 N.E. 163<sup>rd</sup> Street, North Miami Beach, Florida 33160 ("Premises"). See, Plaintiff's Exhibit 2 .

5. Pursuant to the Lease, the "Rent Commencement Date" was January 1, 2012. *Id.* "Rent" consists of the "Minimum Rent," which was \$233,772.00 per year, payable in equal monthly installments of \$19,481.00. Rent also includes "Additional Rent" which consists of (a) sales tax and other taxes assessed against the rent, (b) operating expenses and (c) utilities. *Id.* In their opening statements, the parties both argued that the dispute in this matter concerns fixing the amount of the Operating Expenses and the allowable Operating Expense increases over time according to the Lease.

6. Section 1.1(k) defines "Operating Expenses" as follows: "Landlord's estimate of Tenant's Proportionate Share of Operating Expenses for the calendar year 2012 is \$5,753.31 per

month, which amount shall be due from Tenant on the first (1<sup>st</sup>) day of each month along with the Minimum Rent.” Id.

7. At the time the parties drafted the Lease, they also included Riders to the Lease governing, *inter alia*, the future payment of Operating Expenses. The parties intended that these Riders would supersede the other provisions of the Lease. Indeed, Section 11.28 of the Lease “**Rider**”, explicitly states, “**[i]f any provision contained in a Rider to this Lease is inconsistent with any other provisions herein, the provision contained in the Rider shall control unless otherwise provided in the Rider.**” Id.

8. Additionally, in the opening sentence of the first Rider it states that, “**[b]y reference hereto, this Rider is hereby incorporated into and made a part of the above referenced Lease between Landlord and Tenant. In case of any inconsistency between the provisions of this Rider to the Lease and the balance of the Lease, the provisions of this Rider shall govern and control.**” Id.

9. In Section 2.3 of the Lease, the parties further clarified the definition of Operating Expenses:

“Tenant shall pay to Landlord, as Additional Rent, Tenant’s Proportionate Share of all costs and expenses of owning, operating, servicing, managing, maintaining, repairing, replacing, securing, insuring and improving the Shopping Center (“Operating Expenses”), less any contributions to Operating Expenses received by Landlord from Anchor tenants and/or from those outparcel tenants, if any, whose premises are excluded from the calculation of Tenant’s Proportionate Share in accordance with the next sentence.” Id.

10. In the Lease Rider, the parties agreed to cap the amount of increases to the Operating Expenses at 3% per year:

Notwithstanding anything to the contrary contained in the Lease,  
Operating Expenses (as the term is defined in Section 2.3 of the

Lease) shall increase annually during the Term by the fixed amount of three percent (3%) per calendar year over the Operating Expenses in effect for the immediately preceding calendar year, notwithstanding the actual amount of Operating Expenses otherwise allocable to the Leased Premises.

(Id. Rider, Paragraph 8 entitled “OPERATING EXPENSES/FIXED INCREASES”.)

11. The Lease sets forth in clear and unambiguous language that the Operating Expenses would only increase each year by the fixed amount of three percent (3%). To find otherwise would be completely eviscerate the underlined language immediately above. As a result, the exact amount of the Operating Expenses can be determined by the amount of the Operating Expenses for the first year and then increasing that amount by exactly three percent (3%) every year thereafter.

12. As if to dispel any uncertainty concerning the interpretation of the term Operating Expenses, the parties to the Lease even incorporated a specific prohibition of adjusting any calculation that incorporates the square foot area of the leased Premises in the foundational provision defining what is being leased. Section 1.1(e) entitled “LEASED PREMISES” states:

“Landlord and Tenant agree that **for all purposes of this Lease**, the Floor Area of the Leased Premises shall be deemed to be 7,081 rentable square feet and that **there shall be no re-measurement or adjustment of such Floor Area or adjustment of any amount calculated with reference thereto.**” Id.

13. Since the first prohibition of Section 1.1(e) forbids changing the rental square footage to any number other than 7,081, the second prohibition must preclude the adjustment of any figure calculated by reference to 7,081. The only amount calculated under the Lease by reference to this number is the Operating Expenses which incorporates the Tenant’s Proportionate Share. Every calculation Landlord has submitted in its Exhibits is derived from a calculation of the Operating Expenses by reference to the rentable square footage fixed at 7,081.

Any attempt by Landlord to argue that the fixed increase of three percent (3%) does not prevent the Landlord from altering the agreed upon calculation of Tenant's pro rata share of Operating Expenses are wholly improper under the Lease and are rejected by this Court.

14. While the findings of fact may conclude at this juncture since it would be an error to refer to extrinsic or parol evidence, the Court will comment on the stipulated exhibits solely to dispel any notion that even if an ambiguity exists in the lease (which it does not) that such ambiguity would be resolved any differently.

*(2) The Transfer of Ownership of the Premises*

15. Within, two years of execution of the Lease, on March 15, 2013, CJUF III Intracoastal LLC ("CJUF") acquired the Premises and succeeded to all the rights, title, interest and obligations of MSW under the Lease. Thereafter, on or about December 18, 2013, Landlord acquired the Premises and succeeded to all the rights, title, interest and obligations of CJUF. See, Plaintiff's Exhibit 1.

*(3) The Agreed Upon Operating Expenses "In Effect" for 2012*

16. At the inception of the Lease, the Tenant paid \$54,001.42 to MSW consisting of both the security deposit and first month's rent, including the Operating Expenses in the amount of \$5,753.31 pursuant to Section 1.1(l) of the Lease. Thereafter, from February 2012 through May 2013, the Tenant paid \$5,753.31 per month as part of its aggregate monthly rental payment. See, Defendant's Exhibit 8

17. On May 22, 2013, CJUF (the second landlord) through its property manager Continental Real Estate Companies ("CREC"), sent a letter stating that CJUF had reconciled the 2012 Operating Expenses, and their newly revised calculation of the 2012 Operating Expenses showed a balance due by the tenant. The letter then stated that the then Landlord had decided to

accept the 2012 estimated Operating Expenses billed and collected rather than attempt to revise the Operating Expenses and collect additional amounts. Finally, CJUF reserved the right to attempt to collect the difference if the “Tenant breaches the Lease or a default or event of default occurs under the Lease.” The letter states:

The foregoing is solely a one-time accommodation...nothing contained in this letter is intended to modify or waive any of the terms, covenants and conditions of the Lease. All terms, covenants and conditions of the Lease shall continue to be and remain in full force and effect.

(See, Id.). Plaintiff’s Exhibit 3) The letter, however, supports Defendants argument since the parties continued to use the estimate in effect and set forth in the Lease. Moreover, the second landlord’s interpretation of the Lease through its management company constitutes parol evidence which cannot be used to interpret the Lease.

18. CJUF did not negotiate the Lease but assumed the obligations when it acquired the property. Nonetheless in its letter, CJUF confirmed that the parties agreed to use \$5,753.31 (as recorded in the Lease under Section 1.1(k)) as the correct amount of 2012 Operating Expenses. No other figure was agreed to by both parties as an acceptable figure for the operating expenses for 2012 other than \$5,753.31. Without doubt, \$5,753.31 was the Operating Expense “in effect” after the first year of the Lease. Oxford dictionary defines “in effect” as (1) in force, and (2) in practice even if not formally acknowledged.

*(4) CJUF’s Course of Dealing Concerning the Operating Expenses*

19. In 2013, CJUF never altered the operating expenses for 2012 or demanded any payment for alleged additional 2012 operating expenses beyond the monthly paid operating expenses of \$5,753.31. Thus, \$5,753.31 is the only amount that can be said to be the 2012

operating expenses in effect and the proper base for calculating the 2013 Operating Expenses subject to the fixed increase of three percent (3%) under the Lease.

20. In accordance with the Rider, the only way to properly calculate the 2013 Operating Expenses is to utilize the 2012 operating expense of \$5,753.31 because it: a) was the estimated operating expenses written in the Lease and provided by the then landlord for the premises in 2012; b) billed by this landlord in 2012; c) paid by the Tenant in 2012; and d) acquiesced to by this landlord as the appropriate calculation of 2012 operating expenses. The Court notes that the then landlord calculated the estimated amount in October, 2011 after having received its tax bill, insurance bill and incurred 83% of its remaining expenses for the year, thus enabling them to estimate the actual expenses with reasonable accuracy. The correct method of determining the Operating Expense going forward is to allow a three percent (3%) increase above the 2012 Operating Expenses of \$5,753.31 for every calendar year thereafter.

21. The Landlord's attempt to utilize one or more reconciliations based on an accounting for any alleged actual amount of the Operating Expenses clearly contradicts the controlling and superseding Rider governing Operating Expenses, which expressly prohibits the Landlord from utilizing any later arrived at calculation for actual Operating Expenses.

22. Under the Rider, future increases to the Operating Expenses are derived from the amount "in effect" during the immediately preceding calendar year. The Rider emphasizes that the "in effect" figure is the correct baseline where it states "notwithstanding the **actual** amount of Operating Expenses otherwise allocable to the Leased Premises." The Lease does not define the term "in effect" and therefore the Court determines "in effect" to mean that amount paid by the Tenant in 2012.

23. Indeed, the two (2) prior owners of the Premises approved or acquiesced to this baseline in calculating Operating Expenses for 2012 and Tenant properly relied on their acceptance of \$5,753.31 as the 2012 Operating Expenses properly calculated as part of Tenant's rent.

24. When Plaintiff/Landlord took possession, it continued the course of dealing of CJUF and endorsed the use of its estimated 2013 Operating Expenses until June 2015.

*(5) Calculating the Operating Expenses*

25. The Court reviewed the Defendants Exhibit 8, a Paid Rent Ledger which accounts for the Operating Expenses from February 1, 2012 until December 31, 2016. The Court also reviewed Plaintiffs Exhibit 6, the Receivable ledger which reflects the same payments during the same period of time. No differences exist between the Defendant's record of payments and the Plaintiff's record of receipts. The actual quick book entries on the ledgers show the amount of rent and operating expenses paid by the Tenant. The hand written portion shows the Tenant's claim of a proper 3% increase for Operating Expenses for every year between 2012 and 2016. Id.

26. As set forth above, \$5,753.31/month was agreed to as the 2012 "in effect" Operating Expense and included in the 2012 monthly rent payments. The Court further finds the following as the amounts actually paid by the Tenant from 2013-2016. In 2013, the first five (5) months reflect a payment of \$27,000.71/month, the month of June reflects a payment of \$30,686.82, while the remaining six (6) months reflect a payment of \$27,615.06. Id. If all payments for the year are added and divided by twelve, it reflects an effective rental payment rate of \$27,615.06 per month. For the remaining years until the present, a rental payment per month of \$27,615.06 has been made by Tenant with no increases. Id.



27. The 2013 operating expenses should have increased by three percent (3%) to \$5,925.91/month in accordance with the Lease. However, the ledgers confirm that the Tenant paid \$6,327.47/month towards operating expenses, and as such the Tenant overpaid by \$4,818.72 for 2013. Id.

28. The 2014 operating expenses likewise should have increased only by three percent (3%) to \$6,103.69/month in accordance with the Lease.<sup>1</sup> The Tenant paid \$6,327.47/month towards operating expenses, and the Tenant overpaid \$2,685.36 for 2014. Id.

29. The 2015 operating expenses should have increased by three percent (3%) to \$6,286.80/month<sup>2</sup> but the Tenant overpaid operating expenses and paid \$6,327.47/month, the Tenant overpaid \$488.04 for 2015. Id.

30. The 2016 operating expenses should have increased by three percent (3%) to \$6,475.40/month in accordance with the Lease but the Tenant underpaid \$6,327.47/month towards operating expenses, and Landlord is owed \$1,775.16 for 2016. Id.

31. The 2017 operating expenses should have increased by three percent (3%) to \$6,669.66 in accordance with the Lease but the Tenant paid \$6,327.47/month towards operating expenses, the Tenant underpaid and Landlord is owed \$4,106.28 for 2017. Id. Adding together all the amounts Tenant was owed or owes for all the years of the Lease yields a total overpayment by the Tenant in the amount of \$2,110.68.

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<sup>1</sup> The accounting ledger appears to have mistakenly utilized simple interest rather than compound interest to arrive at a slightly different figure.

<sup>2</sup> Due to using simple instead of compound interest, the ledger arrived at a slightly different figure.

32. The correct calculation of the operating expenses as opposed to what was actually paid can be represented as follows:

<b>Year</b>	<b>Operating Expenses Tenant Paid Per Month/Year</b>	<b>Operating Expenses Owed under the Lease (with 3% increase after Year 2012) Month/Year</b>	<b>Operating Expenses Owed to Tenant Month/Year</b>
2012	\$5,753.31/\$69,039.72	\$5753.31/\$69,039.72	\$0
2013	\$6,327.47/\$75,929.64	\$5,925.91/\$71,110.92	\$4,818.72
2014	\$6,327.47/\$75,929.64	\$6,103.69/\$73,244.28	\$2,685.36
2015	\$6,327.47/\$75,929.64	\$6,286.80/\$75,441.60	\$488.04
2016	\$6,327.47/\$75,929.64	\$6,475.40/\$77,704.80	-\$1,775.16
2017	\$6,327.47/\$75,929.64	\$6,669.66/\$80,035.92	-\$4,106.28
<b>Total Amount Due through 12/31/ 2017</b>			<b>\$2,110.68 DUE TO TENANT</b>

*(6) The Landlord Invents a Default Due to the Rezoning of the Premises*

33. After Landlord assumed ownership of the Premises, Landlord continued demanding monthly rent from Tenant in the aggregate amount of \$27,615.06. Even ten (10) months after Landlord owned the building, on October 3, 2014, CREC sent an email demanding Tenant pay rent in the amount of \$27,615.06 for October 2014 and threatening they would enforce late charges if not paid during the grace period, thus confirming the prior course of dealing of the parties. See, Defendant's Exhibit 1. Landlord accepted monthly rent payments which included the monthly Operating Expenses, without objection for another 1 and ½ years until June 2015. The Landlord continued to unconditionally accept the rent paid without objection or notice of intent to declare a default. Nothing in the record reflects how the Landlord determined the \$27,615.06 rental demand. Nor can that amount be reconciled with the amount

demanded by the Landlord in June, 2015 when it demanded an increase in Operating Expenses from \$6,327.47 to \$13,365.45 per month or an annual increase of \$84,455.76 See, Plaintiff's Exhibit 5. This demand in equity reeks of unfairness, particularly considering that the Receivable ledger marked as Plaintiff's Exhibit 6 shows a balance due to Landlord on May 1, 2015 of 0, and then after the Landlord applied its increases and late fees, the Landlord's demanded damages ballooned to the incredible sum of \$602,379.75 through November, 2017 according to the Lease ledger marked as Plaintiff's Exhibit 7.

34. Upon purchase, the Landlord sought to rezone the Premises. Two years later, on March 12, 2015, the City of North Miami Beach rezoned the Premises to allow a residential and/or commercial premises as massive as forty (40) stories or a maximum of 495 feet. The Court finds that, upon successfully rezoning the Premises, the Landlord, on June 1, 2015, sent Tenant a letter alleging \$116,663.52 was owed and due immediately in June 2015. See, Defendant's Exhibit 5. Landlord writes: "As per the terms of your lease, your rent and CAM is scheduled to change effective June 1, 2015." The Landlord improperly attempts to increase the Lease Operating Expenses going forward and seeks money allegedly owed retroactively as far back as the first payment they received as owner of the premises in January 2014. Id.

35. As discussed above, the Lease does not permit the Operating Expenses to increase beyond three percent (3%). The future increases proposed under this letter violated the Lease as the Rider limits annual increases to the Operating Expenses to three percent (3%).

36. Landlord utilized their improperly calculated increases in the Operating Expenses to assert a claim for rent owed in the Landlord's Notice of Tenant Default dated February 24, 2016, attached as Exhibit B to the Landlord's Complaint and as a basis for further wrongful

increases in the Operating Expenses outside the agreed upon Lease in this matter. See, Plaintiff's Exhibit 7.

37. Under the Lease Ledger marked as Plaintiff's Exhibit 7, Plaintiff acknowledges no balance due from the Tenant as of May 2015, acknowledges receiving \$27,615.06 every month thereafter from Tenant, but still accumulated a claimed balance arising from Operating Expenses owed amounting to \$602,379.75 This contrived amount is overwhelmingly based off of late fees, including their claimed monthly late fees, alleged taxes owed on these claimed late fees and interest on the late fees, all amounting to \$373,697.87.

38. As demonstrated below, the law is not so powerless as to allow the Landlord to run roughshod over the Tenant's rights, ignore the clear and unambiguous terms of the lease and attempt to evict a tenant who overpaid its rent. It also has not gone unnoticed by this Court that the Landlord even failed to give the Tenant a credit for the \$27,000.71 security deposit it holds pursuant to paragraph 1.1(l) of the Lease. See also Plaintiff's Exhibit 1 (acknowledging Landlord still holds the security deposit)

### **III. CONCLUSIONS OF LAW**

Based upon the above findings of fact, the Court makes the following Conclusions of Law:

1. This Court has jurisdiction over the parties hereto and the subject matter hereto.

#### **A. CLAIM FOR EVICTION UNDER THE LEASE**

2. Eviction of a non-residential tenant is governed by §83.20(2), *Fla. Stat.* (2017),

Under section 83.20(2), Landlord must prove the following elements to establish a prima facie claim for eviction:

“1) the parties had an agreement requiring the Tenant to pay the Landlord rent for the use of the property; 2) the Tenant defaulted in the payment of this rent; 3) three days' notice requiring payment of the rent or the possession of the property was served on the Tenant;

and 4) the tenant failed to pay the rent or deliver possession of the property within three days.”

*Dream Closet, Inc. v. Palm Beach Mall, LLC*, 991 So. 2d 910, 911-12 (Fla. 4<sup>th</sup> DCA 2008); *See also, 3618 Lantana Rd. Partners, LLC v. Palm Beach Pain Mgmt., Inc.*, 57 So. 3d 966, 968 (Fla. 4<sup>th</sup> DCA 2011).

3. The Landlord in the instant action failed to prove that the Tenant defaulted in the payment of rent. Landlord utilized an improperly calculated increase in the operating expenses to assert a claim for rent owed in the Landlord’s Notice of Tenant Default dated February 24, 2016, attached as Exhibit B to the Landlord’s Complaint. Pursuant to the Lease Rider paragraph 8, calendar year operating expenses may increase by only three percent (3%). Based on the reports, Landlord received all rental payments including the 3% increase for Operating Expenses. To the contrary, Tenant overpaid \$2,110.68 for Operating Expenses due under the Lease through December 31, 2017.

4. The Court also finds forfeiture of a twenty (20) year Lease, when the Tenant has paid all rent and paid the Landlord’s alleged rental defaults into the registry of the Court, to be unjust, as the payment obviates the need to dispossess the Tenant and a forfeiture would be inequitable. *See, Rader v. Prather*, 130 So. 15 (Fla. 1930). Both equity and the law abhor forfeitures. Since a forfeiture would result in a great windfall for the Plaintiff through redevelopment and great financial loss for the Defendant, the eviction would be manifestly unjust, inequitable and unconscionable. *Sharpe v. Sentry Drugs, Inc.*, 505 So. 2d 168 (Fla. 3d DCA 1987); *Miami Juice Corp., v. LSB Inv. Corp.*, 2016 Fla. Cir. Lexis 25363 (Eleventh Judicial Circuit);

## **B. CLAIM FOR BREACH OF THE LEASE**

5. A breach of contract claim requires three (3) elements, a) the existence of a contract; b) a breach of the contract; and c) damages. *Collections, USA, Inc. v. City of*

*Homestead*, 816 So.2d 1225, 1227 (Fla. 3d DCA 2002). *See also AIB Mortgage Co. v. Sweeney*, 687 So.2d 68, 69 (Fla.3d DCA 1997). The Landlord in the instant matter has failed to prove a breach of the relevant Lease and damages in this matter.

6. It is well settled Florida law that the initial determination of whether a contractual term is ambiguous is a question of law for the Court. *Jones v. Utica Mut. Ins. Co.*, 463 So.2d 1153, 1157 (Fla. 1985). *See also Escobar v. United Auto. Ins. Co.*, 898 So.2d 952, 954 (Fla. 3d DCA 2005).

7. I agree with the arguments presented by both parties' opening statements in this matter that the contract at issue is not ambiguous. Pursuant to the applicable Lease Rider paragraph 8, Landlord is not owed any amount, rather Tenant overpaid \$2,110.68 for Operating Expenses due under the Lease through December 31, 2017.

8. As the Court in *Brooks v. Green*, 993 So. 2d 58, 61 (Fla. 1st DCA 2008) held, "A party is bound by, and a court is powerless to rewrite, the clear and unambiguous terms of a voluntary contract." *Nat'l Health Laboratories, Inc. v. Bailmar, Inc.*, 444 So.2d 1078, 1080 (Fla. 3d DCA 1984) *review denied*, 453 So.2d 43 (Fla.1984). *See generally Bingemann v. Bingemann*, 551 So.2d 1228 (Fla. 1st DCA 1989), *review denied*, 560 So.2d 232 (Fla.1990). It is not the role of the courts to make an otherwise valid contract more reasonable from the standpoint of one contracting party. *Stack v. State Farm Mut. Auto. Ins. Co.*, 507 So.2d 617, 619 (Fla. 3d DCA 1987), *review denied*, 515 So.2d 230 (Fla.1987).

9. In this case, even if I were to find an ambiguity in the applicable Lease Rider paragraph 8, concerning the interpretation of the phrase "the Operating Expenses in effect for the immediately preceding calendar year," notwithstanding the actual amount of Operating Expenses, the parol evidence in the record makes it crystal clear that the only logical starting

number is \$5,753.31. The contract stipulates this amount for the first calendar year of the lease (the 2012 calendar year); the Tenant was billed and paid this amount; and the then landlord for the Premises acquiesced to this amount. *See, Univ. of Miami v. Frank*, 920 So.2d 81, 88 (Fla. 3d DCA 2006).

10. An amount that purports to be “the Operating Expenses in effect” must be arrived at logically by agreement of the parties at the relevant time the number is fixed. It is illogical and improper for the present Landlord to attempt to resurrect a prior disfavored number or superimpose a new number several years later. Considering “the conduct of the parties through their course of dealings”, this Court will not disturb the previously agreed upon figure for 2012 Operating Expenses. *Oakwood Hill Co. v Horacio Taledo, Inc.* 599 S. 2d 1374, 1376, (Fla. 3<sup>rd</sup> DCA 1992 ); See also, *Blackhawk Heating & Plumbing, Co. v. Data Lease Financial Corp.*, 302 So. 2d 404, 407 (Fla. 1974).

11. Pursuant to both the applicable Lease Rider paragraph 8 Landlord is not owed any amount through December 31, 2017. To avoid any confusion going forward, the amount of operating expenses to be paid by Tenant commencing January 1, 2018 shall be \$6,869.75 per month (3% increase each year from 2012).

### **C. ENTITLEMENT TO FEES**

12. Tenant properly plead a claim for attorney’s fees in this action pursuant to Section 11.25 of the Lease. Defendant is the prevailing party in this matter, and as such, is entitled to the reasonable cost, expenses and attorney’s fees from the Plaintiff.

**FINAL JUDGMENT**

Based on the foregoing, it is adjudged that Plaintiff DEZER INTRACOASTAL MALL LLC, a Florida limited liability company, whose principal address is 18001 Collins Avenue, 31<sup>st</sup> Floor, Sunny Isles Beach, Florida 33160, take nothing by this action and that Defendant, SEAHORSE GRILL, LLC, a Florida limited liability company, whose principal address is 3913 NE 163<sup>rd</sup> Street, North Miami Beach, Florida 33160 shall go hence without day and the Court reserves jurisdiction to award Defendant its attorney's fees and costs and the Court directs the Clerk of the Court to refund all monies paid into the registry of the Court by the Defendant. The Clerk shall provide the funds to Phillips, Cantor & Shalek, P.A. Trust Account forthwith.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 12/26/17.

  
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JORGE E. CUETO  
CIRCUIT COURT JUDGE

**FINAL ORDERS AS TO ALL PARTIES**  
**SRS DISPOSITION NUMBER 3**  
**THE COURT DISMISSES THIS CASE AGAINST**  
**ANY PARTY NOT LISTED IN THIS FINAL ORDER**  
**OR PREVIOUS ORDER(S). THIS CASE IS CLOSED**  
**AS TO ALL PARTIES.**

Judge's Initials JEC

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.