



# City of Miami

## Legislation

### Resolution: R-15-0530

City Hall  
3500 Pan American  
Drive  
Miami, FL 33133  
www.miamigov.com

File Number: 15-01562

Final Action Date: 12/10/2015

A RESOLUTION OF THE MIAMI CITY COMMISSION, WITH ATTACHMENT(S), FINDING THAT RIVERSIDE WHARF LLC ("PROPOSER") IS THE TOP RANKED RESPONSIVE AND RESPONSIBLE FIRM PURSUANT TO DEPARTMENT OF REAL ESTATE AND ASSET MANAGEMENT'S REQUEST FOR PROPOSALS ("RFP") NO. 14-15-024 FOR THE DEVELOPMENT AND LEASE OF THE NORTH RIVERFRONT PROPERTY LOCATED AT 236 AND 298 SOUTHWEST NORTH RIVER DRIVE, MIAMI, FLORIDA ("PROPERTY"); AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE A LEASE ("LEASE"), IN SUBSTANTIALLY THE ATTACHED FORM, AND IN COMPLIANCE WITH ANY AND ALL APPLICABLE STATE SUBMERGED LANDS LEASE REQUIREMENTS, WITH THE PROPOSER, FOR AN INITIAL TERM OF THIRTY (30) YEARS, WITH AN OPTION TO RENEW FOR TWO (2) TEN (10) YEAR TERMS, SAID LEASE PROVIDING A PAYMENT TERM OF THE GREATER OF EITHER AN ANNUAL BASE RENT OF \$195,500.00 ("MINIMUM BASE RENT") OR FIFTEEN PERCENT (15%) OF THE GROSS REVENUES AS DEFINED IN THE LEASE, AND PROVIDING THAT THE MINIMUM BASE RENT SHALL BE ADJUSTED ON AN ANNUAL BASIS BY THE GREATER OF THE CONSUMER PRICE INDEX OR A THREE PERCENT (3%) ESCALATOR, WITH TERMS AND CONDITIONS MORE PARTICULARLY DESCRIBED IN THE LEASE; FURTHER PROVIDING THAT THE EXECUTION OF THE LEASE DOES NOT CONFER ANY CONTRACTUAL RIGHTS UPON PROPOSER UNLESS AND UNTIL THE ELECTORATE HAS CAST A FAVORABLE REFERENDUM VOTE APPROVING THE TRANSACTION AS REQUIRED BY CITY CHARTER SECTION 29(B).

WHEREAS, the City of Miami ("City") owns the property located at 236 and 298 Southwest North River Drive, Miami, Florida, 33130 ("Property"); and

WHEREAS, on June 15, 2015, the City's Department of Real Estate and Asset Management ("DREAM") advertised Request for Proposals ("RFP") No. 14-15-024, to solicit proposals for the development of the Property including planning, design, construction, leasing and management services; and

WHEREAS, on September 14, 2015, the solicitation period closed, with receipt of one (1) proposal, from Riverside Wharf LLC ("Proposer"), deemed responsive and responsible in accordance with the RFP's terms and conditions; and

WHEREAS, pursuant to the RFP, the City Manager appointed an Evaluation Selection Committee ("Committee") to evaluate said responsive and responsible proposal; and

WHEREAS, the Committee met on December 8, 2015 to evaluate the criteria and scoring values assigned and to render a written Memorandum for Recommendation for Award ("Recommendation") to the City Manager; and

WHEREAS, the City Manager approved the Committee's Recommendation and submitted the

same to the City Commission for their ultimate consideration and approval; and

WHEREAS, the City Commission accepts the Recommendation of the City Manager; and

WHEREAS, the above actions and procedures have been performed in accordance with the applicable provisions of the Charter and Code of the City of Miami, Florida, and provisions contained within the RFP;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and findings contained in the Preamble to this Resolution are adopted by reference and incorporated as if fully set forth in this Section.

Section 2. The Recommendation of the City Manager approving the findings of the Committee, pursuant to DREAM RFP No. 14-15-024 for the development and lease of the Property finding that Proposer is the top ranked firm is accepted.

Section 3. The City Manager is hereby directed{1} to execute a lease ("Lease"), in substantially the attached form, and in compliance with any and all applicable State submerged lands lease requirements, with the Proposer, for an initial term of thirty (30) years, with options to renew for two (2) ten (10) year terms, said Lease providing a payment term of the greater of either an annual base rent of \$195,500.00 ("Minimum Base Rent") or fifteen percent (15%) of the gross revenues as defined in the Lease, and providing that the Minimum Base Rent shall be adjusted on an annual basis by the greater of the Consumer Price Index or a three percent (3%) escalator, with terms and conditions more particularly described in the Lease; further providing that the execution of the Lease does not confer any contractual rights upon the Proposer unless and until the electorate has cast a favorable referendum vote approving the transaction as required by City Charter Section 29(B).

Section 4. This Resolution shall become effective immediately upon adoption and signature of the mayor.{2}

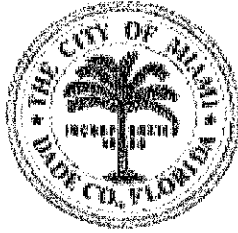
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**Footnotes:**

{1} The herein authorization is further subject to compliance with all requirements that may be imposed by the City Attorney, including but not limited to those prescribed by applicable City Charter and Code provisions.

{2} If the Mayor does not sign this Resolution, it shall become effective at the end of ten (10) calendar days from the date it was passed and adopted. If the Mayor vetoes this Resolution, it shall become effective immediately upon override of the veto by the City Commission.

*Draft Lease Agreement  
Substitute Item  
Original can be seen  
at the end*



**LEASE AGREEMENT**

**BETWEEN**

**THE CITY OF MIAMI**

**AND**

**RIVERSIDE WHARF, LLC**

**FOR THE LEASE OF**

**CITY-OWNED PROPERTY**

**LOCATED AT**

**236 AND 298 SW NORTH RIVER DRIVE**

**MIAMI, FL 33130**

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**LEASE AGREEMENT**

THIS LEASE AGREEMENT ("Lease"), made this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the CITY OF MIAMI, a municipal corporation of the State of Florida having its offices at 3500 Pan American Drive, Miami, Florida 33133 ("Lessor" or "City") and Riverside Wharf, LLC, a Limited Liability Company, having its offices at 2950 Northwest 7<sup>th</sup> Avenue, Miami, Florida 33127, ("Lessee"). The Lessor and Lessee, (together the "Parties") hereby recite:

**RECITALS**

**Whereas**, the City is the owner in fee simple of certain land located in the City of Miami, Miami-Dade County, Florida referred to herein as the "Premises," as specifically set forth in Exhibit A.

**Whereas**, in response to the North River Property Request for Proposals # 14-15-024 ("RFP"), Lessee submitted to Lessor a proposal, which was approved by the City Commission on \_\_\_\_\_ by Resolution No. \_\_\_\_\_.

**Whereas**, this Lease was negotiated pursuant to the authority expressly conferred by the City of Miami Charter, general law, and the City Commission Resolution No. \_\_\_\_\_, which authorized the execution of this Lease.

**Whereas**, this Lease was approved by referendum on March 15, 2016 by a majority of City of Miami voters as required by City of Miami Charter Section 3(f)(iii).

**Whereas**, it is the mutual desire of the Parties that the Property be leased and demised by Lessor to Lessee for the purposes set forth in this Lease, subject to and upon the express terms and conditions contained herein. The Parties believe that this Lease is consistent in all material respects with the RFP.

**Now therefore**, in consideration of the foregoing and of the rent, covenants, and agreements hereinafter set forth, the Parties do hereby covenant and agree as follows:

**ARTICLE I  
INCORPORATION, EXHIBITS, & DEFINITIONS**

Any word contained in the text of this Lease shall be read as the singular or the plural and as the masculine, feminine or neuter gender as may be applicable in the particular context. More specifically, however, for the purposes of this Lease, the following words shall have the meanings attributed to them herein in subsection 1.3.

**1.1 Incorporation by Reference**



The foregoing Recitals are hereby incorporated into this Lease by this reference as if set out in full in the body of this Lease.

## 1.2 Exhibits

Attached hereto and forming a part of this Lease are the following Exhibits:

Exhibit A	--	Survey/Legal Description of Premises
Exhibit B	--	Annual Percentage Rent Statement
Exhibit C	--	Annual Gross Revenue Report
Exhibit D	--	Monthly Gross Revenue Report
Exhibit E	--	Lessee's Leasehold Improvements
Exhibit F	--	Payment & Performance Bond
Exhibit G	--	Contractor Insurance Requirements
Exhibit H	--	Leasehold Insurance Requirements

## 1.3 Definitions

- 1.3.1** "Acceptable Operator" means an entity possessing (A) a minimum of five (5) years of experience (i) directly managing and operating a similar establishments during the last fifteen (15) years; or (ii) directly involved in the ownership and day to day operation of a similar establishment during the last ten (10) years; and (iii) in the management and operation for each use proposed; and (B) the threshold criteria outlined in the City of Miami Department of Real Estate and Asset Management RFP # 14-15-024; and C) a good reputation in the business community; and (D) adequate financial resources and personnel necessary for the proper performance of all of Lessee's obligations under this Lease in a manner consistent with the quality, reputation and economic viability of the Lessee's business at the Premises, including (without limitation) the obligation of payment of Rent payable by Lessee under this Lease.
- 1.3.2** "Additional Rent" means any and all additional sums, charges, or amounts of whatever nature to be paid by Lessee in accordance with the terms of this Lease, whether or not such sums, charges or amounts are referred to as Additional Rent.
- 1.3.3** "Applicable Law(s)" means all laws, Florida Statutes, Codes, City and Miami-Dade County Ordinances, orders, judgments, decrees and injunctions from courts having jurisdiction over the Premises, rules, and requirements of State and local boards and agencies with jurisdiction over the Premises, now existing or hereafter enacted, adopted, foreseen and unforeseen, ordinary and extraordinary, which may be applicable to the Premises or any part of it.
- 1.3.4** "Assignment" refers to the complete transfer of the rights and obligations of the Lessee under the Lease to a third party, whereupon the third party assignee becomes the Lessee under the Lease and takes over all of the Premises and the rent and other obligations associated with the Lease, thereby assuming the prior tenant's rights and obligations.

- 1.3.5 "**Assignee**" refers to the third-party entity assuming the rights and obligations of the Lessee or assignor or owner of the leasehold estate.
- 1.3.6 "**Assignor**" refers to the Lessee that is assigning its rights and obligations under this Lease to a third-party entity. Unless released from liability from the City pursuant to Section 10.10 of this Lease, which decision shall be conditioned on the payment of the consideration at the time of Assignment set forth in Section 10.3 of this Lease, the Assignor shall remain secondarily liable as a guarantor for the obligations under the Lease, if the new Lessee (Assignee) defaults under the Lease.
- 1.3.7 "**Average Repair Costs**" shall mean the average of the previous five (5) years' "repair and maintenance" line-item costs, inclusive of any capital items. Average Repair Costs shall be calculated in order to determine the annual amount due to the CapEx Fund, as specified in section 7.4 below.
- 1.3.8 "**Base Rent**" shall mean the annual Base Rent due and payable by Lessee on a monthly basis for the use of the subject Premises and shall have the sum ascribed to it in Section 4.1.1.
- 1.3.9 "**Business Days**" means Monday through Friday, excluding legal holidays in the City of Miami, Florida.
- 1.3.10 "**City Manager**" shall mean the Chief Administrative Officer of the City. In day to day matters all decisions attributed to the City in this Lease may be made by the City manager, or his authorized designee, unless otherwise specified.
- 1.3.11 "**City Commission**" shall mean the local legislative body of the Executive Mayor City Commission. Notwithstanding Section 1.3.9 above the City Commission will be required to approve the Lease and any amendments to the Lease
- 1.3.12 "**Date of Taking**" means the earlier of (i) the date on which actual possession of all or less than all of the Premises, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of any applicable law; or (ii) the date on which title to all or less than all of the Premises, as the case may be, has vested in any lawful power or authority pursuant to the provisions of any applicable law.
- 1.3.13 "**Fair Market Value**" has the meaning set forth in Section 4.1.6 of this Lease and secondarily as supplemented by the applicable terms of the RFP. For purposes of this Lease, "Fair Market Value" will have the same meaning as "Fair Market Rent."
- 1.3.14 "**Force Majeure**" means an event beyond human control, including but not limited to acts of national security, national emergency acts of God, war, act or threats of terrorism, Government regulation, strikes (other than strikes of Licensee's employees), fire or other natural calamity, disorder, civil disobedience, curtailment of transportation facilities or service, or any occurrence which makes it inadvisable, illegal, or impossible for Licensee to perform its obligations under this License. Force Majeure shall not include events caused, directly or indirectly, by Lessee or individuals or entities under Lessee's control..

- 1.3.15 “Gross Condemnation Award”** means the actual amount of the award paid in connection with or arising from the acquisition or other taking of all or less than all of the Premises, as the case may be.
- 1.3.16 “Gross Insurance Proceeds”** means the actual amount of insurance proceeds paid following an insured casualty to the Leasehold Improvements.
- 1.3.17 “Gross Revenues”** shall mean the entire amount of all revenues and percentages of revenues actually collected and received by the Lessee and its Sub-lessees or its assignees or transferees and derived from the following sales sources, including without limitation:
- a. all revenue from the commercial business and services conducted by Lessee and its Sub-lessees and/or assignees on or from the Premises;
  - b. all revenues from sales of food, beverage, wine, beer, merchandise or services from the Premises;
  - c. all revenue derived from advertising and sponsorships conducted on the Premises, including, but not limited to, movies, television commercials, etc.;
  - d. all amounts received from any catering food operations based at the Premises;
  - e. all amounts received by Lessee from valet concession sales, parking valet services or similarly authorized and permitted concessions on the Premises where the Lessee receives and retains any portion, percentage or fraction of the cost of such sales or services in any manner from the Concessionaire, these sales are subject to verification by a written concession agreement, and any audit or inspection requested by the Lessor in accordance with the requirements of Section 18-99 through 18-102 of the City Code, which is deemed incorporated by reference as if fully set forth herein;
  - f. all amounts received by Lessee from sales made or performed by means of mechanical or other vending devices or machines on the Premises, including without limitation, payphones, vending machines, and entertainment devices both for cash and on credit, rendered in or upon the Premises;
  - g. all revenue received by Lessee in connection with the special events uses of the Premises, any facility thereon, or any portion thereof for any period of time, including banquets, parties, and receptions held on or initiated from the Premises;
  - h. amounts received by Lessee from internet or telephone food/beverage orders received or filled at the Premises, or procured from the Premises by house-to-house or other canvassing, including discount, merchant and online savings incentives including, without limitation, sources and programs such as Groupon, all deposits not refunded to purchasers, and orders taken, although said orders may be filled elsewhere, including proceeds of all video games;
  - i. all grants, subsidies, rebates, credits or similar benefits received from any federal, state, regional or local body, agency, authority, department or organization which revenues are unrestricted or are to be used for general operating expenses;
  - j. all donations and contributions received, the revenues of which are unrestricted or are to be used for general operating expenses;
  - k. and all other receipts whatsoever derived from commercial operations conducted in or from the Premises by the Lessee and its Sub-lessees (if any).

Gross Revenues, whether for cash, credit, credit cards or otherwise, shall be recognized in the period the service was provided or sale took place. Payments received in advance are deferred and are recognized as revenue in the period the service is rendered or sale takes place. Grants shall be recorded as income during the period designated by the grants or when the Lessee has incurred expenditures in compliance with the restrictions of the grantor. If a sale is by credit card, no deduction shall be allowed for any commission associated with such sale.

A "sale" shall be deemed to have been consummated for the purpose of this Lease, and the entire amount of sales price collected by Lessee and Sub-lessees, shall be included in Gross Revenues, at such time that (i) the transaction is initially reflected in the books or records of Lessee or Sub-lessee(s); or (ii) Lessee or Sub-lessee(s) receives all or any portion of the sales price; or (iii) the applicable goods or services are delivered to the customer and payment is made to Lessee or Sub-lessee(s), whichever first occurs, irrespective of whether payment is made in installments, the sale is for cash or for credit, or otherwise, or all or any portion of the sale price has actually been paid at the time of inclusion in Gross Revenues or at any other time.

- 1.3.18** "Impositions" means all assessments, impositions, levies, and governmental charges, including, without limitation, assessments imposed by the City and/or County, franchise fees, fire fees, excises, parking surcharges, license and permit fees, levies, charges and taxes, including ad valorem real estate taxes on the Premises and the Leasehold Improvements, general and special, ordinary and extraordinary properly levied against the Premises and the Leasehold Improvements, any personal property, and/or the Lessee's Leasehold Estate which constitute a lien on the Premises or the Leasehold Improvements.
- 1.3.19** "Lease" means this Lease as supplemented by the RFP, any addendums thereto, and the Lessee's response to the RFP, all of which are hereby incorporated by reference into this Lease as additional documents providing supplemental terms and conditions; provided, however, that in the event of any express conflicts between this Lease and the other documents referenced in this subsection this Lease shall govern.
- 1.3.20** "Lease Date" means the date that the Lease is fully executed and legally binding upon the Parties after approval by the City of Miami Commission. The Lease Date shall also be the date on which Rent commences to become due and payable as referenced in Article IV.
- 1.3.21** "Leasehold Estate" means all of Lessee's right and interest as Lessee in, to and under this Lease, the Premises and the Leasehold Improvements, if applicable.
- 1.3.22** "Leasehold Improvements" means any initial furnishings or equipment constituting fixtures to be installed on the Premises, and all other items and improvements constituting fixtures to be installed or constructed thereafter, from time to time during the Lease Term that are hereafter located upon the Premises.
- 1.3.23** "Leasehold Mortgage" means a mortgage, deed of trust, or any security interest given in connection therewith, which together constitute an encumbrance or lien

upon the Lessee's Leasehold Estate or any part of it, or any related personal property, and Lessee's interest in the Leasehold Improvements as security for any loan. The Leasehold Mortgage may never lien, pledge, hypothecate, or otherwise encumber the fee simple interest of the Lessor.

- 1.3.24** "**Lease Term**" means the period of time fixed in Section 3.1 and shall be deemed to include the additional period of time fixed in Section 3.2 if Lessee exercises Lessee's right to renew the Lease.
- 1.3.25** "**Lease Year**" means twelve (12) full consecutive months. The first Lease Year shall begin on the Lease Date. If the Lease Date does not fall on the first day of the month, the first Lease Year will commence on the first day of the following month. Each succeeding Lease Year shall commence on the anniversary date of the first Lease Year.
- 1.3.26** "**Percentage Rent**" shall have the meaning ascribed to it in Section 4.1.4 and shall be payable annually and calculated as a percentage of the Gross Revenues.
- 1.3.27** "**Premises**" means the space more particularly described in Section 2.1 herein and Exhibit A attached herewith and incorporated herein by reference, and having a collective address of 236 and 298 SW North River Drive, Miami, Florida.
- 1.3.28** "**Proposal**" means the document received by Lessor from Lessee in response to the RFP.
- 1.3.29** "**Rent**" means the greater of Base Rent or Percentage Rent and any other rents, costs and expenses denominated as Additional Rent.
- 1.3.30** "**RFP**" means the document entitled Request for Proposals # 14-15-024, issued by the City on June 15, 2015, and any addendums thereto.
- 1.3.31** "**Sublease**" means any lease (excluding this Lease), sublease, license, concession or other agreement by which Lessee or any person or other entity claiming under Lessee (including, without limitation, a Sub-lessee or sub-licensee) demises, leases, subleases, licenses or sublicenses to or permits the use or occupancy by another person or entity of any part of the Premises and Leasehold Improvements.
- 1.3.32** "**Sub-lessee**" means any person, firm, corporation or other legal entity using or occupying or entitled to use or occupy any part of the Premises or the Leasehold Improvements under a Sublease.

#### **1.4 Priority of Documents**

The North River Property Request for Proposals # 14-15-024 ("RFP") shall be incorporated hereto by reference. Following the issuance of the RFP, Lessee submitted a Proposal ("Proposal"), which was accepted by the City. The above-referenced documents shall be interpreted to avoid conflicts, where possible. In the event of an express conflict between the above-referenced documents and the terms of this Lease, the following order of priority shall govern:

- 1.4.1** This executed Lease and its exhibits shall govern over the RFP and the Proposal;
- 1.4.2** The RFP shall govern over the Proposal;

**1.4.3** The Proposal will be subordinate to the Lease and the RFP, respectively.

**ARTICLE II  
LEASE OF PREMISES**

**2.1 Lease of Premises**

The Lessor does hereby lease, let and demise to the Lessee, and the Lessee hereby leases from the Lessor the Premises, subject to the following terms and conditions, to have and to hold the said lands, tenements and hereditaments, with all of the rights, privileges and appurtenances, thereunto belonging or pertaining unto Lessee for the Lease Term herein specified, unless this Lease shall be sooner terminated in a manner hereinafter provided. The Premises is described more particularly in Exhibit A attached hereto and incorporated herein by reference.

Lessee shall have all rights, privileges, easements and appurtenances, if any, benefiting the Premises in, over and upon adjoining and adjacent public and private land, highways, roads and streets reasonably required for ingress or egress to or from the Premises by Lessee, its agents, servants, employees, contractors, customers and invitees and all others related to Lessee's use and occupancy of the Premises. Notwithstanding any language in this Lease to the contrary, Lessor is the fee simple owner of the Premises, and this Lease shall in no way convey any title or other rights to the Premises to Lessee unless otherwise specified herein; Lessee may not mortgage, pledge, transfer, hypothecate, or otherwise encumber Lessor's fee simple ownership interest in the Premises in any way, or in any way pledge any rights held by the fee simple owner.

**2.2 Purpose of Use and Occupancy**

The Lessee will use and occupy the Premises, subject to compliance with all applicable laws, rules, regulations, permits, licenses, consents, and similar approvals, including the requirements set forth in the RFP, for the development, management and operation of restaurants on the Premises and for other ancillary purposes, without the prior written consent of Lessor, and for no other purpose or use of any kind. Reasonably related special events may be held on the Premises with the City's prior written consent; the request for such special event must be provided a minimum of thirty (30) days prior to the date of the event.

Except as otherwise set forth in this Lease, the Lessee will operate the Premises a minimum of \_\_\_\_\_ hours per week, except in cases of Force Majeure or any reasonable period of remodeling, repair or reconstruction of the Premises, which remodeling, repair or reconstruction may not, without the City's prior written consent, exceed a continuous period of thirty (30) days in any calendar year, or more than a cumulative total period of forty five (45) days in any calendar year.

**2.3 Suitability of Premises**

Lessee acknowledges that neither the Lessor nor any of Lessor's officers, representatives, or employees has made any representation or warranty with respect to the Premises, or with respect to the suitability or fitness of the Premises, for the conduct of Lessee's operations or for any other purpose, except as set forth in this Lease or in the RFP. The execution of this Lease by

Lessee shall establish that the Lessee accepts the condition of the Premises "AS IS," subject to the representations set forth in Section 2.4 herein, the RFP or elsewhere in this Lease.

#### **2.4 Limited Representations by Lessor**

Lessor makes the following representations, covenants and warranties which shall survive the execution of this Lease and the taking of possession of the Premises by the Lessee:

- a) That Lessor has taken all requisite actions to make this Lease binding upon Lessor, and Lessor has marketable, fee simple title to the Premises, and is the sole owner of and has good right, title and authority to convey and transfer all rights and benefits which are the subject matter of this Lease, free and clear of all known liens and encumbrances. Absent emergency action, or other Municipal Home Rule Action required by the public health, safety and general welfare, Lessor covenants with Lessee that it will not, during the Lease Term and any option period hereof, conferred and validly exercised, knowingly permit the imposition upon the Premises any liens, encumbrances, mortgages, easements or any other matters affecting title which would preclude or otherwise materially affect Lessee's quiet enjoyment of the Premises. The obligation of the Lessor set forth in the preceding sentence is not intended to limit the ability of the Lessor, acting in its governmental capacity, to exercise its police powers with respect to the Premises and any activities within the Premises.
- b) That no party, other than Lessee, shall on the Lease Date be in or have any right to possession of the Premises.
- c) That the terms of this Lease, including, without limitation, the intended use of the Property by Lessee, are not in violation of or expressly inconsistent with any operative agreement or covenant known to Lessor of any kind whatsoever which relates to the Property.

#### **2.5 Satisfaction of Liens**

Lessor shall satisfy or cancel of record all existing liens and encumbrances affecting the Premises as of the Lease Date except as otherwise set forth in this Lease.

### **ARTICLE III TERM**

#### **3.1 Term of Lease**

The initial Lease Term is for a period of thirty (30) years, commencing on the Lease Date. The Lease Term shall be extended to include any fraction of a calendar month between the Lease Date and the first day of the first full calendar month thereof.

#### **3.2 Option to Renew**

The Lessee has the option of extending this Lease for two (2) additional terms of ten (10) years each ("First Renewal Term" and "Second Renewal Term"), as long as the Lessee is not in Default of any of the Lease provisions. To exercise the First Renewal Term or the Second Renewal Term, the Lessee must give Lessor written notice by the latter of (i) the date which is

one hundred eighty (180) prior to the expiration date of the Lease Term or the First Renewal Term or (ii) the date thirty (30) days following written notice from Lessor advising Lessee that Lessee has failed to furnish notice of its option to exercise the First Renewal Term or the Second Renewal Term, as applicable, in the manner provided for herein, which notice shall state that such notice constitutes final notice to Lessee of its option to exercise the First Renewal Term or the Second Renewal Term, as applicable. The First Renewal Term and the Second Renewal Term will be on the same terms and conditions as the Lease Term, except that the Base Rent will be adjusted as set forth in Section 4.1.2 below. The total term of the Lease, inclusive of the First and Second Renewal Term, is fifty (50) years. No additional renewals will be available.

**ARTICLE IV  
RENT, SECURITY DEPOSIT, & FINANCIAL RECORDS**

**4.1 Base Rent or Percentage Rent**

Commencing on the Lease Date and on the first (1<sup>st</sup>) day of every calendar month thereafter during the Lease Term, Lessee hereby agrees to pay to the Lessor the Base Rent. If the first payment of Base Rent does not fall on the first day of the month, the first payment shall be prorated based on the number of days in such month.

The Lessee hereby agrees to pay the Lessor the greater of a) the Base Rent defined in Section 4.1.1 below, or b) Percentage Rent as defined in Section 4.1.4 on an annual basis as set forth in this Article.

In the event that Lessee fails to provide payment of Rent in the time required by the terms of this section, shall be subject to a Late Fee in addition to payment then due, as more particularly described in Section 16.4 below.

**4.1.1 Base Rent.**

The Base Rent shall be One Hundred and Ninety-Five Thousand Five Hundred Dollars and 00/100 Cents (\$195,500.00) per year. The Base Rent shall be adjusted and increased annually by the method described in Section 4.1.2 below upon the commencement of the second Lease Year.

**4.1.2 Base Rent Increase**

Lessee agrees that the Base Rent shall be increased annually by an amount equal to the greater of: an increase by three percent (3%) of the previous year's Base Rent, or an increase based on the amount indicated by the Consumer Price Index as of three (3) months prior to the beginning of the applicable adjustment date. In no event shall any such annual adjustment to the Base Rent result in an increase that is less than three percent (3%), or more than Five Percent (5%) of the Base Rent in the year amount immediately prior to the effective date of such adjustment.

**4.1.3 Sales Tax**

The Lessee shall be liable for the prevailing State of Florida Sales, Use or similar tax imposed on the amount of Rent paid to Lessor under this Lease, in the absence of an exemption or other reduction by the State of Florida. This Sales and Use Tax shall be payable to the Lessor when Rent is due, and in turn, Lessor will remit the same, less any authorized handling deductions, if any, to the State.



**4.1.4 Percentage Rent**

Percentage Rent shall be equal to a percentage of Lessee's annual Gross Revenues made from or upon the Premises for that same time period. Percentage Rent shall be computed on an annual basis ("Percentage Rent Period") beginning with the Lease Date and continuing throughout the Term.

The Percentage Rent shall be equal to fifteen percent (15%) of the combined Gross Revenues of the Lessee for any preceding Lease Year. **PERCENTAGE RENT SHALL BE SUBJECT TO NEITHER NATURAL NOR ARTIFICIAL BREAKPOINT.**

**4.1.5 Manner of Payment**

The Percentage Rent shall be payable within sixty (60) days after the end of each Lease Year. Lessee shall deliver to the Lessor a statement setting forth the Gross Revenues during the applicable Percentage Rent Period ("Annual Percentage Rent Statement"), and Lessee shall pay to the City the amount of Percentage Rent due and payable, if any, to the Lessor pursuant to the terms of this Lease. Each Annual Percentage Rent Statement shall be signed and certified to be complete and correct by an officer of Lessee. Such statement shall show the annual Gross Revenues and an itemization of any exclusions or deductions for the current Lease Year. Lessee shall provide the Annual Percentage Rent Statement with an Annual Gross Revenue Report in substantially the same form as attached hereto as Exhibit B and Exhibit C.

Lessee shall

- (i) pay the Lessor (x) the monthly Base Rent and (y) the Percentage Rent, and
- (ii) deliver the corresponding Annual Percentage Rent Statement and Gross Revenue Report for the preceding Lease Year to the City of Miami, Department of Real Estate and Asset Management at the address noted below:

City of Miami  
Department of Real Estate and Asset Management  
Attention: Lease Manager  
444 SW 2nd Avenue, 3rd Floor  
Miami, Florida 33130

**4.1.6 Fair Market Value**

As required by applicable laws, the Lessor has determined that the Base Rent and the Percentage Rent constitutes Fair Market Value. The Lessor has made such determination based on an appraisal of the proposed project as performed by two (2) State-certified general appraisers hired by the Lessor.

**4.2 Security Deposit**

Simultaneously upon the execution of this Lease by Lessee, the Lessee shall pay to the Lessor a security deposit equal to one hundred percent (100%) of the Base Rent specified in section 4.1.1 above (the "Security Deposit"), to be held as security for performance by Lessee of all obligations imposed under this Lease which Lessee is required to perform during the Lease Term, and any extension thereof. The Lessor acknowledges that a portion of the Security Deposit was previously deposited by the Lessee with the Lessor as part of initial earnest money deposit

pursuant to the terms of the RFP. The Security Deposit shall be in the form of cash or its equivalent which funds may be commingled by Lessor with its other funds. No interest shall be paid on the Security Deposit. For so long as the Security Deposit has not been repaid by Lessor, it shall constitute an account payable by Lessor to Lessee within thirty (30) days following termination of this Lease to the extent, if any, that the Security Deposit has not been applied by Lessor as hereunder provided.

If an Event of Default shall occur with respect to any covenant duty, or obligation of Lessee under this Lease, then the Security Deposit or any part thereof may be applied by Lessor, at Lessor's sole discretion, to the damages sustained by Lessor by reason of any such Event of Default or to indebtedness owing by reason of any failure of Lessee to make any required monetary payment under this Lease. No such application shall be construed as an agreement to limit the amount of Lessor's claim or as a waiver of any damage or release of any indebtedness, and any claims of Lessor under this Lease not recovered in full from the Security Deposit shall remain in full force and effect. In no way shall the security deposit serve as liquidated damages for any event of default; rather, Lessor may apply the security deposit amount to damages sustained by Lessee's default and continue to request any additional amount owed.

Further, at any time or times when Lessor has made any such application of all or any part of the Security Deposit, Lessor shall have the right (but not the obligation) at any time thereafter to request in writing that Lessee pay to Lessor a sum or sums equal to the amounts so applied by Lessor so that Lessor will always be in possession of a sum equal to the amount of the Security Deposit stated above. Lessee shall make each such requested remittance within thirty (30) days following such request from Lessor and each such remittance received by Lessor shall thereupon constitute a part of the Security Deposit subject to the terms and provisions thereof. Failure to make any such requested remittance within such thirty (30) day period may be treated by Lessor as a failure by Lessee to make timely payment of rent and as an Event of Default.

The Security Deposit shall be retained by the Lessor throughout the entire term of this Lease and, if not utilized by Lessor, will be returned less interest, and less allowable deductions, credits or setoffs by Lessor, within thirty (30) days following the surrender of the Leased Area at the termination of this Lease, inclusive of any validly exercised option period, as applicable.

#### **4.3 Lessee's Financial Records**

Lessee will establish an operating entity that is unique to the operations of the Lessee in the Premises, as well as one or more bank accounts through which deposits of Gross Revenues generated from such operations will be made. The bank in which such deposits are made shall be based in the United States or shall have a large local presence. The said deposits of Gross Revenues will not be comingled with those from any other operations of the Lessee outside of the Premises or any other affiliated organizations. In addition and/or alternatively, Lessee will use an accounting system that will separately provide for a detailed accounting of Gross Revenues. The detailed accounting shall not be comingled with the Lessee's other operations; and, should comply with federal income tax returns and state sales and use tax returns. Accordingly, Lessee shall prepare and keep full, complete and proper financial records and source documents in accordance with generally accepted accounting principles, of the Gross Revenues, whether for cash, credit or otherwise, of each separate department at any time operated in the Premises.

The financial records and source documents to be kept by Lessee shall include, but shall not be limited to true copies of: (1) records of inventories and receipts of merchandise; (2) profit and loss statements; (3) variance reports; (4) arrearage reports; (5) balance sheets; (6) financial journals and sales summary records; (7) general ledgers; daily dated cash register tapes; (8) daily dated cash register summary tapes ("z" tapes); (9) prenumbered sales slips, including those for mail or telephone orders; daily sales and/or point of sale (pos) reports; (10) financial statements; (11) bank statements; (12) records of daily bank deposits from transactions at or from the premises; (13) duplicate validated bank deposit slips; (14) purchase invoices; (15) inventory and receiving records; (16) pricing schedules or other materials showing price markups; (17) federal, state, and local income tax returns; (18) state and local sales tax reports; (19) settlement statements of transactions with subtenants, concessionaires, and licensees; and any and all records that may be examined or required by an independent accountant in performing an audit of Lessee's Gross Sales or which may be requested by Lessor.

If Lessee subleases the property or provides a license to a third party in accordance with Article X herein, and Lessee's operations require its sub-lessees (or licensees) to pay a security deposit and/or advance rent, Lessee shall deposit such security deposit/advance rent monies into a separate bank account and shall not commingle these monies with any other bank account used in its operations as described herein.

Pertinent original sales records shall include, without limitation: (i) sales reports of back office systems fed from point of sale terminals, (ii) cash register tapes, including tapes from temporary registers, if any, (iii) serially pre-numbered sales slips, (iv) the original records of all mail, internet and telephone orders at and to the Premises, if any, (v) settlement report sheets of transactions with any person conducting business on the Premises, if any, (vi) original records indicating that merchandise returned by customers was purchased at the Premises by such customers, (vii) memorandum receipts or other records of merchandise taken out on approval, (viii) detailed original records of any exclusions or deductions from Gross Revenues, (ix) sales tax records, and (x) such other sales records, if any, which would normally be examined by an independent accountant pursuant to accepted auditing standards in performing an audit of Lessee's sales.

#### **4.4 Reports by Lessee**

Within thirty (30) days following the last day of each month of each Lease Year, Lessee shall furnish to Lessor a monthly statement of Gross Revenues generated in the preceding calendar month ("Monthly Gross Revenue Report"). The Monthly Report shall be signed and certified to be complete and correct by an officer of Lessee. Lessee shall use a Monthly Gross Revenue Report, a sample of which is attached herewith and incorporated herein as Exhibit D to itemize any and all reportable Gross Revenues, or any similar form acceptable to Lessor.

Within sixty (60) days after the end of each Lease Year, Lessee shall also furnish to Lessor the Annual Percentage Rent Statement and Annual Gross Revenue Report specified in section 4.1.5 above, showing in reasonable detail the amount of such Gross Revenues made by Lessee from the Premises during the preceding Lease Year. Any intentional misstatement of Gross Revenues will constitute a default under this Lease.

#### **4.5 Right to Examine Financial Records**

Lessor shall have the right to examine, make extracts from, and copy Lessee's financial records, source documents, bank statements, state sales and use tax returns/reports, and federal income tax returns filed by Lessee, and pertaining to the financial operations on the subject property. Lessee shall make all such documents and records available for a period of seven (7) years after the expiration of each Lease Year. Lessee shall furnish such information at the Premises or Lessee's main accounting office upon not less than thirty (30) days prior written notice from Lessor.

#### **4.6 Audit**

At its option, Lessor may at any time, upon not less than thirty (30) days, prior written notice to Lessee, arrange for an auditor selected by Lessor to conduct a complete audit (including a physical inventory) of the entire records and operations of Lessee included in Gross Revenues from the Premises during the period covered by any statement issued by Lessee. Lessee shall make available to the Lessor's auditor at the Premises or Lessee's main accounting office on the day set forth in Lessor's notice, requiring such audit, all of the financial records, source documents, variance reports, general ledgers, management reports, arrearage reports, check registers, and any other materials which such auditor deems necessary or desirable for the purpose of performing such audit.

Lessee shall promptly pay to Lessor the amount of any deficiency in Percentage Rent payments disclosed by any such audit. If such audit shall disclose that Lessee's statement of Gross Revenues is at variance to the extent of five percent (5%) or more, Lessor may bill to Lessee the cost of such audit, which Lessee shall pay within thirty (30) days after Lessee's receipt of Lessor's invoice. If such audit shall disclose an overpayment, Lessor shall credit such overpayment toward the next payment of Rent due. In addition to the foregoing, and in addition to all other remedies available to Lessor, in the event Lessee's auditor and Lessor's auditor shall schedule a date for an audit of Lessee's records, and Lessee shall fail to be available or shall otherwise fail to comply with the requirements for such audit, Lessee shall pay all costs and expenses associated with the canceled audit. Lessor and Lessee agree to attempt to resolve any audit dispute not resolved in sixty (60) days following delivery of the final audit by submitting the results of the disputed audit to a mutually acceptable third-party accounting firm for its opinion, the fees of which shall be paid by Lessee.

In addition to Lessor's available remedies, in the event an audit or other reliable information reveals that Lessee's records are unavailable due to Lessee's failure to reasonably maintain such records, Lessor shall be entitled to collect as Additional Rent from Lessee an amount equal to the lesser of (i) fifty percent (50%) of the Percentage Rent (the "Audit Unavailability Penalty") paid by Lessee in the preceding Lease Year prorated for the period in question (i.e., if the period in question is equal to six (6) months, then the Additional Rent provided for herein will be equal to 50% (1/2 of the year) of the Audit Unavailability Penalty) or (ii) the difference between (x) 110% of the Percentage Rent that Lessee has calculated as payable in the year in question and (y) the Percentage Rent paid in the preceding Lease Year. Lessor's exercise of the foregoing remedy shall in no way limit or otherwise affect Lessor's ability to exercise other remedies available to it, nor shall Lessee's obligations pursuant to the terms, covenants and conditions of this Lease (including, without limitation, Lessee's obligation with

respect to reporting Gross Revenues and payment of Percentage Rent) be in any manner reduced or diminished by the exercise of such remedy.

Lessor shall additionally have such audit rights as are set forth by Section 18-102, City Code, which is deemed as being incorporated by reference as if fully set forth herein. In addition Lessor shall have the ability but not the duty to conduct inspections, as are set forth in Section 18-101, City Code, deemed as being incorporated by reference as if fully set forth herein, from time to time, of the Premises as provided.

#### **4.7 Lien for Rent & Other Charges**

The whole amount of the Rent and each and every installment, and the amount of all taxes, assessments, water rates, insurance premiums and other charges and Impositions not paid by the Lessee under the provisions of this Lease, and all costs, attorney's fees and other expenses which may be incurred by the Lessor in enforcing the provisions of this Lease, or on account of any delinquency of the Lessee in carrying out any of the provisions of this Lease, shall be and they are deemed to constitute a valid lien upon the Leasehold Improvements, and upon the Lessee's leasehold estate.

### **ARTICLE V LEASEHOLD IMPROVEMENTS**

#### **5.1 Lessee's Obligation to Provide and Fund Leasehold Improvements**

Should Lessee construct and install improvements to the Premises, Lessee shall, with no less than thirty (30) days prior written notice and at Lessee's sole cost and expense, submit to Lessor for Lessor's approval (not to be unreasonably withheld, delayed, or conditioned) its Plans (defined below) for the commencement and completion of the construction of the Leasehold Improvements. The plans shall include any work or equipment to be done or installed by Lessee affecting any structural, mechanical or electrical part of the Premises ("Plans"). Within thirty (30) days of receipt of the Plans, the Lessor shall give Lessee written notice of either Lessor's approval or disapproval setting forth the reasons therefore.

In the event that Lessor disapproves the Plans, Lessee shall within ten (10) business days of receipt of the notice modify the Plans in accordance with the reasons set forth in Lessor's disapproval notice, if applicable. The modified Plans shall be resubmitted to Lessor for Lessor's final review and approval.

#### **5.2 Possession Date**

Lessor shall deliver possession of the Premises to Lessee and Lessee shall take possession thereof on the Lease Date, as defined in Section 1.3 above. By the Lease Date, the Lessee shall have provided the City Manager or his/her designee evidence, as may be reasonably satisfactory to the Lessor, that Lessee has sufficient funding or binding funding commitments to complete the Leasehold Improvements to be constructed at the subject property.

#### **5.3 Payment and Performance Bond**

Within ten (10) days after the Lessor approves the plans in writing and Lessee obtains building permits consistent with the Plans, but in any event prior to the commencement of any construction, the Lessee shall, at Lessee's sole cost and expense, furnish the Lessor with a Payment and Performance Bond in substantially the form prescribed by Section 255.05, Florida Statutes. Plans, design and construction documents will comply with all applicable contract, legal, and regulatory requirements including, without limitation, the Florida Building Code.

The Payment and Performance Bond shall be issued by a bonding company which shall be approved by Lessor, in the reasonable exercise of its discretion, in an amount equal to one hundred percent (100%) of the costs to construct the Leasehold Improvements described in Exhibit E naming the Lessor as the owner/obligee, and the Lessee or Lessee's general contractor, as the principal guaranteeing the payment and performance of Lessee's obligations with respect to any and all construction work pertaining to the Leasehold Improvements, free of construction or other liens. The conditions of the Payment and Performance Bond shall be to insure that the Lessee or Lessee's general contractor will:

- i. Promptly make payment to all claimants, as defined in Section 255.05 Florida Statutes, as amended, supplying the Lessee with labor, materials, or supplies, used directly or indirectly by the Lessee in the prosecution of the work related to the Leasehold Improvements under this Lease;
- ii. Pay Lessor all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Lessor sustains because of a default by Lessee under this Lease pursuant to claims made under Section 255.05, Florida Statutes; and
- iii. Perform the guarantee of all obligations of the Lessee's under this Lease with respect to the construction, and the acquisition and installation of the Leasehold Improvements.

The Payment and Performance Bond may be terminated at such time as the construction, and the acquisition and installation of the Leasehold Improvements are completed as evidenced by issuance of a Certificate of Occupancy and reasonably satisfactory evidence thereof is provided by the Lessee to the City Manager, including certification by the Lessee's architect that all requirements of the Payment and Performance Bond have been satisfactorily concluded, and by the issuance of a Certificate of Occupancy. The form of the Payment and Performance Bond, a sample of which is attached herewith by reference as Exhibit F, shall be approved by the City Manager or the Risk Manager as his designee and by the City Attorney as to legal form, which approval shall not be unreasonably withheld.

#### **5.4 Contractor's Insurance**

The Lessee shall require every contractor performing any work pertaining to the Leasehold Improvements to furnish certificates of insurance, including Builder's Risk insurance, if applicable, to the reasonable satisfaction of the Lessor in accordance to Exhibit G attached hereto. Copies of such certificates shall be furnished to the City of Miami Risk Manager, 444 SW 2<sup>nd</sup> Avenue 9<sup>th</sup> Floor, Miami, FL 33130. The City will be named as an additional insured on such policies.

#### **5.5 Conveyance of Improvements**

The Lessee hereby, in consideration of the granting of this Lease shall upon termination or expiration of this Lease, convey unto Lessor, free and clear of all liens, title to all Leasehold Improvements of a permanent character, including but not limited to, refrigerators, stoves, freezers, hood systems, grills, dishwashers, sinks, kitchen work stations and light fixtures.

In addition to the Leasehold Improvements to be conveyed to Lessor as referenced above, Lessee shall further grant to the Lessor the right to purchase from the Lessee, all of Lessee's personal property added to or installed at the Premises by the Lessee during the Lease Term, including all furnishings, and equipment at actual cost less depreciation as determined by an appraisal, provided that the Lessor by written notice to the Lessee at least forty five (45) days prior to the expiration or termination of the Lease Term.

#### **5.6 Premises to Remain Free of Liens**

The Lessee shall make, or cause to be made, prompt payment of all money due and legally owing to all persons doing any work, including subcontractors, or providing supplies and equipment in connection with the construction, reconstruction or operation of the Premises. The Lessee shall have no power or right to and shall not in any way encumber the Lessor's fee simple interest in the Premises. If any liens or encumbrances shall at any time be filed against the Premises, the Lessee shall, upon acquiring knowledge of such lien or encumbrance, promptly take and diligently pursue a cause of action to have the same discharged or to contest in good faith the amount or validity thereof and if unsuccessful in such contest, to have the same discharged. If Lessee fails to discharge the lien, the Lessor, in addition to any other right or remedy that it may have, may take such action as may be reasonably necessary to protect its interest, and the Lessee shall be responsible for any and all reasonable costs incurred by the Lessor in connection with such action, including all reasonable legal fees, costs and expenses.

#### **5.7 Lessor Approval**

All Plans furnished under this Lease are expressly subject to Lessor's written approval, which the City Manager is hereby authorized to act on behalf of for purposes of such approval, and which approval he or she may not unreasonably withhold or delay.

No approval by the City Manager of any Plans furnished under this Lease pursuant to this section shall relieve Lessee of any obligation it may have at law to file such Plans with any department of the City or any other governmental authority having jurisdiction over the issues; or to obtain any building or other permit or approval required by applicable laws. Lessee acknowledges that any approval given by the City Manager pursuant to this Section shall not constitute an opinion or agreement by the City that the Plans are structurally sufficient or in compliance with any applicable laws.

### **ARTICLE VI CONDUCT OF BUSINESS BY LESSEE**

#### **6.1 Operation of Lessee's Business**

At all times during the Lease Term, Lessee shall manage the Premises with due diligence and efficiency, in Lessee's sole discretion, subject to the limitations set forth in this Lease, and in

a manner prudent and in accord with the current first class and best business practices and techniques within the locale for Lessee's business in similar businesses located in Miami-Dade County. Lessee shall carry at all times in the Premises a stock of merchandise of such quantity, character and quality as shall be in accord with comparable businesses within the locale of the Premises.

## **6.2 Signs**

Lessee will not place or permit to be placed or maintained on any exterior door, wall or window of the Premises, or within the interior of the Premises, any signage or advertising matter of any kind, without first obtaining Lessor's written approval and consent, which may not be unreasonably withheld. Lessee shall erect an exterior sign of type, composition and design in conformance with the City of Miami Zoning Code and the Sign Regulations of Miami-Dade County, as applicable. Lessee further agrees that such signs, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved shall be maintained in good condition and repair at all times.

## **ARTICLE VII MAINTENANCE, REPAIR AND ALTERATION OF PREMISES**

### **7.1 Lessee's Maintenance Obligations**

Lessee, at its sole cost and expense, agrees to provide the necessary management and labor to continuously maintain the Leasehold Improvements in the Premises, including all operating equipment, utility services, and connections within the Premises. Lessee, at its sole cost and expense, agrees to provide, janitorial and custodian services, trash and garbage removal services, and any and all other related services necessary to have the Premises, and the Leasehold Improvements remain in good, safe, code compliant and sanitary condition and repair throughout the Lease Term. Lessee shall be responsible for periodic painting of the interior and exterior of the Premises and decorating the interior of the Premises, maintaining its equipment, fixtures, furnishings, and other personal property in good condition and repair. All maintenance shall be at the Lessee's sole cost and expense and will be subject to general inspection by the Lessor to insure a continuing quality of maintenance and appearance and physical condition of the Premises commensurate with maintenance, health, and safety standards established by the Lessor and Applicable Law.

### **7.2 Lessee's Repair Obligation**

Subject to the provisions of this Lease regarding casualty damage and condemnation and except as otherwise provided for in this Lease, Lessee, at Lessee's sole cost and expense, at all times during the Lease Term, shall make all repairs to all Leasehold Improvements, including, without limitation, all heating, ventilating and air-conditioning equipment and any other repair or replacement to the Leasehold Improvements. The Lessee will be responsible for maintenance and repairs in the Leased Area throughout the term of this Lease. For avoidance of doubt, the Lessee's repair obligations shall not include (i) any initial installation or provision of City Improvements or (ii) any repair, maintenance or replacement that includes areas outside of the



Premises, or (iii) any repair, maintenance or replacement, which is the responsibility of Lessor, as provided in Section 7.3 below.

### **7.3 Changes/Alterations.**

Lessee shall not install or cause to be installed any exterior signs, affixed exterior machinery, shades, awnings in and to the Premises or any part thereof without the prior written consent of the Lessor, which consent the City Manager is hereby authorized to give, and may not unreasonably withhold or delay.

No approval by the City Manager of any changes or alterations shall relieve Lessee of any obligation it may have at law to file the required documents with any department of the City or any other governmental authority having jurisdiction over the issues; or to obtain any building or other permit or approval required by law. Lessee acknowledges that any approval given by the City Manager pursuant to this section shall not constitute an opinion or agreement by the City that the changes or alterations are in compliance with any applicable laws.

### **7.4 Capital Expenditure Fund**

Commencing in Lease Year ten (10) and extending through Lease Year fifteen (15), Lessee shall set aside an amount equal to twenty percent (20%) per year of Average Repair Costs into a separate reserve account (until 100% of Average Repair Costs is deposited), in order to fund capital expenditures for the Premises ("CapEx Fund"), which is required to be capitalized as an improvement to the Premises. The CapEx Fund may be used beginning in Lease Year eleven (11). The CapEx Fund shall be applied toward major repairs and improvements, including, but not limited to, substantial mechanical and structural purchases, upgrades, improvements, or repairs; the CapEx Fund shall not be applied to minor repairs due to regular wear and tear.

The CapEx Fund accrued from Lease Years ten (10) through fifteen (15) must be spent in the manner specified above on or before Lease Year twenty-five (25). Commencing in Lease Year twenty-five (25) and extending through Lease Year thirty (30), the CapEx Fund shall be replenished in an amount equal to ten percent (10%) per year of Average Repair Costs. Commencing in Lease Year forty (40) and extending through Lease Year forty-five (45), the CapEx Fund shall be replenished in an amount equal to ten percent (10%) per year of Average Repair Costs. Any amounts remaining in the CapEx Fund must be spent in the manner specified above on or before the termination of the Lease.

Lessee shall maintain financial accounting and "scope of work" records together with any corresponding documentation of amounts placed and amounts used from the CapEx Fund, which shall be subject to review by Lessor, in the manner specified above in sections 4.6 and 4.7 of this Lease.

## **ARTICLE VIII INSURANCE AND INDEMNITY**

### **8.1 Insurance on the Premises**

In connection herewith, Lessee shall obtain and maintain or cause to be obtained and maintained in full force and effect throughout the period of this Lease, the insurance coverage set forth in Exhibit H. If required by state, county, or city laws from time to time for work conducted on or use of municipal properties, Lessee shall obtain and maintain or cause to be obtained and maintained throughout or during the Lease Term, as applicable, such types and amounts of payment, performance, maintenance, or restoration bond(s) as shall be required to be reviewed and approved by the City's Risk Management Department in coordination with Lessee's Risk Manager.

The Lessor reserves the right to reasonably amend the herein insurance requirements as may be applicable in connection with the scope contemplated under this agreement. Lessor further reserves the right to request copies of all applicable policies in connection with this agreement.

### **8.2 Delivery of Insurance Policies**

All liability, statutory workers compensation and property policies, if applicable, shall be retained by the Lessee. Except as otherwise specifically provided, all other policies of insurance required to be furnished shall be held by and be payable jointly to the Lessor and the Lessee with the proceeds to be distributed in accordance with the terms of this Lease. Insurance company certificates evidencing the existence of all of these policies of insurance shall be delivered to the Lessor. All policies of insurance required by this Lease shall provide that they shall not be amended or canceled on less than thirty (30) days prior written notice to the Lessor and all insured beneficiaries of the policies shall contain waiver of subrogation rights endorsements, as required below. The Lessor shall have no obligation to pay premiums, make contributions to the insuring company or any other person, or to satisfy any deductible. On or before the Lease Date and not less than thirty (30) days prior to the expiration date of any policy required to be carried pursuant to this section, the Lessee shall deliver to the Lessor the applicable respective policies, or insurance company certificates evidencing all policies of insurance and renewals required to be furnished. Receipt of any documentation of insurance by the Lessor or by any of its representatives that indicates less coverage than required does not constitute a waiver of the Lessee's obligation to fulfill the insurance requirements herein. The Lessor shall appear listed as an additional insured on all applicable liability policies, and loss payee on any property policy. The insurance shall be primary and non-contributory, and should include all corresponding endorsements in connection with the agreement, and as required by the City.

### **8.3 Adjustment of Loss**

Any Gross Insurance Proceeds recovered on account of any damage or destruction by any casualty shall be made available for the payment of the cost of the reconstruction, replacement or repairs. All of the Gross Insurance Proceeds plus the amount of any deductible applicable to said damage or destruction shall be deposited by the insurance company or by the Lessee (in the case of the deductible) with an escrow agent reasonably acceptable to the City Manager, with instructions to the escrow holder that the escrow holder shall disburse the funds to the Lessee, with notice thereof to the Lessor, as the work of the reconstruction, replacement or repairs progresses upon certificates of the architect or engineer supervising the work that the disbursements then requested, plus all previous disbursements made from such Gross Insurance

Proceeds, plus the amount of any deductible, do not exceed the cost of the work already completed and paid for, and that the balance in the escrow fund is sufficient to pay for the reasonably estimated cost of completing the required work. The escrow holder shall be any bank mutually agreeable to Lessor and Lessee. If the amount of the Gross Insurance Proceeds is less than the cost of the required work, then Lessee shall pay the excess cost; and if the amount of the Gross Insurance Proceeds is greater than the cost of the required work, then the excess shall be paid to and belong to the Lessee.

#### **8.4 Indemnification of Lessor**

Lessee shall indemnify, defend and hold Lessor harmless from and against any and all claims actions, damages, liability and expense in connection with personal injury and/or damage to or destruction of Premises arising from or out of any occurrence in, upon or at the Premises, or arising from the occupancy or use by Lessee of the Premises or any part thereof, or occasioned wholly or in part by any act or omission of Lessee, its agents, contractors, employees, servants, customers, invitees, licensees, sub-lessees or concessionaires, excluding any claims arising from the negligence or willful misconduct of the Lessor (or any other person acting on behalf of the Lessor as its contractor, employees, agent or representative). Lessee shall further indemnify Lessor for any penalties, fines, costs, expenses, suits, liabilities, claims, or damages resulting from Lessee's failure to perform its obligations in this Lease and/or for Lessee's failure to comply with applicable laws. In case Lessor shall be made a party to any litigation commenced by or against Lessee and covered by this indemnity provision, then Lessee shall protect and hold Lessor harmless and pay all of Lessor's costs and attorney's fees incurred by Lessor in connection with such litigation, and any appeals thereof. Lessee shall also pay all of Lessor's third party costs, expenses and reasonable attorneys' fees that may be incurred or paid by Lessor in enforcing the covenants and agreements in this Lease inclusive of administrative, litigation and appellate proceedings. Further, Lessee shall indemnify, defend and hold Lessor harmless from and against any and all claims actions, damages, liability and expense arising from or caused by the presence, in or about the Premises, of any Hazardous Materials placed on or about the Premises by Lessee, or its agents, employees or assignees, or at Lessee's direction, or by Lessee's failure to comply with all applicable Environmental Laws.

#### **8.5 Waiver of Subrogation**

Lessee waives all rights to recover against the Lessor for any damages arising from any cause covered by any insurance required to be carried by Lessee, or any insurance actually carried by Lessee. The Lessee shall cause its insurer(s) to issue appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with the Premises, or any part thereof.

#### **8.6 Release of Lessor**

The Lessee and its assignees, for and in consideration of the leasing and the demise of the Premises to the Lessee, hereby release, remise and discharge the Lessor, its officers and employees, of and from all claims, demands, and actions, whether in law or in equity, which may be filed or asserted by the Lessee or its assignees for or on account of improvements made and

furniture, fixtures and equipment installed in the Premises, and from any and all costs and expenses of Lessee or its assignees in connection with this Lease, including, but not limited to those costs associated with the development of the Premises and acquisition of the Leasehold Improvements (the "Claim"). It is the intent of the Parties that this provision shall control over any other provision in this Lease and that notwithstanding any limited representations provided by Lessor under Section 2.4 of this Lease, neither the Lessee, nor its assignees shall seek to recover from the Lessor compensation for, or reimbursement of, any costs, losses, fees or expenses incurred by the Lessee or its assignees. The terms of this provision shall expressly be made a part of any future assignment or mortgage of the Leasehold Interest.

## **ARTICLE IX SERVICES AND UTILITIES**

### **9.1 Lessee to Provide and Pay for Utilities**

The Lessee shall pay, or cause to be paid, all proper charges for gas, electricity, light, heat, water and power, for telephone, protective and other communication services, and for all other public or private utility services, which shall be used, rendered or supplied upon or in connection with the Premises and any Leasehold Improvements, if any, or any part of it, at any time during the Lease Term, and the Lessee shall comply with all contracts relating to any such services and will do all other things required for the maintenance and continuance of all services as are necessary for the proper maintenance and operation of the Premises and the Leasehold Improvements. The Lessee shall, at its sole expense, procure any and all necessary permits, licenses or other authorization required for the lawful and proper installation and maintenance upon the Premises of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any such utilities, services or substitutes to the Premises.

### **9.2 Lessor Not Liable for Failure of Utilities**

The Lessor shall not be liable for any failure of water supply, sewer, gas or electric current, or for any injury or damage to any person or to the Premises caused by or resulting from water, gas or electricity which may leak or flow from the water or gas mains on to any part of the Premises or the Leasehold Improvements. The Lessor shall not be required to make any alteration to any service or utility system of the Premises on behalf of Lessee. Lessor shall not be liable for temporary failure of services, and any such temporary failure shall not be deemed to constitute actual or constructive eviction, nor entitle Lessee to any abatement or diminution in rent payable under this Lease.

Lessor shall not make or allow to be made after the Lease Date any changes in any utility service to, through, under or above the Premises that would result in a materially disruptive effect on the use or operation of the Premises by the Lessee and its customers, including but not limited to fiber optics, telephone, electricity, water, storm and sanitary sewer, gas, heat, ventilation and air conditioning, without the prior written consent of Lessee, which shall not be unreasonably withheld, conditioned or denied; further, provided, that the written consent of the Lessee shall not be required for minor, routine and customary, maintenance, repair, improvement and upgrades made by the utility provider to the utilities it furnishes.

**ARTICLE X  
SUBLEASES, ASSIGNMENTS AND TRANSFERS**

**10.1 Subleases, Assignments and Transfers**

Lessee shall not, at any time during the Lease Term, enter into (i) any sublease, license, concession, easement, or permit agreement with respect to the Premises or (ii) sublease, assign or transfer this Lease to any third party or parties, which has the effect of granting exclusive possession to the Premises and assigning the rent and other obligations set forth in this Lease to any third party or parties (collectively "Transfer"), without first procuring the prior written consent of the City. The provisions of this Article constitute the sole means by which Lessee may request Lessor's consent to a Transfer.

In recognition of the fact that this Lease was awarded to Lessee following a competitive procurement relying on Lessee's unique attributes, any Transfer of this Lease to any third party or parties (except as otherwise permitted under this Article X) shall require the prior written approval of the City, which may grant, deny, refuse or consent to such Transfer, in the City's sole discretion, based on reasonable commercial factors including the credit worthiness, solvency, reputation, ability and experience of such proposed transferee. If approved, any such transferee shall be required to sign a written agreement assuming all terms and conditions of the Lease, without exception in a form satisfactory to the Lessor. Any such attempted Transfer of the Lease, without the Lessor's prior written consent, shall be void and of no force or effect and shall not confer any interest or estate in the purported Transfer and will additionally be a default by Lessee of this Lease.

It is agreed that all terms and conditions of this Lease shall extend to and be binding on all transferees, assignees or Sub-lessees as may be approved by Lessor and shall be for a period of time equal to or less than the Lease Term. Lessor reserves the right to directly terminate the rights and interests of any transferee or Sub-lessee under any Transfer for any cause for which Lessee's Leasehold Interest may be terminated. Lessee shall reimburse to Lessor, as Additional Rent, all costs and expenses, including third party attorneys' fees, which Lessor reasonably incurs by reason of or in connection with a Transfer, and all negotiations and actions with respect thereto, such Additional Rent to be due and payable within thirty (30) days of receipt of a statement of such costs and expenses from Lessor.

**10.2 Procedure for Transfer**

Subject to the provisions of Section 10.1, should Lessee desire to Transfer the Lease, Lessee shall, in each instance, give written notice of its intention to do so to Lessor's City Manager at least thirty (30) days prior to the effective date of any such proposed Transfer, specifying in such notice the nature of such proposed Transfer and the proposed date thereof and specifically identifying the proposed Sub-lessee, Assignee or transferee. Such notice shall be accompanied by a copy of the proposed Transfer agreement and any other documents or financial information Lessor may reasonably require in order to determine the suitability of the Sub-lessee, Assignee or transferee. If requested by Lessor, Lessee shall provide to Lessor copies of all Transfer documents and amendments thereto. Lessor shall either (i) withhold consent to the Transfer, together with a detailed explanation for such denial, or (ii) consent to such Transfer upon the terms and subject to the conditions provided for in this Article, by mailing written

notice to Lessee of its intent to do so. Lessee acknowledges and agrees that the imposition of the conditions provided herein requiring Lessor's consent is reasonable.

### **10.3 Additional Consideration Payable to Lessor**

If Lessor gives its consent to any Transfer, Lessor shall be entitled to any proceeds from any such Transfer, with the Lessor's participation capped at a maximum of four percent (4%) of gross proceeds from the sale if the Lease is assigned or otherwise transferred or sold within Lease Years one (1) through five (5); and five percent (5%) if transferred after Lease Year five (5) ("Transfer Fee"). Lessee shall, in consideration of any Transfer, include in Lessee's Gross Revenues the amount of Sub-Lessee's, Assignee's or transferee's Gross Revenues which shall be listed separately on Lessee's Annual Report. Assignee's or transferee's records shall be kept in accordance with Article IV. Additionally, Lessor reserves the right to examine transferee's books and audit transferee's entire records in accordance with Article IV of this Lease.

The Transfer fee shall be perpetual and shall apply to any successive Transfer procured by the terms of this Lease for as long as this Lease is active, including modifications and extensions, if any. The acceptance by Lessor of the payment of rent following any Transfer prohibited by this Article shall not be deemed to be consent by Lessor to any such Assignment or Transfer, nor shall the same be deemed a waiver of any right or remedy of Lessor hereunder.

### **10.4 Definitions**

As used in this Article, the term:

"Transfer" means:

1. any total or partial sale, or assignment of Lessee's business or Leasehold Estate or any contract or agreement to do any of the same, including by entering into a sublease, assignment, transfer agreement, concession agreement, etc.
2. any transfer of more than forty-nine percent (49%) of the stock of Lessee or of the stock of any Owner, other than an Owner whose shares are publicly traded, if the transfer results in a transfer of more than forty-nine percent (49%) of the beneficial ownership of Lessee;
3. any merger, consolidation or sale or lease of all or substantially all of the assets of the Lessee or of any Owner, other than an owner whose shares are publicly traded.

"Owner" means:

any person, firm, corporation or other entity which owns, directly or indirectly, legally or beneficially, more than fifteen percent (15%) of the stock of the Lessee, but shall not include any shareholder of an Owner whose shares are publicly traded.

"Owner whose shares are publicly traded" means:

1. an Owner who has filed an effective registration statement with the Securities & Exchange Commission (or its successor) with respect to the

- shares of any class of its voting stock or of all classes of any other form of ownership interest which includes voting rights; and
2. whose voting stock and other form of ownership interest described in clause (i) is listed for trading purposes on a securities exchange subject to the regulatory jurisdiction of the Securities & Exchange Commission (or its successor) or is publicly traded over the counter.

### **10.5 Acceptable Transfers**

The Lessee recognizes that the operational experience of the Lessee as set forth in the proposal was given special consideration by the Lessor in the public selection process undertaken by the Lessor for the award of this Lease. Therefore, Lessee agrees that except as permitted pursuant to this Article X of this Lease, no Transfer may be made, suffered or created by the Lessee, or any Owner without the prior written consent of the City Manager, which consent shall not be unreasonably withheld or delayed. The following Transfers shall be permitted hereunder without the written approval of the City Manager:

- (a) Any Transfer directly resulting from the foreclosure of Lessee's Leasehold Estate, provided that such purchaser or grantee is an institutional investor (including a bank or other similar financial institution) or an agent, designee or nominee of an institutional investor which is wholly owned or controlled by an institutional investor, and that such purchaser or grantee within six (6) months after taking possession of the Premises, shall have entered into an agreement for the management and operation of the Premises with an Acceptable Operator or is itself an Acceptable Operator;
- (b) the issuance of stock or stock options to Lessee's directors, officers, or employees, provided the stock or stock options issued constitute, in the aggregate, less than fifteen percent (15%) of the issued and outstanding stock of Lessee;

The Parties hereby acknowledge and agree that anything herein to the contrary notwithstanding, the "going public" by Lessee, including, but not limited to, the filing of a registration statement with the Securities and Exchange Commission and/or the creation of one or more classes of stock and the offering of shares of stock to the public for purchase, shall not constitute a Transfer hereunder and shall not require the consent of the Lessor.

Any consent to a Transfer shall not waive or abridge any of the Lessor's rights to consent to a subsequent Transfer. Any Transfer made in violation of the terms hereof shall be null and void and of no force and effect. Any transferee must be an institutional investor (as provided above) or an Acceptable Operator in each such instance.

### **10.6 Notice of Transfer**

With respect to any Transfer which must be approved by the City Manager, the Lessee shall give or cause to be given to the Lessor written notice (including all information necessary for the Lessor to make an evaluation of the proposed Acceptable Operator according to the requirements of this Lease) of any Transfer of which Lessee, or its officers shall have knowledge, not less than thirty (30) days prior to any such proposed Transfer, and the Lessor shall within thirty (30) days of its receipt of such information, advise Lessee in writing if it shall consent to same. If the Lessor shall not consent to a Transfer, the City Manager shall state the

reasons for such disapproval in his notice to Lessee. If the Lessor is not required to consent to a Transfer pursuant to the terms hereof, the Lessee shall notify the Lessor in writing of same within thirty (30) days after the date of Transfer. In the event that City Commission approval is required by this Lease, the City Manager shall use due diligence to present the request for Transfer to the City Commission as soon as practicable and the time for performance by Lessor shall be reasonably extended to provide sufficient time for presentation to the City Commission.

#### **10.7 Information as to Shareholders, etc.**

If applicable, Lessee shall from time to time throughout the Lease Term, as the Lessor shall reasonably request, furnish the Lessor with a complete statement, subscribed and sworn to by the President or Vice-President and the Secretary or Assistant Secretary of the Lessee, setting forth (to the extent known) the full names and addresses of material holders of stock interests in Lessee, and the extent of their holdings, and in the event any other parties have a material beneficial interest in such stock, their full names and addresses and the extent of such interest as determined or indicated by the records of Lessee. Notwithstanding the foregoing, the information required by this Section shall not be required to be furnished with respect to the shareholders of any Owner whose shares are publicly traded. As used in this section, the term "material" shall mean ownership of not less than a ten (10%) percent interest in Lessee.

#### **10.8 Effectuation of Permitted Transfers**

No Transfer shall be effective unless and until:

(1) all Rents, taxes, assessments, impositions, insurance, permitting and other charges required to be paid by the Lessee under this Lease shall be paid by the Lessee up to the date of transfer, and all other covenants and agreements to be kept and performed by the Lessee shall be substantially complied with at the date of the Transfer; and

(2) the entity to which such Transfer is made, by instrument in writing reasonably satisfactory to the City Manager (subject to approval as to legal form by the City Attorney) and in a form recordable among the land records, shall, for itself and its successors and assigns, and especially for the benefit of the Lessor, expressly assume all of the obligations of Lessee under this Lease, agree to be subject to all conditions and restrictions to which Lessee is subject, including the additional guarantees required under Section 16.5 of this Lease; provided, however, that any transferee shall not be required to assume any personal liability under this Lease with respect to any matter arising prior or subsequent to the period of such transferee's actual ownership, partial or whole, of the Leasehold Estate created by this Lease (it being understood, nevertheless, that the absence of any such liability for such matters shall not impair, impede or prejudice any other right or remedy available to the Lessor for default by Lessee). Nothing herein shall be construed to relive or release the Lessee from liability for the performance of all of the obligations of Lessee under this Lease.

#### **10.9 Criteria for Consent for Transfer**

The Lessor may, at its sole discretion, condition its consent to a permitted Assignment, Sublease or Transfer upon satisfaction of all or any of the following conditions:



- (1) The proposed entity to which the Leasehold is being assigned, transferred, or subleased ("Transferee"), shall be an Acceptable Operator;
- (2) Transferee shall satisfy the qualification requirements imposed upon Lessee and set out in the original RFP;
- (3) Transferee shall have no open permits, liens, fines, unsafe structures, or any open lawsuits;
- (4) The net assets of the Transferee immediately prior to the Transfer shall not be less than:  
(a) the net assets of the Transferor whose interest is being transferred immediately prior to the Transfer; (b) the net assets of said Transferor on the Lease Date adjusted for inflation; or (c) an amount reasonably necessary to discharge Lessee's remaining obligations hereunder;
- (5) Such Transfer shall not adversely affect the quality and type of business operation which the Lessee has conducted theretofore;
- (6) Such Transferee, shall possess qualifications for the Lessee's business substantially equivalent to Lessee or an Acceptable Operator, or shall engage an Acceptable Operator and shall have demonstrated recognized experience in successfully operating such a business, including, without limitation, experience in successfully operating a similar quality business;
- (7) Such Transferee shall agree to continue to operate a business similar to the use conducted at the Premises pursuant to this Lease;
- (8) Such Transferee shall assume in writing, in a form acceptable to Lessor, all of Lessee's obligations hereunder, and Lessee shall provide Lessor with a copy of all documents pertaining to such Transfer;
- (9) Transferee shall submit to a credit check and other background checks as Lessor sees fit. Failure or refusal to submit to said credit and background checks shall be an automatic disqualification of the potential transferee;
- (10) Lessee shall pay to the Lessor any due, but unpaid Rent.

#### **10.10 Liability of Lessee**

If a Transferee does not meet all of the criteria set forth in this Article, Lessor, at its sole option, may require Lessee or Owner transferring such interest to remain liable under this Lease for the performance of all terms, including, but not limited to, payment of Rent due under this Lease. If a Transferee does meet the criteria set forth in this Article, Lessee shall be released from any and all remaining liability and/or obligations set forth in this Lease from the effective date of such Assignment or Transfer, but shall remain liable and responsible as provided by this Agreement and applicable laws for performance of duties including, without limitation, payment of rent prior to the effective date of such transfer.

#### **10.11 Acceptance of Rent from Transferee**

The acceptance by Lessor of the payment of Rent following any Transfer prohibited by this Article shall not be deemed to be a consent by Lessor to any such Transfer, nor shall the same be deemed to be a waiver of any right or remedy of Lessor hereunder.

#### **10.12 Transfers of the Lessor's Interest**

At the Lessee's request, Lessor shall provide the Lessee copies of any and all agreements or contracts pertaining to the total or partial sale, assignment, conveyance, mortgage, trust or power, or other transfer in any mode or form of or with respect to the Lessor's reversionary or fee interest in the Premises, or any part thereof, or any interest therein, or any contract or agreement to do any of the same, to any purchaser, assignee, mortgagee, or trustee. Lessor hereby agrees to incorporate the terms and conditions set forth in this Lease or in any agreement or contract with such purchaser, assignee, mortgagee, or trustee.

#### **10.13 Mortgages of Leasehold Interest**

**10.13.1 Right to Mortgage.** All rights of Lessee pursuant to this Lease are mortgageable, pledgeable, assignable or transferable, in accordance with the terms of this Lease. Any successor to, or assignee of, the rights of Lessee hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure or otherwise) shall hold or be entitled to exercise the rights of Lessee hereunder as fully as if named as such party herein. No party exercising rights as Lessee hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights. In no way shall Lessee have any authority to mortgage the ownership interest belonging to Lessor.

**10.13.2 Requirements for Mortgage.** In addition to the requirements specified throughout this Lease, Lessee may only pledge, hypothecate, or otherwise mortgage the Leasehold Estate with the written permission of the City Manager, the permission for which shall not be unreasonably withheld.

**10.13.3 Notice.** In the event Lessor gives a notice of default under this Lease to Lessee, Lessor shall also send a copy of such notice to any holder of a Leasehold Mortgage, provided such holder or its mortgagor shall have sent Lessor a notice informing it of the existence of such Leasehold Mortgage and the name of the person or officer and the address to which copies of the notices of defaults are to be sent (each a "Mortgagee"). Such Mortgagee shall have an additional thirty (30) days to cure any default that is capable of being cured with the payment of money, and an additional thirty (30) days for all other defaults (and such additional time, as to non-monetary defaults, as the Mortgagee in good faith and with reasonable diligence either attempts to cure such default or commences and thereafter prosecutes with reasonable diligence, if not enjoined or stayed, appropriate proceedings for foreclosure or other enforcement of the liens securing its financing). Initiation of foreclosure proceedings against Lessee shall constitute "diligence" by a Mortgagee hereunder so long as such foreclosure proceedings are continuously pursued and all rent and additional rent is being paid to Lessor by Lessee or Mortgagee during the pendency of any foreclosure proceeding. The

foregoing requirements to give notice of default to a Mortgagee and allow such Mortgagee an opportunity to cure such default shall not delay the exercise of self-help remedies by Lessor in the event of an emergency.

**10.13.4 Rights of Mortgagees.** Once Lessor has received a notice as specified in the preceding section, then, from and after receipt of such notice:

- (1) No voluntary termination by Lessee of this Lease shall be effective unless consented to in writing by such Mortgagee; and any material amendment or material modification of this Lease or the exercise by Lessee of any option to terminate this Lease without the written consent of such Mortgagee shall be voidable as against such Mortgagee at its option. If any Mortgagee shall fail to respond to any written consent under this section within thirty (30) days after the receipt by such Mortgagee of such written request (which written request shall make specific reference to this section), the Mortgagee shall be deemed to have denied its consent to such request. No notice required to be given to Lessee by Lessor shall be effective as to such Mortgagee unless and until a copy thereof has been given to such Mortgagee.
- (2) Lessor shall accept performance of any and all of Lessee's obligations hereunder, including the obligations to pay rent, from any such Mortgagee and the performance of such obligation by such Mortgagee shall be deemed to have been a cure effected by Lessee. Lessor hereby consents to the entry onto the Premises by any such Mortgagee for the purpose of effecting the cure of any default by Lessee. In the event of a default by Lessee hereunder, any Mortgagee may affect the cure of such default by foreclosing its Mortgage, obtaining possession of the Premises and performing all of Lessee's obligations hereunder.
- (3) If it shall be necessary for any such Mortgagee to obtain possession of the Premises to effect any such cure of a default by Lessee under this Lease, then Lessor shall not commence any proceeding or action to terminate the Lease Term if (a) such Mortgagee shall have informed Lessor within the grace period applicable to such Mortgagee that such Mortgagee has taken steps to foreclose its Leasehold Mortgage, to obtain possession of the Premises, (b) the rent and all monetary obligations of Lessee shall be paid and all other provisions and requirements of this Lease which are capable of being observed and performed without obtaining possession of the Premises are so observed and performed while any such foreclosure, other action or other remedy is being prosecuted by any such Mortgagee and for so long thereafter as such Mortgagee shall have obtained possession of the Premises, and (c) such Mortgagee shall be diligently prosecuting such foreclosure or cancellation and attempting to effect a cure of the default. Nothing herein contained shall be deemed to require the Mortgagee to continue with any foreclosure or other proceedings, or, in the event such Mortgagee shall otherwise acquire possession of the Premises, to continue such possession, if the default in respect to which Lessor shall have given the notice shall be remedied.
- (4) Lessor agrees that in the event of the termination of this Lease by reason of any

default by Lessee or rejection of this Lease in a bankruptcy proceeding effecting Lessee, and if Lessor has prior to such termination been given written notice of the name and address of such Mortgagee, Lessor will enter into a new agreement for the Premises with any Mortgagee or a wholly owned subsidiary of Mortgagee for the remainder of the Lease Term, effective as of the date of such termination, at the rent and upon the terms, options, provisions, covenants and agreements as herein contained, provided:

- i. Such Mortgagee shall make written request upon Lessor for such new agreement prior to or within ten (10) days after the date of such termination and such written request is accompanied by payment to Lessor of all sums then due to Lessor hereunder;
  - ii. Such Mortgagee or its nominee shall pay to Lessor at the time of the execution and delivery of said new lease any and all sums which would at that time be due hereunder but for such termination; and
  - iii. That in the event there exists more than one Mortgagee, the first Mortgagee shall have the first option to become Lessee under the provisions of this section, with priority over the second Mortgagee.
- (5) No Mortgagee shall become liable under the agreements, terms, covenants or conditions of this Lease unless and until it becomes the owner of the estate held by Lessee.

All of the provisions contained in this Lease with respect to Leasehold Mortgage and the rights of Mortgagees shall survive the termination of this Lease for such period of time as shall be necessary to effectuate the rights granted to all Mortgagees by the provisions of this Lease.

Nothing herein contained shall require any Mortgagee or its nominee to cure any default by Lessee hereunder, unless Mortgagee accepts assignment and assumption; however this shall not preclude the City from seeking a judicial remedy for any such losses or breaches of the Lease in a manner consistent with the terms of this Lease.

## **ARTICLE XI COMPLIANCE WITH LAWS**

### **11.1 Compliance with Laws**

Lessee shall, at Lessee's sole cost and expense, comply with all applicable Federal, State, and local laws, and all applicable permitting and regulatory requirements, rules, regulations, codes, ordinances, and written policies now in force, or which may hereafter be in force, pertaining to Lessee or its use of the Premises, and shall faithfully observe in the use of the Premises or in the performance of any alterations (including, without limitation, the construction of any Leasehold Improvements) all applicable laws now in force or which may hereafter be in force.

**ARTICLE XII  
ENVIRONMENTAL LIABILITY**

**12.1 Definition of Terms**

For purposes of this Article XII the following terms shall have the meaning attributed to them herein:

1. "Hazardous Materials" means any toxic or hazardous substance, material, or waste, and any other contaminant, pollutant or constituent thereof, whether liquid, solid, semi-solid, sludge and/or gaseous, including without limitation, chemicals, compounds, pesticides, petroleum products including crude oil and any fraction thereof, asbestos containing materials or other similar substances or materials which are regulated or controlled by, under, or pursuant to any federal, state or local statutes, laws, ordinances, codes, rules, regulations, orders or decrees including, but not limited to, all applicable laws.
2. "Environmental Laws" shall include all applicable laws, rules and ordinances, existing now or in the future during the Term, as amended, modified, supplemented, superseded or replaced at any time during the Term, that govern or relate to: the existence, cleanup and/or remedy of contamination of property; the protection of the environment from spilled, deposited or otherwise emplaced contamination; the control of hazardous or toxic substances or wastes; the use, generation, discharge, transportation, treatment, removal or recovery of Hazardous Materials; or otherwise regulating the impact of human activities on the environment.
3. "Costs" shall mean all costs incurred in connection with correcting any violations of any Environmental Laws and/or in connection with the clean-up of contamination on the Premises.
4. "Clean Up" shall mean any remediation and/or disposal of Hazardous Materials at or from the Premises which is ordered by any federal, state, or local environmental regulatory agency.

**12.2 Lessee's Environmental Covenant**

The Lessee shall not cause or permit any Hazardous Materials to be brought upon, treated, stored, disposed of, discharged, released, produced, manufactured, generated, refined, or used upon, about or beneath the Premises or any portion thereof by the Lessee, its agents, employees, contractors, licensees, or invitees except as may be customarily used and required to conduct Lessee's business or as may be used in compliance with Environmental Laws. Lessee shall not permit any activities on the Premises that would violate Environmental Laws. If Lessee should breach this covenant, Lessee shall take all actions necessary to comply with all Environmental Laws and shall, at Lessee's sole cost and expense, perform any and all Clean Up. Lessee's obligation under this section shall survive the expiration or earlier termination of this Lease for a period of two (2) years.

**12.3 Survival of Lessee's Obligations**

The respective rights and obligations of Lessor and Lessee under this Article XII shall survive the expiration or termination of this Lease for a period of one (1) year.

**ARTICLE XIII  
DAMAGE OR DESTRUCTION OF PREMISES**

**13.1 Definitions**

For the purposes of this Article XIII, the following words shall have the meanings attributed to them in this Section 13.1:

- (a) "Completely Destroyed" means the destruction of the safe, leasable use or occupancy of a substantial portion of the Premises under this Lease which damage cannot reasonably be repaired, restored or replaced within one hundred eighty (180) calendar days from the date on which the damage occurred.
- (b) "Partial Destruction" means any damage to the Premises which damage can reasonably be repaired, restored or replaced within one hundred eighty (180) calendar days from the date on which the damage occurred.

**13.2 Duty to Repair, Restore or Replace Premises after Damage**

In the event of damage by fire or otherwise of the Premises including any machinery, fixtures or equipment which are a part of the Premises, the Parties agree as follows:

In the event of Partial Destruction of the Premises, within sixty (60) calendar days of the damage (subject to reasonable delay and/or Force Majeure), (i) the Lessee shall use the Gross Insurance Proceeds available, together with Lessee's own funds (if the Gross Insurance Proceeds are insufficient) to commence and diligently pursue to completion within one hundred eighty (180) calendar days from the date the damage occurred (subject to reasonable extension due to Force Majeure or delays by Lessor in the repair, restoration, or replacement of the damaged or destroyed portion of the Premises as required in order for the Lessee to commence the restoration of the Leasehold Improvements), the repair, restoration or replacement of the damaged or destroyed portion of the Leasehold Improvements ("Restoration Work"), and this Lease shall remain in full force and effect, with no abatement in Rent.

In the event the Premises are Completely Destroyed at any time during Lease Term, Lessee, in its sole discretion, shall have the option to select whether to terminate this Lease within sixty (60) days of the damage. In the event the Lessee shall determine not to terminate this Lease, then at the Lessee's sole cost and expense, (together with Gross Insurance Proceeds available for that purpose), Lessee shall commence and diligently pursue to completion the Restoration Work, in accordance with the provisions of Section 13.3 below, and Lessee shall complete the Restoration Work within twelve (12) months from the date the damage occurred (subject to reasonable extension due to Force Majeure or delays by Lessor in the repair, restoration, or replacement of the damaged or destroyed portion of the Premises as required in order for the Lessee to commence the restoration of the Leasehold Improvements), and this Lease shall remain in full force and effect, with no abatement in Rent. Alternatively, the Lessee may elect not to undertake the Restoration Work by providing written notice to Lessor and in which event this Lease shall terminate, and the Lessee shall, at the Lessee's sole cost and

expense, (but using along with the Lessee's own funds, Gross Insurance Proceeds available for that purpose) deliver possession of the Premises to Lessor free and clear of all debris and Lessor and Lessee shall each be released thereby from any further obligations hereunder accruing after the effective date of such termination, except that such release shall not apply to any Rent or other sums accrued or due, Lessee's obligations regarding surrender of the Premises including the removal of debris, and environmental liability as provided for in Article XII.

### **13.3 Performance of Restoration Work**

In the event Lessee undertakes any Restoration Work in accordance with the provisions of this Article, such Restoration Work by Lessee shall be substantially the same as possible to the condition that existed immediately prior to the damage, and shall be performed in accordance with the provisions of Article V applicable to the construction of any Leasehold Improvements. Lessor hereby acknowledges and agrees that Lessee's obligations hereunder and the time periods set forth above are subject to Force Majeure, and reasonable extensions based on the severity of the damage.

### **13.4 No Additional Right to Terminate**

Except for the Lessee's right to terminate this Lease in accordance with the provisions of Article XIII set forth herein, Lessee waives the provisions of any statute, code or judicial decision which grants Lessee the right to terminate this Lease in the event of damage or destruction of the Premises.

### **13.5 Lessee's Right to Terminate**

If Lessee elects to exercise the option given under Subsection 13.2, to terminate this Lease, then any and all Gross Insurance Proceeds paid for damage or destruction of the Premises shall be applied as follows:

First toward debris removal; and

Second, toward the balance of the proceeds, if any, after payment of any Rent due, shall be paid to the Parties as the respective Rent shall be prorated based on the useful life of the Premises prior to the casualty event as compared to the remaining term of the Lease and any option periods without consideration of the termination of the Lease as provided in this Section.

### **13.6 Payment for Construction of Restoration Work**

Except as otherwise provided for in this Article XIII, all Gross Insurance Proceeds shall be applied by the Parties to the payment of the cost of the Restoration Work to restore the Premises, and the Gross Insurance Proceeds shall be paid out, the Restoration Work shall be performed, and the Lessee shall make additional deposits with an escrow agent, if any are required, as may be applicable.

### **13.7 Collection of Insurance Proceeds**

The Lessor shall in no event be responsible for the non-collection of any insurance proceeds under this Lease but only for insurance money that shall come into its hands.

### **13.8 Unused Insurance Proceeds and Deposits**

In the event any Gross Insurance Proceeds or sums deposited with an escrow agent or Lessor in connection with the Restoration Work shall remain in the hands of an escrow agent or the Lessor, if the Parties have agreed to allow the Lessor to hold the insurance proceeds until completion of the Restoration Work, and if the Lessee shall not then be in default under this Lease in respect of any matter or thing of which notice of default has been served on the Lessee, then the remaining funds shall be applied first towards any unpaid Rent, and the remaining balance paid to the Lessee.

## **ARTICLE XIV EMINENT DOMAIN**

### **14.1 Total Condemnation**

In the event that all of the Premises (or such portion thereof as shall, in the good faith opinion of Lessor or Lessee, render it economically unfeasible for its intended purpose) shall be taken for any public purpose by the right of condemnation, the exercise of the power of eminent domain or shall be conveyed by the Lessor and Lessee acting jointly to avoid proceedings of such taking, the Rent pursuant to this Lease shall be prorated and paid by the Lessee to the date of taking or conveyance in lieu thereof, and this Lease shall terminate and become null and void as of the date of taking or such conveyance. Any damages resulting to Lessor and Lessee, respectively, and to their respective interests in and to the Premises, the Leasehold Improvements, and in connection with this Lease (which amount of damages shall be calculated based on the remaining term of the Lease and any option periods without consideration of the termination of the Lease as provided in this Section), shall be separately determined and computed by the court having jurisdiction and separate awards and judgments with respect to damages to Lessor and Lessee, respectively, and to each of their respective interests, shall be made and entered.

### **14.2 Partial Condemnation**

In the event less than all of the Premises shall be taken for any public use or purpose by the right or the exercise of the power of eminent domain, or shall be conveyed by the Lessor and Lessee acting jointly to avoid proceedings of such taking, and Lessee shall be of the good faith opinion that it is economically feasible to effect restoration thereof, then this Lease and all the covenants, conditions and provisions hereunder shall be and remain in full force and effect as to the Premises not so taken or conveyed. Lessee shall to the extent the proceeds of the Gross Condemnation Award are made available to it, pursuant to the terms hereof, remodel, repair and restore the remaining portion of the Premises so that it shall be comparable to the Premises prior to the condemnation; provided, however, that in so doing, Lessee shall not be required to expend more than the amount of any Gross Condemnation Award actually received by Lessee.



The Gross Condemnation Award allowed to Lessor and Lessee shall be paid to and received by the Parties as follows:

- (a) There shall be paid to the Lessor the value of the portion of the land so taken and Lessor's reversionary interest in the improvements so taken, which land and reversionary improvements shall be valued as if unencumbered. Lessor shall further be paid an amount by which the Rent has been reduced by the taking;
- (b) There shall be paid to the Lessee any amount by which Lessee's profits and value of Lessee's interest in the Lease and the Premises have been reduced by the taking after any payment required by the Lease;
- (c) There shall be paid to the Lessee the amount required to complete the remodeling and repairs to the Premises pursuant to (a) above;
- (d) The Lessor and Lessee shall be paid portions of the balance of the Gross Condemnation Award or awards, if any, which are allocable to and represented by the value of their respective interest in the Premises as found by the court in its condemnation award.

### **14.3 Adjustment of Rent Upon Partial Taking**

In the event a part of the Premises shall be taken for any public use or purpose by the exercise of the power of eminent domain, or shall be conveyed by Lessor and Lessee acting jointly to avoid proceedings of such taking, then Rent pursuant to this Lease shall be paid by Lessee to the Date of Taking or conveyance in lieu thereof, and after such date the Base Rent for the remainder of the Lease Term shall be reduced on an equitable basis and Percentage Rent shall continue at the same rate.

### **14.4 Deposit of Condemnation Award with Escrow Agent**

Unless the effect of a condemnation proceeding shall be to terminate this Lease by operation of law or as provided in Section 14.2 above, any Gross Condemnation Award made in respect to the Premises in a condemnation proceeding shall be deposited with an escrow agent selected by the Lessor to be disbursed for the cost of restoring the Premises.

### **14.5 Temporary Taking**

In the event that all or any portion of the Premises shall be taken by the right of condemnation or the exercise of the power of eminent domain for governmental use or occupancy for a temporary period, this Lease shall not terminate and Lessee shall continue to perform and observe all of its obligations (including the obligation to pay Rent as provided throughout this Lease) as though the temporary taking had not occurred except only to the extent that it may be prevented from so doing by the terms of the order of the authority which make the temporary taking or by the conditions resulting from the taking, including the loss of its possession of all or any part of the Premises. If the period of governmental occupancy extends beyond the termination of the Lease Term, the Lessor shall be entitled to receive that portion of the Gross Condemnation Award allocable to the period beyond the termination of the Lease Term. The amount of any Gross Condemnation Award payable to Lessee, on account of a

temporary taking of all or any part of the Leasehold Improvements, shall be deemed a part of the Lessee's Leasehold Estate for all purposes in this Lease. If the Gross Condemnation Award does not separately determine the amount applicable to the taking of the interest of the Lessor in this Lease and in the Leasehold Improvements and if Lessor and Lessee shall not agree in writing as to the proportion of the award so applicable to the respective Parties, then Lessor and Lessee shall submit the matter to the court on stipulation for the purpose of a judgment determinative of the interest of the Parties in accordance with the terms of this sub-section.

**ARTICLE XV  
PAYMENT OF TAXES, ASSESSMENTS AND OTHER IMPOSITIONS**

**15.1 Payment of Taxes and Impositions**

From and after the Lease Date, Lessee shall pay all ad valorem and similar taxes, surcharged, levies, charges, assessments, and impositions levied against the Premises before any fine, penalty, interest or costs are added for non-payment. All such ad valorem and similar taxes, governmental levies, charges, impositions and assessments shall be payable by Lessee directly to the taxing authority prior to delinquency (without penalty) of such taxes, provided that Lessor has advised Lessee of its share of such taxes and assessments in a written notice, including a copy of the tax bill prior to delinquency.

**15.2 Installment Payments of Ad Valorem Taxes and Impositions**

Lessee agrees that the Premises or any interest thereon is subject to ad valorem taxation. Lessee, at its option, may enroll in the Miami-Dade County Ad Valorem Tax Payment Plan.

If by law, any ad valorem taxes or other Impositions are payable or may, at the option of the taxpayer, be paid in installments (whether or not interest shall accrue on the unpaid balance of the Imposition), the Lessee may pay the same (and any accrued interest on the unpaid balance of the Imposition), in installments before any fine, penalty, interest or cost is added for the nonpayment of any installment and interest. Any Imposition relating to a fiscal period of the taxing authority, a part of which period is included before the Lease Date and part of which is included after the Lease Date shall be adjusted as between the Lessor and the Lessee as of the commencement of the Lease Term, so that the Lessee shall pay that portion of the Imposition attributable to that part of the fiscal period included in the Lease Term, and the Lessor shall pay the remainder, if applicable. Any Imposition relating to a fiscal period of the taxing authority, a part of which period is included within the Lease Term and a part of which is included in a period of time after Lease Term shall be adjusted as between the Lessor and the Lessee as of the termination of the Lease Term, so that the Lessee shall pay that proportion of the Imposition attributable to that part of the fiscal period included in the Lease Term, and the Lessor shall pay the remainder, if applicable.

**15.3 Payment in Lieu of Taxes**

The Lessee shall be responsible for the following payments or for payments in lieu of taxes ("PILOT") during the use period in the event the Property is deemed exempt from ad valorem real estate taxes; in which case, Lessee will pay the City an annual PILOT in an amount

initially equal to three thousand three hundred and seventy-six and 71/100 dollars (\$3,376.71) per year. The PILOT will increase on each anniversary of the Lease Date at a rate equal to three percent (3%). If Lessee is required to pay ad valorem taxes on the Property, it shall not be required to pay the PILOT.

#### **15.4 Proof of Payment**

The Lessee shall furnish to Lessor, within thirty (30) days after the date whenever any Imposition is payable by or on behalf of the Lessee, official receipts of the appropriate taxing authority, photocopies or other proof satisfactory to the Lessor, evidencing the payment.

#### **15.5 State-Owned Sovereignty Submerged Land**

In the event the Lessee wishes to utilize the Premises in a manner that would derive income directly or indirectly from the use of the State-owned sovereignty submerged lands, or otherwise is required to make payments under applicable law, the Successful Proposer shall be solely responsible for all fees, costs, expenses, impositions, and payments due.

### **ARTICLE XVI DEFAULT OF LESSEE**

#### **16.1 Lessee Default**

The occurrence of any one or more of the following events is deemed a "Lessee Default":

- a. If the Lessee defaults in the due and punctual payment of any installment of Rent, as and when due and payable in accordance with this Lease, and such default continues for more than ten (10) days after the sum is due;
- b. Except with respect to an event of Force Majeure, in the event Lessee shall cease to operate its business, unless in connection with alterations or renovations, for a period of fifteen (15) consecutive days;
- c. In the event a petition in bankruptcy under any present or future bankruptcy laws (including but not limited to reorganization proceedings or voluntary insolvency filing) be filed by or against Lessee and such petition is not dismissed or contested in good faith within sixty (60) days from the filing thereof, or in the event Lessee is adjudged a bankrupt;
- d. In the event an assignment for the benefit of creditors is made by Lessee;
- e. In the event of an appointment by any court of a receiver or other court officer of Lessee's Premises and such receivership is not dismissed or contested in good faith within sixty (60) days from the date of such appointment;
- f. In the event Lessee removes, attempts to remove, or permits to be removed from the Premises, except in the usual course of trade, a substantial portion of the Leasehold Improvements (furnishings, fixtures, and equipment) installed or placed upon the Premises by the Lessee during the Lease Term;

- g. In the event Lessee, before the expiration of the Lease Term, and without the written consent of Lessor, abandons the possession of the Premises, or uses the same for purposes other than the purposes for which the same are hereby leased or as otherwise permitted by Lessor, and such default continues for more than thirty (30) days after written notice of the default from the Lessor to the Lessee, In the event an execution or other legal process is levied upon the goods, furniture, effects or other personal property of Lessee brought on the Premises, or upon the interest of Lessee in this Lease, and the same is not satisfied, dismissed or contested in good faith within sixty (60) days from such levy; or
- h. In the event Lessee defaults in the due performance or observance of any Lease term, covenant, condition or provision, other than the payment of Rent, including without limitation failure to maintain insurance coverage in effect, failure to obtain permits or approvals required by law, or failure to timely pay taxes, fees, surcharges, or other impositions when required by law, and such default continues for more than thirty (30) days after written notice of the default from the Lessor to the Lessee, or such longer period as is reasonably necessary to diligently cure such default; or
- i. Inability of Lessee to produce financial records under the circumstances set forth in Article IV of this Lease.

## **16.2 Remedies of Lessor**

If any Lessee Default occurs, Lessor shall have the right after the expiration of the applicable cure period, and at the sole discretion of Lessor, to terminate this Lease upon providing five (5) days written notice. An Event of Default shall be deemed to have occurred at the expiration of such five (5) day period if the default has not been cured by the expiration of such five (5) day period. Lessor may terminate the Lease irrespective of any suit or action brought by Lessee and the time period required for termination of this Lease shall not be tolled by the filing of a suit or action.

Additionally, if any Event of Default occurs, Lessor may, at its option, from time to time, without terminating this Lease, re-enter and re-let the Premises, or any part thereof, as the agent and for the account of Lessee upon such terms and conditions as Lessor may deem advisable or satisfactory, in which event the rents received on such re-letting shall be applied first to the expenses of such re-letting and collection including but not limited to, necessary renovation and alterations of the Premises, reasonable attorney's fees, any real estate commissions paid, and thereafter toward payment of all sums due or to become due to Lessor hereunder, and if a sufficient sum shall not be thus realized or secured to pay such sums and other charges, at Lessor's option, Lessee shall pay Lessor any deficiency immediately upon demand therefore, notwithstanding that Lessor may have received periodic rental in excess of the periodic rental stipulated in this Lease in previous or subsequent rental periods, and Lessor may bring an action therefore as such deficiency shall arise. Nothing herein, however, shall be construed to require Lessor to re-enter and re-let the Premises in any event. Lessor shall not, in any event, be required to pay Lessee any surplus of any sums received by Lessor on a re-letting of said Premises in excess of the rent provided in this Lease.

If any Event of Default occurs, Lessor shall have the right to obtain injunctive and declaratory relief, temporary and/or permanent, against Lessee for any acts, conduct or omissions of Lessee, and to further obtain specific performance of any term, covenant or condition of this Lease, including but not limited to the appointment of a receiver to operate Lessee's business at the Premises.

If any Event of Default occurs, Lessor shall have the right, at its option, to declare all Rent (or any portion thereof) for the entire remaining Lease Term, and other indebtedness owing by Lessee to Lessor, if any, immediately due and payable without regard to whether possession of the Premises shall have been surrendered to or taken by Lessor, and may commence action immediately thereupon and recover judgment therefore.

If any Event of Default occurs, Lessor, in addition to other rights and remedies it may have, shall have the right to remove all or any part of Lessee's personal property from the Premises and any personal property removed may be stored in any public warehouse or elsewhere at the cost of, and for the account of Lessee, and Lessor shall not be responsible for the care or safekeeping thereof whether in transport, storage or otherwise, and Lessee hereby waives any and all claim against Lessor for loss, destruction and/or damage or injury which may be occasioned by any of the aforesaid acts.

No such re-entry or taking possession of the Premises by Lessor shall be construed as an election on Lessor's part to terminate this Lease unless a written notice of such intention is given to Lessee. Notwithstanding any such re-letting without termination, Lessor may at all times thereafter elect to terminate this Lease for such previous default. Any such re-entry shall be allowed by Lessee without hindrance, and Lessor shall not be liable in damages for any such re-entry, or guilty of trespass or forcible entry.

It is expressly agreed that the forbearance on the part of Lessor in the institution of any suit or entry of judgment for any part of the Rent herein reserved to Lessor, shall not serve as a defense against nor prejudice a subsequent action for such Rent. Lessee hereby expressly waives Lessee's right to claim a merger or waiver of such subsequent action in any previous suit or in the judgment entered therein. Furthermore, it is expressly agreed that claims for liquidated Base Rent and/or Percentage Rent may be regarded by Lessor, if it so elects, as separate and independent claims capable of being separately assigned.

Any and all rights, remedies and options given in this Lease to Lessor shall be cumulative and in addition to and without waiver of, or in derogation of, any right or remedy given to it under any laws now or hereafter in effect.

### **16.3 No Waiver by Lessor**

The waiver (either expressed or implied by law) by Lessor of any default of any term, condition or covenant herein contained shall not be a waiver of any subsequent default of the same term or any other term, condition or covenant herein contained. The consent or approval by Lessor to or of any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent to or approval of any subsequent similar act by Lessee. No re-entry hereunder shall bar the recovery of rents or damages for the default or delay on the part of Lessor to enforce any right hereunder and shall not be deemed a waiver of any

preceding default by Lessee of any term, covenant or condition of this Lease, or a waiver of the right of Lessor to annul this Lease or to re-enter the Premises or to re-let same.

#### **16.4 Late Payment Fee**

Any installment of Rent not received within five (5) days after the due date shall be subject to a late payment fee. Lessee shall pay, in addition to the payment then due, five percent (5%) of the amount due ("Late Fee"), and in the event that any check, bank draft, order for payment, or negotiable instrument given to Lessor for any payment under Lease shall be dishonored for any reason whatsoever not attributable to Lessor, Lessor, in addition to the five (5%) percent Late Fee, shall be entitled to make an administrative charge to Lessee of One Hundred and 0/100 Dollars (\$100.00), or the actual charge, to Lessor by Lessor's bank for dealing with such dishonored tender, whichever is greater. In the event that it shall be necessary for Lessor to give more than one (1) written notice to Lessee of any violation of this Lease, during the term hereof, Lessor shall be entitled to make an administrative charge to Lessee of Twenty-five and 0/100 Dollars (\$25.00) for each such subsequent notice after the first notice. Lessee recognizes and agrees that the charges Lessor is entitled to make upon the conditions stated in this section represent, at the time this Lease is made, a fair and reasonable estimate of the costs of Lessor in the administration of the Premises resulting from the events described herein, which costs are not contemplated or included in any Rent or other charges provided to be paid by Lessee to Lessor in this Lease. Any charges becoming due under this Section of this Lease shall be added to and become due with the late payment for which the charge was assessed, and shall be collectible as a part thereof.

#### **16.5 Additional Guarantees**

In the event that Lessee defaults in accordance with the terms of this Article, or otherwise fails to perform any obligation required by this Lease, which directly or indirectly causes Lessor to suffer damages, and thereafter Lessee fails to cure or remedy the respective default in accordance to the terms of this Lease, Lessee's parent company, if any, and Lessee's President shall assume responsibility as a personal guarantors (collectively "Guarantor"), and shall pay the amounts due or perform the obligation required, as applicable. Guarantor may, at Lessor's option, be joined in any action or proceeding commenced by Lessor against Lessee in connection with and based upon the failure of Lessee to perform.

#### **16.6 Remedies Cumulative**

No remedy conferred upon or reserved to the Lessor or the Lessee shall be considered exclusive of any other remedy, but shall be cumulative and shall be in addition to every other remedy given under this Lease or existing at law or in equity or by statute; and every power and remedy given by this Lease to the Lessor or the Lessee may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by the Lessor or the Lessee. No delay or omission of Lessor or Lessee to exercise any right or power arising from any default shall impair any right or power, nor shall it be construed to be a waiver of any default or any acquiescence in it.

**16.7 Lessor Default.**

In the event that Lessor shall at any time be in default of the terms of this Lease and any such default shall continue for a period of sixty (60) days after written notice to Lessor, and Lessor shall not thereafter cure or commence to cure the default, Lessee shall have the right at any time thereafter (but in no event shall be obligated) to cure such default for the account of Lessor, and Lessor shall reimburse Lessee for any amount paid and any expense or contractual liability so incurred upon invoice.

**ARTICLE XVII  
ACCESS BY LESSOR**

**17.1 Right of Entry**

Lessor and Lessor's agents shall have the right to enter the Premises at all reasonable times upon reasonable prior written notice to the Lessee (except in the case of an emergency when no notice is required) to examine the same. If Lessee shall not be personally present to open and permit entry into the Premises at any time, when for any reason an entry therein shall be necessary or permissible, Lessor or Lessor's agents may enter the same without in any manner affecting the obligations and covenants of this Lease. Nothing herein contained, however, shall be deemed or construed to impose upon Lessor any obligation, responsibility or liability whatsoever, for the care, maintenance or repair of the Premises or any part thereof, except as otherwise herein specifically provided.

**ARTICLE XVIII  
DAMAGE TO LESSEE'S PROPERTY**

**18.1 Loss and Damage**

Unless caused by a negligent act or omission of Lessor or Lessor's officers, employees, or agents, the Lessor shall not be responsible for any damage to any property of Lessee (including without limitation appliances, equipment, machinery, stock, inventory, fixtures, furniture, improvements, displays, decorations, carpeting and painting), or of others located on the Premises, nor for the loss of or damage to any property of Lessee, or of others by theft or otherwise. Lessor shall not be liable for any injury or damage to persons or Premises resulting from fire, smoke, explosion, falling plaster, steam, gas, electricity, water, rain, or leaks from any part of the Premises or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place by dampness or by any other cause of whatsoever nature. Lessor shall not be liable for any patent or latent defect in the Premises. All property of Lessee kept or stored on the Premises shall be so kept or stored at the risk of Lessee only and Lessee shall hold Lessor harmless from any and all claims arising out of damage to same, including subrogation claims by Lessee's insurance carriers.

**ARTICLE XIX  
HOLDING OVER & SUCCESSORS**

**19.1 Holding Over**

In the event Lessee remains in possession of the Premises after the expiration of the Lease Term, Lessee, at the option of Lessor, shall be deemed to be occupying the Premises as a Lessee at sufferance at a monthly rental equal to two (2) times the Base Rent and the Percentage Rent of the preceding Lease Year, payable during the last month of the Lease Term hereof. In addition, Lessee agrees to pay monthly: (a) one-twelfth (1/12) of the taxes for the Premises based upon the total taxes payable for the Lease Year immediately prior to the Lease Year in which the expiration occurs; (b) cost of insurance for which Lessee would have been responsible if this Lease had been renewed on the same terms contained herein; (c) all sales taxes assessed against such increased rent, and (d) any and all Additional Rent otherwise payable by Lessee hereunder. Such tenancy shall be subject to all the other conditions, provisions and obligations of this Lease. Lessee's obligation to pay any rents or sums provided in this Lease shall survive the expiration or earlier termination of this Lease.

**19.2 Successors**

All rights and liabilities herein given to, or imposed upon, the respective Parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors, and the assigns of the said Parties; and if there shall be more than one Lessee, they shall be bound jointly and severally by the terms, covenants and agreements herein. Nothing contained in this Lease shall in any manner restrict Lessor's right to assign or encumber this Lease and, in the event Lessor sells its interest in the Premises and the purchaser assumes Lessor's obligations and covenants, Lessor shall thereupon be relieved of all further obligations hereunder.

**ARTICLE XX  
EQUAL EMPLOYMENT OPPORTUNITIES**

**20.1 Equal Employment Opportunities**

The Lessee agrees that during the Lease Term; (a) it will not discriminate against any employee or applicant for employment because of race, creed, color, place of birth, religion, national origin, sex, age, marital status, veteran and disability status and will take definitive action to assure that applicants are employed and that employees are treated during employment without regard to race, creed, color, place of birth, religion, national origin, sex, age, marital status, veteran and disability status; (b) post in conspicuous places, available to employees and applicants for employment, notices, the form of which is to be provided by the Lessor, setting forth provisions for this nondiscrimination clause; (c) in all solicitations or advertisements for employees placed by or on behalf of the Lessee shall state that all qualified applicants will receive consideration for employment without regard to race, creed color or national origin; and (d) if applicable, to send to each labor union or representative of workers with which the construction contractor has a collective bargaining agreement or other contract or understanding



a notice, the form of which is to be provided by the Lessor, advising the union or representative of the Lessee's commitment and posting copies of the notice in a conspicuous places available to employees and applicants for employment.

## **20.2 Community Small Business Enterprise**

Lessee shall work towards achieving Community Small Business Enterprise ("CSBE") goals, employing the requirements of the Community Small Business Enterprises set forth in the City of Miami Procurement Ordinance, codified in Chapter 18, Article III, City Code, as a model; and shall try to attain, but not mandate, a plan for its achievement, which will strive to provide equal opportunity in hiring and promoting for Miami-Dade County certified CSBE companies, the disabled and veterans. Such plan shall include a set of positive measures taken to insure utilization of CSBE companies when practicable and nondiscrimination in the work place as it relates to hiring, firing, training and promotion.

## **20.3 Non-Discrimination**

Lessee represents and warrants to the Lessor that it will comply with §18-188, §18-189 and §18-190 of the City of Miami Code incorporated herein. Lessee hereby represents and warrants that it shall not engage in discriminatory practices and shall not discriminate in connection with Lessee's use of the Premises on account of race, national origin, ancestry, color, sex, religion, age, handicap, familial status, marital status or sexual orientation. Further, should the Lessee introduce or have existing membership rules for patrons at the Premises, that it will comply with the non-discrimination provisions incorporated within §18-188, §18-189, §18-190, and §18-191 of the City of Miami Code as incorporated herein by reference.

## **ARTICLE XXI MISCELLANEOUS**

### **21.1 Accord and Satisfaction**

No payment by Lessee or receipt by Lessor of a lesser amount than the Rent or other amount due as specified herein shall be deemed in satisfaction of any such amounts owed; nor shall any endorsement or statement on any check remitting partial payment or any letter accompanying any partial payment be deemed an accord and satisfaction of Lessee's debt. Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such Rent or pursue any other remedy provided herein or by law.

### **21.2 Public Records**

Lessee shall additionally comply with Section 119.0701, Florida Statutes, including without limitation: (1) keep and maintain public records that ordinarily and necessarily would be required by the City to perform this service; (2) provide the public with access to public records on the same terms and conditions as the City would at the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from disclosure are not disclosed except as authorized by law; (4) meet

all requirements for retaining public records and transfer, at no cost, to the City all public records in its possession upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from disclosure requirements; and, (5) provide all electronically stored public records to the City in a format compatible with the City's information technology systems.

**21.3 Entire Agreement**

This Lease and the Exhibits attached hereto and forming a part thereof as if fully set forth herein constitute all of the covenants, promises, agreements, conditions and understandings between Lessor and Lessee concerning the Premises and there are no covenants, promises, conditions or understandings, either oral or written, between them other than those set forth herein. All representations, either oral or written, made between the Parties shall be deemed to be merged into this Lease. No course of prior dealings between the Parties or their officer's employees, agents or affiliates shall be relevant or admissible to supplement, explain or vary any of the terms of this Lease. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement between the Parties or their affiliates shall not be relevant or admissible to determine the meaning of any of the terms of this Lease. Except as herein otherwise provided, no subsequent alteration, change or addition to this Lease shall be binding upon Lessor or Lessee unless reduced to writing and signed by the Parties. Any amendments to this Lease must be approved with the same formalities as were used in its execution; providing, however, that the City Manager may administratively execute non-material (i.e. non-substantial) amendments of the Lease in the exercise of his professional discretion. This Lease has been negotiated "at arm's length" by and between Lessor and Lessee, each having the opportunity to be represented by legal counsel of its choice and to negotiate the form and substance of this Lease, and therefore, in construing the provisions of this Lease neither party will be deemed disproportionately responsible for draftsmanship.

**21.4 Independent Parties**

It is understood and agreed by the Parties hereto that this Lease does not create a fiduciary or other relationship between the Parties, other than as Lessor and Lessee or contracting parties, as applicable. Lessor and Lessee are and shall be independent contracting parties and nothing in this Lease is intended to make either Party a general or special agent, joint venturer, partner or employee of the other for any purpose.

**21.5 Notices**

Any notice by the Parties required to be given must be served by certified mail return receipt requested, or by hand delivery, addressed to Lessor or Lessee at:

If to Lessor at:

City Manager  
City of Miami

If to Lessee at:

\_\_\_\_\_  
\_\_\_\_\_

444 SW 2nd Avenue, 10th Floor  
Miami, Florida 33130

\_\_\_\_\_  
Attn: \_\_\_\_\_

With copies to:

With a copy to:

City of Miami City Attorney  
Office of City Attorney  
444 SW 2nd Avenue, 9th Floor  
Miami, Florida 33130

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

City of Miami  
Director, Department of Real Estate and  
Asset Management  
444 SW 2nd Avenue, 3rd Floor  
Miami, Florida 33130

All notices given hereunder shall be effective and deemed to have been given upon receipt by the party to which notice is being given, said receipt being deemed to have occurred upon hand delivery or posting, or upon such date as the postal authorities shall show the notice to have been delivered, refused, or undeliverable, is evidenced by the return receipt or proof of deliver. Notwithstanding any other provision hereof, Lessor shall also have the right to give notice to Lessee in any other manner provided by law. If there shall be more than one Lessee, any notice required or permitted by the terms of this Lease may be given by or to any one thereof, and shall have the same force and effect as if given to all thereof.

**21.6 Captions and Section Numbers**

The captions, section numbers, and article numbers appearing in this Lease are inserted only for convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Lease nor in any way affect this Lease.

**21.7 Partial Invalidity**

If any term, covenant or condition of this Lease or the application thereof to any person or circumstances shall, to any extent, be deemed invalid or unenforceable by a Court with jurisdiction, the remainder of this Lease shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**21.8 Estoppel Certificate**

Each party agrees that it will, at any time and from time to time, within ten (10) business days following written notice by the requesting party specifying that it is given pursuant to this section, execute, acknowledge and deliver to the requesting party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect and stating the modifications), and the date to which the Base Rent, Percentage Rent and any other payments due hereunder from Lessee

have been paid in advance, if any, and stating whether or not there are defenses or offsets claimed by the certifying party and whether or not to the best knowledge of certifying party, the requesting party is in default in performance of any, covenant, agreement or condition contained in this Lease, and if so, specifying each such default of which certifying party may have knowledge.

The failure of the certifying party to execute, acknowledge and deliver to the requesting party a statement in accordance with the provisions of this Section within said ten (10) business day period, shall constitute an acknowledgment by the certifying party, which may be relied on by any person holding or proposing to acquire an interest in the Premises or any party thereof, that this Lease is unmodified and in full force and effect and that all Rent and dues have been fully paid to and including the respective due dates immediately preceding the date of such notice, and shall constitute, as to any person entitled as aforesaid to rely upon such statement, a waiver of any defaults which may exist prior to the date of such notice. It is agreed that nothing contained in the provisions of this Section shall constitute waiver by requesting party of any default in payment of rent or other charges existing as of the date of such notice and, unless expressly consented to in writing by requesting party and, certifying party shall still remain liable for the same. There will be a two hundred fifty dollar (\$250.00) regulatory fee per Section 166.221, Florida Statutes for each request made of Lessor for each Estoppel Certificate requested, payment in full shall be made at the time of the request. No certificate shall be issued without payment of the fee.

#### **21.9 Waiver**

Failure on the part of either party to complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be deemed to be a waiver by such party of any of its rights hereunder. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by either party shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval to or of any action by either party requiring such consent or approval shall not be deemed to waive or render unnecessary such consent or approval to or of any subsequent similar act by such party.

#### **21.10 Time is of the Essence**

Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

#### **21.11 No Discrimination**

It is intended that the Premises shall be operated in a manner whereby all customers, employees, licensees and invitees of the Lessee shall have the opportunity to obtain all the goods, services, accommodations, advantages, facilities and privileges of the Premises without discrimination because of race, creed, color, sex, age, national origin, ancestry, handicap or disability of any kind. To that end, Lessee shall not discriminate in the conduct and operation of its business in the Premises against any person or group of persons because of the race, creed,

color, sex, age, national origin, ancestry, handicap or disability of such person or group of persons.

**21.12 Governing Law, Venue, & Attorney's Fees**

It is the intent of the Parties hereto that all questions with respect to the construction of the Lease and the rights and the liabilities of the Parties hereto shall be determined in accordance with the laws of Florida. Additionally, all disputes civil action or legal proceeding arising out of or relating to this Lease shall be brought in the courts of record in Miami-Dade County. Each party shall bear their own attorney's fees in civil actions between them arising out of this Lease except the prevailing party may be awarded by the court in action for removal of the Lessee as provided by Florida Statute 83. 231, as amended or modified.

**21.13 Waiver of Counterclaims**

Lessee shall not impose any permissive counterclaim(s) for damages in a summary proceeding or other action based on termination or holdover, it being the intent of the Parties hereto that Lessee be strictly limited in such instances to bringing a separate action in the court of appropriate jurisdiction. The foregoing waiver is a material inducement to Lessor making, executing and delivering this Lease and Lessee's waiver of its right to counterclaim in any summary proceeding or other action based on termination or holdover is done so knowingly, intelligently and voluntarily.

**21.14 Waiver of Jury Trial**

Lessor and Lessee hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the Parties hereto against the other on, or in respect of, any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Lessor and Lessee hereunder, and/or Lessee's use or occupancy of the Premises.

**21.15 Quiet Enjoyment**

Subject to the terms of this Lease, upon the observance by the Lessee hereunder of all the terms, provisions, covenants and conditions imposed upon the Lessee, the Lessor covenants to the Lessee that Lessee shall peaceably and quietly hold, occupy and enjoy the Premises for the Lease Term without any interruption, disturbance or hindrance by the Lessor, its successors and assigns, or by persons claiming by, through or under the Lessor for the Premises leased herein, or by persons with title superior to the Lessor, its successors and assigns.

**21.16 Surrender of Possession**

Upon the expiration or earlier termination of the Lease pursuant to the provisions hereof, the Lessee shall deliver to the Lessor possession of the Premises in good repair and condition, reasonable wear and tear excepted.

**21.17 Joint and Several Liability**

If two or more individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) shall sign this Lease as Lessee, or by virtue of a Transfer assume the rights and obligations of the Lessee hereunder, the liability of each such individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) to pay Rent and perform all other obligations hereunder shall be deemed to be joint and several, and all notices, payments and agreements given or made by, with, or to any one of such individuals, corporations, partnerships or other business associations shall be deemed as having been given to all of them.

**21.18 Third Party Beneficiary**

Nothing contained in this Lease shall be construed so as to confer upon any other party the rights of third party beneficiary.

**21.19 Radon**

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 unit.

**21.20 No Liability for Act of other Party**

Lessee shall not sign any contract or application for any license or permit or do anything that may result in liability to the Lessor for any indebtedness or obligation of Lessee, unless expressly provided herein or approved in writing by the Lessor. Except as expressly authorized in writing or agreed to herein, neither Lessor nor Lessee shall make any express or implied agreement, warranties, guarantees or representations or incur any debt, or represent that their relationship is other than Lessor and Lessee, for the management and operation of the Premises; neither Lessor nor Lessee shall be obligated by or have any liability under any agreements or representations made by the other that are not expressly authorized in writing. Lessor reserves the right, at its sole option, to refuse an agreement for any Federal, State or local grants and loans when the acceptance of same by either Lessor or Lessee may impose a hardship upon Lessor or include obligations which extend beyond the Lease Term.

**21.21 Rights, Privileges and Immunities; Covenants**

The Lessee shall have, and the Lessor shall fully cooperate in providing to the Lessee, for its use and enjoyment, all rights, privileges and immunities as shall from time to time be granted or afforded by Federal, State or local law to restaurant operators or proprietors.

**21.22 Consents.**

Wherever in this Lease the consent of one party is required for an act of the other party, unless otherwise specified, such consent shall not be unreasonably withheld, delayed or conditioned.

The Parties agree that each of the terms, covenants and conditions hereof agreed to be observed or performed by each party shall constitute concurrent conditions of exchange.

**IN WITNESS WHEREOF**, Lessor and Lessee have executed this Lease, or have caused the same to be executed, as of the date and year first above written.

**LESSOR:**

**CITY OF MIAMI**, a municipal corporation  
of the State of Florida

By: \_\_\_\_\_  
Daniel J. Alfonso  
City Manager

**ATTEST:**

By: \_\_\_\_\_  
Todd B. Hannon  
City Clerk

**APPROVED AS TO INSURANCE  
REQUIREMENTS:**

By: \_\_\_\_\_  
Ann-Marie Sharpe, Director  
Risk Management Department

**APPROVED AS TO LEGAL FORM &  
CORRECTNESS:**

By: \_\_\_\_\_  
Victoria Méndez  
City Attorney



**LESSEE:**  
[INSERT LESSEE'S NAME]

\_\_\_\_\_  
Name of Authorized Agent  
Title

**CORPORATE SEAL**

**ATTESTED BY:**

**By:** \_\_\_\_\_  
Name  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Company Name

**By:** \_\_\_\_\_  
Name  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Company Name

**GUARANTOR:**  
By:[PARENT COMPANY]

\_\_\_\_\_  
Name of Authorized Agent  
Title

**CORPORATE SEAL**

**ATTESTED BY:**

**By:** \_\_\_\_\_  
Name  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Company Name

By:[PRESIDENT OF LESSEE]

\_\_\_\_\_  
Name  
President

**EXHIBIT A**  
**SURVEY/LEGAL DESCRIPTION OF PREMISES**

*[to be inserted prior to execution]*

**EXHIBIT B**  
**ANNUAL PERCENTAGE RENT STATEMENT**

*[to be inserted prior to execution]*

**EXHIBIT C**  
**ANNUAL GROSS REVENUE REPORT**

*[to be inserted prior to execution]*

**EXHIBIT D**  
**MONTHLY GROSS REVENUE REPORT**

*[to be inserted prior to execution]*

**EXHIBIT E**  
**LESSEE'S LEASEHOLD IMPROVEMENTS**

*[to be inserted prior to execution]*

**EXHIBIT F**  
**PAYMENT & PERFORMANCE BOND**

*[to be inserted prior to execution]*

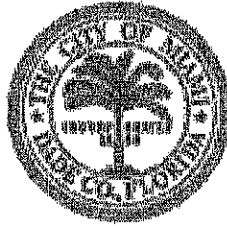
**EXHIBIT G**  
**CONTRACTOR INSURANCE REQUIREMENTS**

*[to be inserted prior to execution]*



**EXHIBIT H**  
**LEASEHOLD INSURANCE REQUIREMENTS**

*[to be inserted prior to execution]*



**LEASE AGREEMENT**

**BETWEEN**

**THE CITY OF MIAMI**

**AND**

**RIVERSIDE WHARF, LLC**

**FOR THE LEASE OF**

**CITY-OWNED PROPERTY**

**LOCATED AT**

**236 AND 298 SW NORTH RIVER DRIVE**

**MIAMI, FL 33130**

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**LEASE AGREEMENT**

THIS LEASE AGREEMENT ("Lease"), made this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the CITY OF MIAMI, a municipal corporation of the State of Florida having its offices at 3500 Pan American Drive, Miami, Florida 33133 ("Lessor" or "City") and Riverside Wharf, LLC, a Limited Liability Company, having its offices at 2950 Northwest 7<sup>th</sup> Avenue, Miami, Florida 33127, ("Lessee"). The Lessor and Lessee, (together the "Parties") hereby recite:

**RECITALS**

Whereas, the City is the owner in fee simple of certain land located in the City of Miami, Miami-Dade County, Florida referred to herein as the "Premises," as specifically set forth in Exhibit A.

Whereas, in response to the North River Property Request for Proposals # 14-15-024 ("RFP"), Lessee submitted to Lessor a proposal, which was approved by the City Commission on \_\_\_\_\_ by Resolution No. \_\_\_\_\_.

Whereas, this Lease was negotiated pursuant to the authority expressly conferred by the City of Miami Charter, general law, and the City Commission Resolution No. \_\_\_\_\_, which authorized the execution of this Lease.

Whereas, this Lease was approved by referendum on March 15, 2016 by a majority of City of Miami voters as required by City of Miami Charter Section 3(f)(iii).

Whereas, it is the mutual desire of the Parties that the Property be leased and demised by Lessor to Lessee for the purposes set forth in this Lease, subject to and upon the express terms and conditions contained herein. The Parties believe that this Lease is consistent in all material respects with the RFP.

Now therefore, in consideration of the foregoing and of the rent, covenants, and agreements hereinafter set forth, the Parties do hereby covenant and agree as follows:

**ARTICLE I  
INCORPORATION, EXHIBITS, & DEFINITIONS**

Any word contained in the text of this Lease shall be read as the singular or the plural and as the masculine, feminine or neuter gender as may be applicable in the particular context. More specifically, however, for the purposes of this Lease, the following words shall have the meanings attributed to them herein in subsection 1.3.

**1.1 Incorporation by Reference**

The foregoing Recitals are hereby incorporated into this Lease by this reference as if set out in full in the body of this Lease.

## 1.2 Exhibits

Attached hereto and forming a part of this Lease are the following Exhibits:

Exhibit A	--	Survey/Legal Description of Premises
Exhibit B	--	Annual Percentage Rent Statement
Exhibit C	--	Annual Gross Revenue Report
Exhibit D	--	Monthly Gross Revenue Report
Exhibit E	--	Lessee's Leasehold Improvements
Exhibit F	--	Payment & Performance Bond
Exhibit G	--	Contractor Insurance Requirements
Exhibit H	--	Leasehold Insurance Requirements

## 1.3 Definitions

- 1.3.1 "**Acceptable Operator**" means an entity possessing (A) a minimum of five (5) years of experience (i) directly managing and operating a similar establishments during the last fifteen (15) years; or (ii) directly involved in the ownership and day to day operation of a similar establishment during the last ten (10) years; and (iii) in the management and operation for each use proposed; and (B) the threshold criteria outlined in the City of Miami Department of Real Estate and Asset Management RFP # 14-15-024; and C) a good reputation in the business community; and (D) adequate financial resources and personnel necessary for the proper performance of all of Lessee's obligations under this Lease in a manner consistent with the quality, reputation and economic viability of the Lessee's business at the Premises, including (without limitation) the obligation of payment of Rent payable by Lessee under this Lease.
- 1.3.2 "**Additional Rent**" means any and all additional sums, charges, or amounts of whatever nature to be paid by Lessee in accordance with the terms of this Lease, whether or not such sums, charges or amounts are referred to as Additional Rent.
- 1.3.3 "**Applicable Law(s)**" means all laws, Florida Statutes, Codes, City and Miami-Dade County Ordinances, orders, judgments, decrees and injunctions from courts having jurisdiction over the Premises, rules, and requirements of State and local boards and agencies with jurisdiction over the Premises, now existing or hereafter enacted, adopted, foreseen and unforeseen, ordinary and extraordinary, which may be applicable to the Premises or any part of it.
- 1.3.4 "**Assignment**" refers to the complete transfer of the rights and obligations of the Lessee under the Lease to a third party, whereupon the third party assignee becomes the Lessee under the Lease and takes over all of the Premises and the rent and other obligations associated with the Lease, thereby assuming the prior tenant's rights and obligations.



- 1.3.5 "**Assignee**" refers to the third-party entity assuming the rights and obligations of the Lessee or assignor or owner of the leasehold estate.
- 1.3.6 "**Assignor**" refers to the Lessee that is assigning its rights and obligations under this Lease to a third-party entity. Unless released from liability from the City pursuant to Section 10.10 of this Lease, which decision shall be conditioned on the payment of the consideration at the time of Assignment set forth in Section 10.3 of this Lease, the Assignor shall remain secondarily liable as a guarantor for the obligations under the Lease, if the new Lessee (Assignee) defaults under the Lease.
- 1.3.7 "**Average Repair Costs**" shall mean the average of the previous five (5) years' "repair and maintenance" line-item costs, inclusive of any capital items. Average Repair Costs shall be calculated in order to determine the annual amount due to the CapEx Fund, as specified in section 7.4 below.
- 1.3.8 "**Base Rent**" shall mean the annual Base Rent due and payable by Lessee on a monthly basis for the use of the subject Premises and shall have the sum ascribed to it in Section 4.1.1.
- 1.3.9 "**Business Days**" means Monday through Friday, excluding legal holidays in the City of Miami, Florida.
- 1.3.10 "**City Manager**" shall mean the Chief Administrative Officer of the City. In day to day matters all decisions attributed to the City in this Lease may be made by the City manager, or his authorized designee, unless otherwise specified.
- 1.3.11 "**City Commission**" shall mean the local legislative body of the Executive Mayor City Commission. Notwithstanding Section 1.3.9 above the City Commission will be required to approve the Lease and any amendments to the Lease
- 1.3.12 "**Date of Taking**" means the earlier of (i) the date on which actual possession of all or less than all of the Premises, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of any applicable law; or (ii) the date on which title to all or less than all of the Premises, as the case may be, has vested in any lawful power or authority pursuant to the provisions of any applicable law.
- 1.3.13 "**Fair Market Value**" has the meaning set forth in Section 4.1.6 of this Lease and secondarily as supplemented by the applicable terms of the RFP. For purposes of this Lease, "Fair Market Value" will have the same meaning as "Fair Market Rent."
- 1.3.14 "**Force Majeure**" means an event beyond human control, including but not limited to acts of national security, national emergency acts of God, war, act or threats of terrorism, Government regulation, strikes (other than strikes of Licensee's employees), fire or other natural calamity, disorder, civil disobedience, curtailment of transportation facilities or service, or any occurrence which makes it inadvisable, illegal, or impossible for Licensee to perform its obligations under this License. Force Majeure shall not include events caused, directly or indirectly, by Lessee or individuals or entities under Lessee's control..

- 1.3.15 "**Gross Condemnation Award**" means the actual amount of the award paid in connection with or arising from the acquisition or other taking of all or less than all of the Premises, as the case may be.
- 1.3.16 "**Gross Insurance Proceeds**" means the actual amount of insurance proceeds paid following an insured casualty to the Leasehold Improvements.
- 1.3.17 "**Gross Revenues**" shall mean the entire amount of all revenues and percentages of revenues actually collected and received by the Lessee and its Sub-lessees or its assignees or transferees and derived from the following sales sources, including without limitation:
- a. all revenue from the commercial business and services conducted by Lessee and its Sub-lessees and/or assignees on or from the Premises;
  - b. all revenues from sales of food, beverage, wine, beer, merchandise or services from the Premises;
  - c. all revenue derived from advertising and sponsorships conducted on the Premises, including, but not limited to, movies, television commercials, etc.;
  - d. all amounts received from any catering food operations based at the Premises;
  - e. all amounts received by Lessee from valet concession sales, parking valet services or similarly authorized and permitted concessions on the Premises where the Lessee receives and retains any portion, percentage or fraction of the cost of such sales or services in any manner from the Concessionaire, these sales are subject to verification by a written concession agreement, and any audit or inspection requested by the Lessor in accordance with the requirements of Section 18-99 through 18-102 of the City Code, which is deemed incorporated by reference as if fully set forth herein;
  - f. all amounts received by Lessee from sales made or performed by means of mechanical or other vending devices or machines on the Premises, including without limitation, payphones, vending machines, and entertainment devices both for cash and on credit, rendered in or upon the Premises;
  - g. all revenue received by Lessee in connection with the special events uses of the Premises, any facility thereon, or any portion thereof for any period of time, including banquets, parties, and receptions held on or initiated from the Premises;
  - h. amounts received by Lessee from internet or telephone food/beverage orders received or filled at the Premises, or procured from the Premises by house-to-house or other canvassing, including discount, merchant and online savings incentives including, without limitation, sources and programs such as Groupon, all deposits not refunded to purchasers, and orders taken, although said orders may be filled elsewhere, including proceeds of all video games;
  - i. all grants, subsidies, rebates, credits or similar benefits received from any federal, state, regional or local body, agency, authority, department or organization which revenues are unrestricted or are to be used for general operating expenses;
  - j. all donations and contributions received, the revenues of which are unrestricted or are to be used for general operating expenses;
  - k. and all other receipts whatsoever derived from commercial operations conducted in or from the Premises by the Lessee and its Sub-lessees (if any).

Gross Revenues, whether for cash, credit, credit cards or otherwise, shall be recognized in the period the service was provided or sale took place. Payments received in advance are deferred and are recognized as revenue in the period the service is rendered or sale takes place. Grants shall be recorded as income during the period designated by the grants or when the Lessee has incurred expenditures in compliance with the restrictions of the grantor. If a sale is by credit card, no deduction shall be allowed for any commission associated with such sale.

A "sale" shall be deemed to have been consummated for the purpose of this Lease, and the entire amount of sales price collected by Lessee and Sub-lessees, shall be included in Gross Revenues, at such time that (i) the transaction is initially reflected in the books or records of Lessee or Sub-lessee(s); or (ii) Lessee or Sub-lessee(s) receives all or any portion of the sales price; or (iii) the applicable goods or services are delivered to the customer and payment is made to Lessee or Sub-lessee(s), whichever first occurs, irrespective of whether payment is made in installments, the sale is for cash or for credit, or otherwise, or all or any portion of the sale price has actually been paid at the time of inclusion in Gross Revenues or at any other time.

- 1.3.18 "**Impositions**" means all assessments, impositions, levies, and governmental charges, including, without limitation, assessments imposed by the City and/or County, franchise fees, fire fees, excises, parking surcharges, license and permit fees, levies, charges and taxes, including ad valorem real estate taxes on the Premises and the Leasehold Improvements, general and special, ordinary and extraordinary property levied against the Premises and the Leasehold Improvements, any personal property, and/or the Lessee's Leasehold Estate which constitute a lien on the Premises or the Leasehold Improvements.
- 1.3.19 "**Lease**" means this Lease as supplemented by the RFP, any addendums thereto, and the Lessee's response to the RFP, all of which are hereby incorporated by reference into this Lease as additional documents providing supplemental terms and conditions; provided, however, that in the event of any express conflicts between this Lease and the other documents referenced in this subsection this Lease shall govern.
- 1.3.20 "**Lease Date**" means the date that the Lease is fully executed and legally binding upon the Parties after approval by the City of Miami Commission. The Lease Date shall also be the date on which Rent commences to become due and payable as referenced in Article IV.
- 1.3.21 "**Leasehold Estate**" means all of Lessee's right and interest as Lessee in, to and under this Lease, the Premises and the Leasehold Improvements, if applicable.
- 1.3.22 "**Leasehold Improvements**" means any initial furnishings or equipment constituting fixtures to be installed on the Premises, and all other items and improvements constituting fixtures to be installed or constructed thereafter, from time to time during the Lease Term that are hereafter located upon the Premises.
- 1.3.23 "**Leasehold Mortgage**" means a mortgage, deed of trust, or any security interest given in connection therewith, which together constitute an encumbrance or lien

upon the Lessee's Leasehold Estate or any part of it, or any related personal property, and Lessee's interest in the Leasehold Improvements as security for any loan. The Leasehold Mortgage may never lien, pledge, hypothecate, or otherwise encumber the fee simple interest of the Lessor.

- 1.3.24 "**Lease Term**" means the period of time fixed in Section 3.1 and shall be deemed to include the additional period of time fixed in Section 3.2 if Lessee exercises Lessee's right to renew the Lease.
- 1.3.25 "**Lease Year**" means twelve (12) full consecutive months. The first Lease Year shall begin on the Lease Date. If the Lease Date does not fall on the first day of the month, the first Lease Year will commence on the first day of the following month. Each succeeding Lease Year shall commence on the anniversary date of the first Lease Year.
- 1.3.26 "**Percentage Rent**" shall have the meaning ascribed to it in Section 4.1.4 and shall be payable annually and calculated as a percentage of the Gross Revenues.
- 1.3.27 "**Premises**" means the space more particularly described in Section 2.1 herein and Exhibit A attached herewith and incorporated herein by reference, and having a collective address of 236 and 298 SW North River Drive, Miami, Florida.
- 1.3.28 "**Proposal**" means the document received by Lessor from Lessee in response to the RFP.
- 1.3.29 "**Rent**" means the greater of Base Rent or Percentage Rent and any other rents, costs and expenses denominated as Additional Rent.
- 1.3.30 "**RFP**" means the document entitled Request for Proposals # 14-15-024, issued by the City on June 15, 2015, and any addendums thereto.
- 1.3.31 "**Sublease**" means any lease (excluding this Lease), sublease, license, concession or other agreement by which Lessee or any person or other entity claiming under Lessee (including, without limitation, a Sub-lessee or sub-licensee) demises, leases, subleases, licenses or sublicenses to or permits the use or occupancy by another person or entity of any part of the Premises and Leasehold Improvements.
- 1.3.32 "**Sub-lessee**" means any person, firm, corporation or other legal entity using or occupying or entitled to use or occupy any part of the Premises or the Leasehold Improvements under a Sublease.

#### 1.4 Priority of Documents

The North River Property Request for Proposals # 14-15-024 ("RFP") shall be incorporated hereto by reference. Following the issuance of the RFP, Lessee submitted a Proposal ("Proposal"), which was accepted by the City. The above-referenced documents shall be interpreted to avoid conflicts, where possible. In the event of an express conflict between the above-referenced documents and the terms of this Lease, the following order of priority shall govern:

- 1.4.1 This executed Lease and its exhibits shall govern over the RFP and the Proposal;
- 1.4.2 The RFP shall govern over the Proposal;

1.4.3 The Proposal will be subordinate to the Lease and the RFP, respectively.

## ARTICLE II LEASE OF PREMISES

### 2.1 Lease of Premises

The Lessor does hereby lease, let and demise to the Lessee, and the Lessee hereby leases from the Lessor the Premises, subject to the following terms and conditions, to have and to hold the said lands, tenements and hereditaments, with all of the rights, privileges and appurtenances, thereunto belonging or pertaining unto Lessee for the Lease Term herein specified, unless this Lease shall be sooner terminated in a manner hereinafter provided. The Premises is described more particularly in Exhibit A attached hereto and incorporated herein by reference.

Lessee shall have all rights, privileges, easements and appurtenances, if any, benefiting the Premises in, over and upon adjoining and adjacent public and private land, highways, roads and streets reasonably required for ingress or egress to or from the Premises by Lessee, its agents, servants, employees, contractors, customers and invitees and all others related to Lessee's use and occupancy of the Premises. Notwithstanding any language in this Lease to the contrary, Lessor is the fee simple owner of the Premises, and this Lease shall in no way convey any title or other rights to the Premises to Lessee unless otherwise specified herein; Lessee may not mortgage, pledge, transfer, hypothecate, or otherwise encumber Lessor's fee simple ownership interest in the Premises in any way, or in any way pledge any rights held by the fee simple owner.

### 2.2 Purpose of Use and Occupancy

The Lessee will use and occupy the Premises, subject to compliance with all applicable laws, rules, regulations, permits, licenses, consents, and similar approvals, including the requirements set forth in the RFP, for the development, management and operation of restaurants on the Premises and for other ancillary purposes, without the prior written consent of Lessor, and for no other purpose or use of any kind. Reasonably related special events may be held on the Premises with the City's prior written consent; the request for such special event must be provided a minimum of thirty (30) days prior to the date of the event.

Except as otherwise set forth in this Lease, the Lessee will operate the Premises a minimum of \_\_\_\_\_ hours per week, except in cases of Force Majeure or any reasonable period of remodeling, repair or reconstruction of the Premises, which remodeling, repair or reconstruction may not, without the City's prior written consent, exceed a continuous period of thirty (30) days in any calendar year, or more than a cumulative total period of forty five (45) days in any calendar year.

### 2.3 Suitability of Premises

Lessee acknowledges that neither the Lessor nor any of Lessor's officers, representatives, or employees has made any representation or warranty with respect to the Premises, or with respect to the suitability or fitness of the Premises, for the conduct of Lessee's operations or for any other purpose, except as set forth in this Lease or in the RFP. The execution of this Lease by

Lessee shall establish that the Lessee accepts the condition of the Premises "AS IS," subject to the representations set forth in Section 2.4 herein, the RFP or elsewhere in this Lease.

#### 2.4 Limited Representations by Lessor

Lessor makes the following representations, covenants and warranties which shall survive the execution of this Lease and the taking of possession of the Premises by the Lessee:

- a) That Lessor has taken all requisite actions to make this Lease binding upon Lessor, and Lessor has marketable, fee simple title to the Premises, and is the sole owner of and has good right, title and authority to convey and transfer all rights and benefits which are the subject matter of this Lease, free and clear of all known liens and encumbrances. Absent emergency action, or other Municipal Home Rule Action required by the public health, safety and general welfare, Lessor covenants with Lessee that it will not, during the Lease Term and any option period hereof, conferred and validly exercised, knowingly permit the imposition upon the Premises any liens, encumbrances, mortgages, easements or any other matters affecting title which would preclude or otherwise materially affect Lessee's quiet enjoyment of the Premises. The obligation of the Lessor set forth in the preceding sentence is not intended to limit the ability of the Lessor, acting in its governmental capacity, to exercise its police powers with respect to the Premises and any activities within the Premises.
- b) That no party, other than Lessee, shall on the Lease Date be in or have any right to possession of the Premises.
- c) That the terms of this Lease, including, without limitation, the intended use of the Property by Lessee, are not in violation of or expressly inconsistent with any operative agreement or covenant known to Lessor of any kind whatsoever which relates to the Property.

#### 2.5 Satisfaction of Liens

Lessor shall satisfy or cancel of record all existing liens and encumbrances affecting the Premises as of the Lease Date except as otherwise set forth in this Lease.

### ARTICLE III TERM

#### 3.1 Term of Lease

The initial Lease Term is for a period of thirty (30) years, commencing on the Lease Date. The Lease Term shall be extended to include any fraction of a calendar month between the Lease Date and the first day of the first full calendar month thereof.

#### 3.2 Option to Renew

The Lessee has the option of extending this Lease for two (2) additional terms of ten (10) years each ("First Renewal Term" and "Second Renewal Term"), as long as the Lessee is not in Default of any of the Lease provisions. To exercise the First Renewal Term or the Second Renewal Term, the Lessee must give Lessor written notice by the latter of (i) the date which is

one hundred eighty (180) prior to the expiration date of the Lease Term or the First Renewal Term or (ii) the date thirty (30) days following written notice from Lessor advising Lessee that Lessee has failed to furnish notice of its option to exercise the First Renewal Term or the Second Renewal Term, as applicable, in the manner provided for herein, which notice shall state that such notice constitutes final notice to Lessee of its option to exercise the First Renewal Term or the Second Renewal Term, as applicable. The First Renewal Term and the Second Renewal Term will be on the same terms and conditions as the Lease Term, except that the Base Rent will be adjusted as set forth in Section 4.1.2 below. The total term of the Lease, inclusive of the First and Second Renewal Term, is fifty (50) years. No additional renewals will be available.

#### ARTICLE IV RENT, SECURITY DEPOSIT, & FINANCIAL RECORDS

##### 4.1 Base Rent or Percentage Rent

Commencing on the Lease Date and on the first (1<sup>st</sup>) day of every calendar month thereafter during the Lease Term, Lessee hereby agrees to pay to the Lessor the Base Rent. If the first payment of Base Rent does not fall on the first day of the month, the first payment shall be prorated based on the number of days in such month.

The Lessee hereby agrees to pay the Lessor the greater of a) the Base Rent defined in Section 4.1.1 below, or b) Percentage Rent as defined in Section 4.1.4 on an annual basis as set forth in this Article.

In the event that Lessee fails to provide payment of Rent in the time required by the terms of this section, shall be subject to a Late Fee in addition to payment then due, as more particularly described in Section 16.4 below.

##### 4.1.1 Base Rent.

The Base Rent shall be One Hundred and Ninety-Five Thousand and 00/100 Dollars (\$195,000) per year. The Base Rent shall be adjusted and increased annually by the method described in Section 4.1.2 below upon the commencement of the second Lease Year.

##### 4.1.2 Base Rent Increase

Lessee agrees that the Base Rent shall be increased annually by an amount equal to the greater of: an increase by three percent (3%) of the previous year's Base Rent, or an increase based on the amount indicated by the Consumer Price Index as of three (3) months prior to the beginning of the applicable adjustment date. In no event shall any such annual adjustment to the Base Rent result in an increase that is less than three percent (3%), or more than Five Percent (5%) of the Base Rent in the year amount immediately prior to the effective date of such adjustment.

##### 4.1.3 Sales Tax

The Lessee shall be liable for the prevailing State of Florida Sales, Use or similar tax imposed on the amount of Rent paid to Lessor under this Lease, in the absence of an exemption or other reduction by the State of Florida. This Sales and Use Tax shall be payable to the Lessor when Rent is due, and in turn, Lessor will remit the same, less any authorized handling deductions, if any, to the State.

**4.1.4 Percentage Rent**

Percentage Rent shall be equal to a percentage of Lessee's annual Gross Revenues made from or upon the Premises for that same time period. Percentage Rent shall be computed on an annual basis ("Percentage Rent Period") beginning with the Lease Date and continuing throughout the Term.

The Percentage Rent shall be equal to fifteen percent (15%) of the combined Gross Revenues of the Lessee for any preceding Lease Year. **PERCENTAGE RENT SHALL BE SUBJECT TO NEITHER NATURAL NOR ARTIFICIAL BREAKPOINT.**

**4.1.5 Manner of Payment**

The Percentage Rent shall be payable within sixty (60) days after the end of each Lease Year. Lessee shall deliver to the Lessor a statement setting forth the Gross Revenues during the applicable Percentage Rent Period ("Annual Percentage Rent Statement"), and Lessee shall pay to the City the amount of Percentage Rent due and payable, if any, to the Lessor pursuant to the terms of this Lease. Each Annual Percentage Rent Statement shall be signed and certified to be complete and correct by an officer of Lessee. Such statement shall show the annual Gross Revenues and an itemization of any exclusions or deductions for the current Lease Year. Lessee shall provide the Annual Percentage Rent Statement with an Annual Gross Revenue Report in substantially the same form as attached hereto as Exhibit B and Exhibit C.

Lessee shall

- (i) pay the Lessor (x) the monthly Base Rent and (y) the Percentage Rent, and
- (ii) deliver the corresponding Annual Percentage Rent Statement and Gross Revenue Report for the preceding Lease Year to the City of Miami, Department of Real Estate and Asset Management at the address noted below:

City of Miami  
Department of Real Estate and Asset Management  
Attention: Lease Manager  
444 SW 2nd Avenue, 3rd Floor  
Miami, Florida 33130

**4.1.6 Fair Market Value**

As required by applicable laws, the Lessor has determined that the Base Rent and the Percentage Rent constitutes Fair Market Value. The Lessor has made such determination based on an appraisal of the proposed project as performed by two (2) State-certified general appraisers hired by the Lessor.

**4.2 Security Deposit**

Simultaneously upon the execution of this Lease by Lessee, the Lessee shall pay to the Lessor a security deposit equal to one hundred percent (100%) of the Base Rent specified in section 4.1.1 above (the "Security Deposit"), to be held as security for performance by Lessee of all obligations imposed under this Lease which Lessee is required to perform during the Lease Term, and any extension thereof. The Lessor acknowledges that a portion of the Security Deposit was previously deposited by the Lessee with the Lessor as part of initial earnest money deposit



pursuant to the terms of the RFP. The Security Deposit shall be in the form of cash or its equivalent which funds may be commingled by Lessor with its other funds. No interest shall be paid on the Security Deposit. For so long as the Security Deposit has not been repaid by Lessor, it shall constitute an account payable by Lessor to Lessee within thirty (30) days following termination of this Lease to the extent, if any, that the Security Deposit has not been applied by Lessor as hereunder provided.

If an Event of Default shall occur with respect to any covenant duty, or obligation of Lessee under this Lease, then the Security Deposit or any part thereof may be applied by Lessor, at Lessor's sole discretion, to the damages sustained by Lessor by reason of any such Event of Default or to indebtedness owing by reason of any failure of Lessee to make any required monetary payment under this Lease. No such application shall be construed as an agreement to limit the amount of Lessor's claim or as a waiver of any damage or release of any indebtedness, and any claims of Lessor under this Lease not recovered in full from the Security Deposit shall remain in full force and effect. In no way shall the security deposit serve as liquidated damages for any event of default; rather, Lessor may apply the security deposit amount to damages sustained by Lessee's default and continue to request any additional amount owed.

Further, at any time or times when Lessor has made any such application of all or any part of the Security Deposit, Lessor shall have the right (but not the obligation) at any time thereafter to request in writing that Lessee pay to Lessor a sum or sums equal to the amounts so applied by Lessor so that Lessor will always be in possession of a sum equal to the amount of the Security Deposit stated above. Lessee shall make each such requested remittance within thirty (30) days following such request from Lessor and each such remittance received by Lessor shall thereupon constitute a part of the Security Deposit subject to the terms and provisions thereof. Failure to make any such requested remittance within such thirty (30) day period may be treated by Lessor as a failure by Lessee to make timely payment of rent and as an Event of Default.

The Security Deposit shall be retained by the Lessor throughout the entire term of this Lease and, if not utilized by Lessor, will be returned less interest, and less allowable deductions, credits or setoffs by Lessor, within thirty (30) days following the surrender of the Leased Area at the termination of this Lease, inclusive of any validly exercised option period, as applicable.

#### **4.3 Lessee's Financial Records**

Lessee will establish an operating entity that is unique to the operations of the Lessee in the Premises, as well as one or more bank accounts through which deposits of Gross Revenues generated from such operations will be made. The bank in which such deposits are made shall be based in the United States or shall have a large local presence. The said deposits of Gross Revenues will not be commingled with those from any other operations of the Lessee outside of the Premises or any other affiliated organizations. In addition and/or alternatively, Lessee will use an accounting system that will separately provide for a detailed accounting of Gross Revenues. The detailed accounting shall not be commingled with the Lessee's other operations; and, should comply with federal income tax returns and state sales and use tax returns. Accordingly, Lessee shall prepare and keep full, complete and proper financial records and source documents in accordance with generally accepted accounting principles, of the Gross Revenues, whether for cash, credit or otherwise, of each separate department at any time operated in the Premises.

The financial records and source documents to be kept by Lessee shall include, but shall not be limited to true copies of: (1) records of inventories and receipts of merchandise; (2) profit and loss statements; (3) variance reports; (4) arrearage reports; (5) balance sheets; (6) financial journals and sales summary records; (7) general ledgers; daily dated cash register tapes; (8) daily dated cash register summary tapes ("z" tapes); (9) prenumbered sales slips, including those for mail or telephone orders; daily sales and/or point of sale (pos) reports; (10) financial statements; (11) bank statements; (12) records of daily bank deposits from transactions at or from the premises; (13) duplicate validated bank deposit slips; (14) purchase invoices; (15) inventory and receiving records; (16) pricing schedules or other materials showing price markups; (17) federal, state, and local income tax returns; (18) state and local sales tax reports; (19) settlement statements of transactions with subtenants, concessionaires, and licensees; and any and all records that may be examined or required by an independent accountant in performing an audit of Lessee's Gross Sales or which may be requested by Lessor.

If Lessee subleases the property or provides a license to a third party in accordance with Article X herein, and Lessee's operations require its sub-lessees (or licensees) to pay a security deposit and/or advance rent, Lessee shall deposit such security deposit/advance rent monies into a separate bank account and shall not commingle these monies with any other bank account used in its operations as described herein.

Pertinent original sales records shall include, without limitation: (i) sales reports of back office systems fed from point of sale terminals, (ii) cash register tapes, including tapes from temporary registers, if any, (iii) serially pre-numbered sales slips, (iv) the original records of all mail, internet and telephone orders at and to the Premises, if any, (v) settlement report sheets of transactions with any person conducting business on the Premises, if any, (vi) original records indicating that merchandise returned by customers was purchased at the Premises by such customers, (vii) memorandum receipts or other records of merchandise taken out on approval, (viii) detailed original records of any exclusions or deductions from Gross Revenues, (ix) sales tax records, and (x) such other sales records, if any, which would normally be examined by an independent accountant pursuant to accepted auditing standards in performing an audit of Lessee's sales.

#### **4.4 Reports by Lessee**

Within thirty (30) days following the last day of each month of each Lease Year, Lessee shall furnish to Lessor a monthly statement of Gross Revenues generated in the preceding calendar month ("Monthly Gross Revenue Report"). The Monthly Report shall be signed and certified to be complete and correct by an officer of Lessee. Lessee shall use a Monthly Gross Revenue Report, a sample of which is attached herewith and incorporated herein as Exhibit D to itemize any and all reportable Gross Revenues, or any similar form acceptable to Lessor.

Within sixty (60) days after the end of each Lease Year, Lessee shall also furnish to Lessor the Annual Percentage Rent Statement and Annual Gross Revenue Report specified in section 4.1.5 above, showing in reasonable detail the amount of such Gross Revenues made by Lessee from the Premises during the preceding Lease Year. Any intentional misstatement of Gross Revenues will constitute a default under this Lease.

#### 4.5 Right to Examine Financial Records

Lessor shall have the right to examine, make extracts from, and copy Lessee's financial records, source documents, bank statements, state sales and use tax returns/reports, and federal income tax returns filed by Lessee, and pertaining to the financial operations on the subject property. Lessee shall make all such documents and records available for a period of seven (7) years after the expiration of each Lease Year. Lessee shall furnish such information at the Premises or Lessee's main accounting office upon not less than thirty (30) days prior written notice from Lessor.

#### 4.6 Audit

At its option, Lessor may at any time, upon not less than thirty (30) days, prior written notice to Lessee, arrange for an auditor selected by Lessor to conduct a complete audit (including a physical inventory) of the entire records and operations of Lessee included in Gross Revenues from the Premises during the period covered by any statement issued by Lessee. Lessee shall make available to the Lessor's auditor at the Premises or Lessee's main accounting office on the day set forth in Lessor's notice, requiring such audit, all of the financial records, source documents, variance reports, general ledgers, management reports, arrearage reports, check registers, and any other materials which such auditor deems necessary or desirable for the purpose of performing such audit.

Lessee shall promptly pay to Lessor the amount of any deficiency in Percentage Rent payments disclosed by any such audit. If such audit shall disclose that Lessee's statement of Gross Revenues is at variance to the extent of five percent (5%) or more, Lessor may bill to Lessee the cost of such audit, which Lessee shall pay within thirty (30) days after Lessee's receipt of Lessor's invoice. If such audit shall disclose an overpayment, Lessor shall credit such overpayment toward the next payment of Rent due. In addition to the foregoing, and in addition to all other remedies available to Lessor, in the event Lessee's auditor and Lessor's auditor shall schedule a date for an audit of Lessee's records, and Lessee shall fail to be available or shall otherwise fail to comply with the requirements for such audit, Lessee shall pay all costs and expenses associated with the canceled audit. Lessor and Lessee agree to attempt to resolve any audit dispute not resolved in sixty (60) days following delivery of the final audit by submitting the results of the disputed audit to a mutually acceptable third-party accounting firm for its opinion, the fees of which shall be paid by Lessee.

In addition to Lessor's available remedies, in the event an audit or other reliable information reveals that Lessee's records are unavailable due to Lessee's failure to reasonably maintain such records, Lessor shall be entitled to collect as Additional Rent from Lessee an amount equal to the lesser of (i) fifty percent (50%) of the Percentage Rent (the "Audit Unavailability Penalty") paid by Lessee in the preceding Lease Year prorated for the period in question (i.e., if the period in question is equal to six (6) months, then the Additional Rent provided for herein will be equal to 50% (1/2 of the year) of the Audit Unavailability Penalty) or (ii) the difference between (x) 110% of the Percentage Rent that Lessee has calculated as payable in the year in question and (y) the Percentage Rent paid in the preceding Lease Year. Lessor's exercise of the foregoing remedy shall in no way limit or otherwise affect Lessor's ability to exercise other remedies available to it, nor shall Lessee's obligations pursuant to the terms, covenants and conditions of this Lease (including, without limitation, Lessee's obligation with

respect to reporting Gross Revenues and payment of Percentage Rent) be in any manner reduced or diminished by the exercise of such remedy.

Lessor shall additionally have such audit rights as are set forth by Section 18-102, City Code, which is deemed as being incorporated by reference as if fully set forth herein. In addition Lessor shall have the ability but not the duty to conduct inspections, as are set forth in Section 18-101, City Code, deemed as being incorporated by reference as if fully set forth herein, from time to time, of the Premises as provided.

#### **4.7 Lien for Rent & Other Charges**

The whole amount of the Rent and each and every installment, and the amount of all taxes, assessments, water rates, insurance premiums and other charges and Impositions not paid by the Lessee under the provisions of this Lease, and all costs, attorney's fees and other expenses which may be incurred by the Lessor in enforcing the provisions of this Lease, or on account of any delinquency of the Lessee in carrying out any of the provisions of this Lease, shall be and they are deemed to constitute a valid lien upon the Leasehold Improvements, and upon the Lessee's leasehold estate.

### **ARTICLE V LEASEHOLD IMPROVEMENTS**

#### **5.1 Lessee's Obligation to Provide and Fund Leasehold Improvements**

Should Lessee construct and install improvements to the Premises, Lessee shall, with no less than thirty (30) days prior written notice and at Lessee's sole cost and expense, submit to Lessor for Lessor's approval (not to be unreasonably withheld, delayed, or conditioned) its Plans (defined below) for the commencement and completion of the construction of the Leasehold Improvements. The plans shall include any work or equipment to be done or installed by Lessee affecting any structural, mechanical or electrical part of the Premises ("Plans"). Within thirty (30) days of receipt of the Plans, the Lessor shall give Lessee written notice of either Lessor's approval or disapproval setting forth the reasons therefore.

In the event that Lessor disapproves the Plans, Lessee shall within ten (10) business days of receipt of the notice modify the Plans in accordance with the reasons set forth in Lessor's disapproval notice, if applicable. The modified Plans shall be resubmitted to Lessor for Lessor's final review and approval.

#### **5.2 Possession Date**

Lessor shall deliver possession of the Premises to Lessee and Lessee shall take possession thereof on the Lease Date, as defined in Section 1.3 above. By the Lease Date, the Lessee shall have provided the City Manager or his/her designee evidence, as may be reasonably satisfactory to the Lessor, that Lessee has sufficient funding or binding funding commitments to complete the Leasehold Improvements to be constructed at the subject property.

#### **5.3 Payment and Performance Bond**

Within ten (10) days after the Lessor approves the plans in writing and Lessee obtains building permits consistent with the Plans, but in any event prior to the commencement of any construction, the Lessee shall, at Lessee's sole cost and expense, furnish the Lessor with a Payment and Performance Bond in substantially the form prescribed by Section 255.05, Florida Statutes. Plans, design and construction documents will comply with all applicable contract, legal, and regulatory requirements including, without limitation, the Florida Building Code.

The Payment and Performance Bond shall be issued by a bonding company which shall be approved by Lessor, in the reasonable exercise of its discretion, in an amount equal to one hundred percent (100%) of the costs to construct the Leasehold Improvements described in Exhibit E naming the Lessor as the owner/obligee, and the Lessee or Lessee's general contractor, as the principal guaranteeing the payment and performance of Lessee's obligations with respect to any and all construction work pertaining to the Leasehold Improvements, free of construction or other liens. The conditions of the Payment and Performance Bond shall be to insure that the Lessee or Lessee's general contractor will:

- i. Promptly make payment to all claimants, as defined in Section 255.05 Florida Statutes, as amended, supplying the Lessee with labor, materials, or supplies, used directly or indirectly by the Lessee in the prosecution of the work related to the Leasehold Improvements under this Lease;
- ii. Pay Lessor all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Lessor sustains because of a default by Lessee under this Lease pursuant to claims made under Section 255.05, Florida Statutes; and
- iii. Perform the guarantee of all obligations of the Lessee's under this Lease with respect to the construction, and the acquisition and installation of the Leasehold Improvements.

The Payment and Performance Bond may be terminated at such time as the construction, and the acquisition and installation of the Leasehold Improvements are completed as evidenced by issuance of a Certificate of Occupancy and reasonably satisfactory evidence thereof is provided by the Lessee to the City Manager, including certification by the Lessee's architect that all requirements of the Payment and Performance Bond have been satisfactorily concluded, and by the issuance of a Certificate of Occupancy. The form of the Payment and Performance Bond, a sample of which is attached herewith by reference as Exhibit F, shall be approved by the City Manager or the Risk Manager as his designee and by the City Attorney as to legal form, which approval shall not be unreasonably withheld.

#### **5.4 Contractor's Insurance**

The Lessee shall require every contractor performing any work pertaining to the Leasehold Improvements to furnish certificates of insurance, including Builder's Risk insurance, if applicable, to the reasonable satisfaction of the Lessor in accordance to Exhibit G attached hereto. Copies of such certificates shall be furnished to the City of Miami Risk Manager, 444 SW 2<sup>nd</sup> Avenue 9<sup>th</sup> Floor, Miami, FL 33130. The City will be named as an additional insured on such policies.

#### **5.5 Conveyance of Improvements**

The Lessee hereby, in consideration of the granting of this Lease shall upon termination or expiration of this Lease, convey unto Lessor, free and clear of all liens, title to all Leasehold Improvements of a permanent character, including but not limited to, refrigerators, stoves, freezers, hood systems, grills, dishwashers, sinks, kitchen work stations and light fixtures.

In addition to the Leasehold Improvements to be conveyed to Lessor as referenced above, Lessee shall further grant to the Lessor the right to purchase from the Lessee, all of Lessee's personal property added to or installed at the Premises by the Lessee during the Lease Term, including all furnishings, and equipment at actual cost less depreciation as determined by an appraisal, provided that the Lessor by written notice to the Lessee at least forty five (45) days prior to the expiration or termination of the Lease Term.

#### **5.6 Premises to Remain Free of Liens**

The Lessee shall make, or cause to be made, prompt payment of all money due and legally owing to all persons doing any work, including subcontractors, or providing supplies and equipment in connection with the construction, reconstruction or operation of the Premises. The Lessee shall have no power or right to and shall not in any way encumber the Lessor's fee simple interest in the Premises. If any liens or encumbrances shall at any time be filed against the Premises, the Lessee shall, upon acquiring knowledge of such lien or encumbrance, promptly take and diligently pursue a cause of action to have the same discharged or to contest in good faith the amount or validity thereof and if unsuccessful in such contest, to have the same discharged. If Lessee fails to discharge the lien, the Lessor, in addition to any other right or remedy that it may have, may take such action as may be reasonably necessary to protect its interest, and the Lessee shall be responsible for any and all reasonable costs incurred by the Lessor in connection with such action, including all reasonable legal fees, costs and expenses.

#### **5.7 Lessor Approval**

All Plans furnished under this Lease are expressly subject to Lessor's written approval, which the City Manager is hereby authorized to act on behalf of for purposes of such approval, and which approval he or she may not unreasonably withhold or delay.

No approval by the City Manager of any Plans furnished under this Lease pursuant to this section shall relieve Lessee of any obligation it may have at law to file such Plans with any department of the City or any other governmental authority having jurisdiction over the issues; or to obtain any building or other permit or approval required by applicable laws. Lessee acknowledges that any approval given by the City Manager pursuant to this Section shall not constitute an opinion or agreement by the City that the Plans are structurally sufficient or in compliance with any applicable laws.

### **ARTICLE VI CONDUCT OF BUSINESS BY LESSEE**

#### **6.1 Operation of Lessee's Business**

At all times during the Lease Term, Lessee shall manage the Premises with due diligence and efficiency, in Lessee's sole discretion, subject to the limitations set forth in this Lease, and in

a manner prudent and in accord with the current first class and best business practices and techniques within the locale for Lessee's business in similar businesses located in Miami-Dade County. Lessee shall carry at all times in the Premises a stock of merchandise of such quantity, character and quality as shall be in accord with comparable businesses within the locale of the Premises.

## **6.2 Signs**

Lessee will not place or permit to be placed or maintained on any exterior door, wall or window of the Premises, or within the interior of the Premises, any signage or advertising matter of any kind, without first obtaining Lessor's written approval and consent, which may not be unreasonably withheld. Lessee shall erect an exterior sign of type, composition and design in conformance with the City of Miami Zoning Code and the Sign Regulations of Miami-Dade County, as applicable. Lessee further agrees that such signs, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved shall be maintained in good condition and repair at all times.

## **ARTICLE VII MAINTENANCE, REPAIR AND ALTERATION OF PREMISES**

### **7.1 Lessee's Maintenance Obligations**

Lessee, at its sole cost and expense, agrees to provide the necessary management and labor to continuously maintain the Leasehold Improvements in the Premises, including all operating equipment, utility services, and connections within the Premises. Lessee, at its sole cost and expense, agrees to provide, janitorial and custodian services, trash and garbage removal services, and any and all other related services necessary to have the Premises, and the Leasehold Improvements remain in good, safe, code compliant and sanitary condition and repair throughout the Lease Term. Lessee shall be responsible for periodic painting of the interior and exterior of the Premises and decorating the interior of the Premises, maintaining its equipment, fixtures, furnishings, and other personal property in good condition and repair. All maintenance shall be at the Lessee's sole cost and expense and will be subject to general inspection by the Lessor to insure a continuing quality of maintenance and appearance and physical condition of the Premises commensurate with maintenance, health, and safety standards established by the Lessor and Applicable Law.

### **7.2 Lessee's Repair Obligation**

Subject to the provisions of this Lease regarding casualty damage and condemnation and except as otherwise provided for in this Lease, Lessee, at Lessee's sole cost and expense, at all times during the Lease Term, shall make all repairs to all Leasehold Improvements, including, without limitation, all heating, ventilating and air-conditioning equipment and any other repair or replacement to the Leasehold Improvements. The Lessee will be responsible for maintenance and repairs in the Leased Area throughout the term of this Lease. For avoidance of doubt, the Lessee's repair obligations shall not include (i) any initial installation or provision of City Improvements or (ii) any repair, maintenance or replacement that includes areas outside of the

Premises, or (iii) any repair, maintenance or replacement, which is the responsibility of Lessor, as provided in Section 7.3 below.

### **7.3 Changes/Alterations.**

Lessee shall not install or cause to be installed any exterior signs, affixed exterior machinery, shades, awnings in and to the Premises or any part thereof without the prior written consent of the Lessor, which consent the City Manager is hereby authorized to give, and may not unreasonably withhold or delay.

No approval by the City Manager of any changes or alterations shall relieve Lessee of any obligation it may have at law to file the required documents with any department of the City or any other governmental authority having jurisdiction over the issues; or to obtain any building or other permit or approval required by law. Lessee acknowledges that any approval given by the City Manager pursuant to this section shall not constitute an opinion or agreement by the City that the changes or alterations are in compliance with any applicable laws.

### **7.4 Capital Expenditure Fund**

Commencing in Lease Year ten (10) and extending through Lease Year fifteen (15), Lessee shall set aside an amount equal to twenty percent (20%) per year of Average Repair Costs into a separate reserve account (until 100% of Average Repair Costs is deposited), in order to fund capital expenditures for the Premises ("CapEx Fund"), which is required to be capitalized as an improvement to the Premises. The CapEx Fund may be used beginning in Lease Year eleven (11). The CapEx Fund shall be applied toward major repairs and improvements, including, but not limited to, substantial mechanical and structural purchases, upgrades, improvements, or repairs; the CapEx Fund shall not be applied to minor repairs due to regular wear and tear.

The CapEx Fund accrued from Lease Years ten (10) through fifteen (15) must be spent in the manner specified above on or before Lease Year twenty-five (25). Commencing in Lease Year twenty-five (25) and extending through Lease Year thirty (30), the CapEx Fund shall be replenished in an amount equal to ten percent (10%) per year of Average Repair Costs. Commencing in Lease Year forty (40) and extending through Lease Year forty-five (45), the CapEx Fund shall be replenished in an amount equal to ten percent (10%) per year of Average Repair Costs. Any amounts remaining in the CapEx Fund must be spent in the manner specified above on or before the termination of the Lease.

Lessee shall maintain financial accounting and "scope of work" records together with any corresponding documentation of amounts placed and amounts used from the CapEx Fund, which shall be subject to review by Lessor, in the manner specified above in sections 4.6 and 4.7 of this Lease.

## **ARTICLE VIII INSURANCE AND INDEMNITY**

### **8.1 Insurance on the Premises**



In connection herewith, Lessee shall obtain and maintain or cause to be obtained and maintained in full force and effect throughout the period of this Lease, the insurance coverage set forth in Exhibit H. If required by state, county, or city laws from time to time for work conducted on or use of municipal properties, Lessee shall obtain and maintain or cause to be obtained and maintained throughout or during the Lease Term, as applicable, such types and amounts of payment, performance, maintenance, or restoration bond(s) as shall be required to be reviewed and approved by the City's Risk Management Department in coordination with Lessee's Risk Manager.

The Lessor reserves the right to reasonably amend the herein insurance requirements as may be applicable in connection with the scope contemplated under this agreement. Lessor further reserves the right to request copies of all applicable policies in connection with this agreement.

### **8.2 Delivery of Insurance Policies**

All liability, statutory workers compensation and property policies, if applicable, shall be retained by the Lessee. Except as otherwise specifically provided, all other policies of insurance required to be furnished shall be held by and be payable jointly to the Lessor and the Lessee with the proceeds to be distributed in accordance with the terms of this Lease. Insurance company certificates evidencing the existence of all of these policies of insurance shall be delivered to the Lessor. All policies of insurance required by this Lease shall provide that they shall not be amended or canceled on less than thirty (30) days prior written notice to the Lessor and all insured beneficiaries of the policies shall contain waiver of subrogation rights endorsements, as required below. The Lessor shall have no obligation to pay premiums, make contributions to the insuring company or any other person, or to satisfy any deductible. On or before the Lease Date and not less than thirty (30) days prior to the expiration date of any policy required to be carried pursuant to this section, the Lessee shall deliver to the Lessor the applicable respective policies, or insurance company certificates evidencing all policies of insurance and renewals required to be furnished. Receipt of any documentation of insurance by the Lessor or by any of its representatives that indicates less coverage than required does not constitute a waiver of the Lessee's obligation to fulfill the insurance requirements herein. The Lessor shall appear listed as an additional insured on all applicable liability policies, and loss payee on any property policy. The insurance shall be primary and non-contributory, and should include all corresponding endorsements in connection with the agreement, and as required by the City.

### **8.3 Adjustment of Loss**

Any Gross Insurance Proceeds recovered on account of any damage or destruction by any casualty shall be made available for the payment of the cost of the reconstruction, replacement or repairs. All of the Gross Insurance Proceeds plus the amount of any deductible applicable to said damage or destruction shall be deposited by the insurance company or by the Lessee (in the case of the deductible) with an escrow agent reasonably acceptable to the City Manager, with instructions to the escrow holder that the escrow holder shall disburse the funds to the Lessee, with notice thereof to the Lessor, as the work of the reconstruction, replacement or repairs progresses upon certificates of the architect or engineer supervising the work that the disbursements then requested, plus all previous disbursements made from such Gross Insurance

Proceeds, plus the amount of any deductible, do not exceed the cost of the work already completed and paid for, and that the balance in the escrow fund is sufficient to pay for the reasonably estimated cost of completing the required work. The escrow holder shall be any bank mutually agreeable to Lessor and Lessee. If the amount of the Gross Insurance Proceeds is less than the cost of the required work, then Lessee shall pay the excess cost, and if the amount of the Gross Insurance Proceeds is greater than the cost of the required work, then the excess shall be paid to and belong to the Lessee.

#### **8.4 Indemnification of Lessor**

Lessee shall indemnify, defend and hold Lessor harmless from and against any and all claims actions, damages, liability and expense in connection with personal injury and/or damage to or destruction of Premises arising from or out of any occurrence in, upon or at the Premises, or arising from the occupancy or use by Lessee of the Premises or any part thereof, or occasioned wholly or in part by any act or omission of Lessee, its agents, contractors, employees, servants, customers, invitees, licensees, sub-lessees or concessionaires, excluding any claims arising from the negligence or willful misconduct of the Lessor (or any other person acting on behalf of the Lessor as its contractor, employees, agent or representative). Lessee shall further indemnify Lessor for any penalties, fines, costs, expenses, suits, liabilities, claims, or damages resulting from Lessee's failure to perform its obligations in this Lease and/or for Lessee's failure to comply with applicable laws. In case Lessor shall be made a party to any litigation commenced by or against Lessee and covered by this indemnity provision, then Lessee shall protect and hold Lessor harmless and pay all of Lessor's costs and attorney's fees incurred by Lessor in connection with such litigation, and any appeals thereof. Lessee shall also pay all of Lessor's third party costs, expenses and reasonable attorneys' fees that may be incurred or paid by Lessor in enforcing the covenants and agreements in this Lease inclusive of administrative, litigation and appellate proceedings. Further, Lessee shall indemnify, defend and hold Lessor harmless from and against any and all claims actions, damages, liability and expense arising from or caused by the presence, in or about the Premises, of any Hazardous Materials placed on or about the Premises by Lessee, or its agents, employees or assignees, or at Lessee's direction, or by Lessee's failure to comply with all applicable Environmental Laws.

#### **8.5 Waiver of Subrogation**

Lessee waives all rights to recover against the Lessor for any damages arising from any cause covered by any insurance required to be carried by Lessee, or any insurance actually carried by Lessee. The Lessee shall cause its insurer(s) to issue appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with the Premises, or any part thereof.

#### **8.6 Release of Lessor**

The Lessee and its assignees, for and in consideration of the leasing and the demise of the Premises to the Lessee, hereby release, remise and discharge the Lessor, its officers and employees, of and from all claims, demands, and actions, whether in law or in equity, which may be filed or asserted by the Lessee or its assignees for or on account of improvements made and

furniture, fixtures and equipment installed in the Premises, and from any and all costs and expenses of Lessee or its assignees in connection with this Lease, including, but not limited to those costs associated with the development of the Premises and acquisition of the Leasehold Improvements (the "Claim"). It is the intent of the Parties that this provision shall control over any other provision in this Lease and that notwithstanding any limited representations provided by Lessor under Section 2.4 of this Lease, neither the Lessee, nor its assignees shall seek to recover from the Lessor compensation for, or reimbursement of, any costs, losses, fees or expenses incurred by the Lessee or its assignees. The terms of this provision shall expressly be made a part of any future assignment or mortgage of the Leasehold Interest.

## **ARTICLE IX SERVICES AND UTILITIES**

### **9.1 Lessee to Provide and Pay for Utilities**

The Lessee shall pay, or cause to be paid, all proper charges for gas, electricity, light, heat, water and power, for telephone, protective and other communication services, and for all other public or private utility services, which shall be used, rendered or supplied upon or in connection with the Premises and any Leasehold Improvements, if any, or any part of it, at any time during the Lease Term, and the Lessee shall comply with all contracts relating to any such services and will do all other things required for the maintenance and continuance of all services as are necessary for the proper maintenance and operation of the Premises and the Leasehold Improvements. The Lessee shall, at its sole expense, procure any and all necessary permits, licenses or other authorization required for the lawful and proper installation and maintenance upon the Premises of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any such utilities, services or substitutes to the Premises.

### **9.2 Lessor Not Liable for Failure of Utilities**

The Lessor shall not be liable for any failure of water supply, sewer, gas or electric current, or for any injury or damage to any person or to the Premises caused by or resulting from water, gas or electricity which may leak or flow from the water or gas mains on to any part of the Premises or the Leasehold Improvements. The Lessor shall not be required to make any alteration to any service or utility system of the Premises on behalf of Lessee. Lessor shall not be liable for temporary failure of services, and any such temporary failure shall not be deemed to constitute actual or constructive eviction, nor entitle Lessee to any abatement or diminution in rent payable under this Lease.

Lessor shall not make or allow to be made after the Lease Date any changes in any utility service to, through, under or above the Premises that would result in a materially disruptive effect on the use or operation of the Premises by the Lessee and its customers, including but not limited to fiber optics, telephone, electricity, water, storm and sanitary sewer, gas, heat, ventilation and air conditioning, without the prior written consent of Lessee, which shall not be unreasonably withheld, conditioned or denied; further, provided, that the written consent of the Lessee shall not be required for minor, routine and customary, maintenance, repair, improvement and upgrades made by the utility provider to the utilities it furnishes.

**ARTICLE X**  
**SUBLEASES, ASSIGNMENTS AND TRANSFERS**

**10.1 Subleases, Assignments and Transfers**

Lessee shall not, at any time during the Lease Term, enter into (i) any sublease, license, concession, easement, or permit agreement with respect to the Premises or (ii) sublease, assign or transfer this Lease to any third party or parties, which has the effect of granting exclusive possession to the Premises and assigning the rent and other obligations set forth in this Lease to any third party or parties (collectively "Transfer"), without first procuring the prior written consent of the City. The provisions of this Article constitute the sole means by which Lessee may request Lessor's consent to a Transfer.

In recognition of the fact that this Lease was awarded to Lessee following a competitive procurement relying on Lessee's unique attributes, any Transfer of this Lease to any third party or parties (except as otherwise permitted under this Article X) shall require the prior written approval of the City, which may grant, deny, refuse or consent to such Transfer, in the City's sole discretion, based on reasonable commercial factors including the credit worthiness, solvency, reputation, ability and experience of such proposed transferee. If approved, any such transferee shall be required to sign a written agreement assuming all terms and conditions of the Lease, without exception in a form satisfactory to the Lessor. Any such attempted Transfer of the Lease, without the Lessor's prior written consent, shall be void and of no force or effect and shall not confer any interest or estate in the purported Transfer and will additionally be a default by Lessee of this Lease.

It is agreed that all terms and conditions of this Lease shall extend to and be binding on all transferees, assignees or Sub-lessees as may be approved by Lessor and shall be for a period of time equal to or less than the Lease Term. Lessor reserves the right to directly terminate the rights and interests of any transferee or Sub-lessee under any Transfer for any cause for which Lessee's Leasehold Interest may be terminated. Lessee shall reimburse to Lessor, as Additional Rent, all costs and expenses, including third party attorneys' fees, which Lessor reasonably incurs by reason of or in connection with a Transfer, and all negotiations and actions with respect thereto, such Additional Rent to be due and payable within thirty (30) days of receipt of a statement of such costs and expenses from Lessor.

**10.2 Procedure for Transfer**

Subject to the provisions of Section 10.1, should Lessee desire to Transfer the Lease, Lessee shall, in each instance, give written notice of its intention to do so to Lessor's City Manager at least thirty (30) days prior to the effective date of any such proposed Transfer, specifying in such notice the nature of such proposed Transfer and the proposed date thereof and specifically identifying the proposed Sub-lessee, Assignee or transferee. Such notice shall be accompanied by a copy of the proposed Transfer agreement and any other documents or financial information Lessor may reasonably require in order to determine the suitability of the Sub-lessee, Assignee or transferee. If requested by Lessor, Lessee shall provide to Lessor copies of all Transfer documents and amendments thereto. Lessor shall either (i) withhold consent to the Transfer, together with a detailed explanation for such denial, or (ii) consent to such Transfer upon the terms and subject to the conditions provided for in this Article, by mailing written

notice to Lessee of its intent to do so. Lessee acknowledges and agrees that the imposition of the conditions provided herein requiring Lessor's consent is reasonable.

### 10.3 Additional Consideration Payable to Lessor

If Lessor gives its consent to any Transfer, Lessor shall be entitled to any proceeds from any such Transfer, with the Lessor's participation capped at a maximum of four percent (4%) of gross proceeds from the sale if the Lease is assigned or otherwise transferred or sold within Lease Years one (1) through five (5); and five percent (5%) if transferred after Lease Year five (5) ("Transfer Fee"). Lessee shall, in consideration of any Transfer, include in Lessee's Gross Revenues the amount of Sub-Lessee's, Assignee's or transferee's Gross Revenues which shall be listed separately on Lessee's Annual Report. Assignee's or transferee's records shall be kept in accordance with Article IV. Additionally, Lessor reserves the right to examine transferee's books and audit transferee's entire records in accordance with Article IV of this Lease.

The Transfer fee shall be perpetual and shall apply to any successive Transfer procured by the terms of this Lease for as long as this Lease is active, including modifications and extensions, if any. The acceptance by Lessor of the payment of rent following any Transfer prohibited by this Article shall not be deemed to be consent by Lessor to any such Assignment or Transfer, nor shall the same be deemed a waiver of any right or remedy of Lessor hereunder.

### 10.4 Definitions

As used in this Article, the term:

"Transfer" means:

1. any total or partial sale, or assignment of Lessee's business or Leasehold Estate or any contract or agreement to do any of the same, including by entering into a sublease, assignment, transfer agreement, concession agreement, etc.
2. any transfer of more than forty-nine percent (49%) of the stock of Lessee or of the stock of any Owner, other than an Owner whose shares are publicly traded, if the transfer results in a transfer of more than forty-nine percent (49%) of the beneficial ownership of Lessee;
3. any merger, consolidation or sale or lease of all or substantially all of the assets of the Lessee or of any Owner, other than an owner whose shares are publicly traded.

"Owner" means:

any person, firm, corporation or other entity which owns, directly or indirectly, legally or beneficially, more than fifteen percent (15%) of the stock of the Lessee, but shall not include any shareholder of an Owner whose shares are publicly traded.

"Owner whose shares are publicly traded" means:

1. an Owner who has filed an effective registration statement with the Securities & Exchange Commission (or its successor) with respect to the

shares of any class of its voting stock or of all classes of any other form of ownership interest which includes voting rights; and

2. whose voting stock and other form of ownership interest described in clause (i) is listed for trading purposes on a securities exchange subject to the regulatory jurisdiction of the Securities & Exchange Commission (or its successor) or is publicly traded over the counter.

### **10.5 Acceptable Transfers**

The Lessee recognizes that the operational experience of the Lessee as set forth in the proposal was given special consideration by the Lessor in the public selection process undertaken by the Lessor for the award of this Lease. Therefore, Lessee agrees that except as permitted pursuant to this Article X of this Lease, no Transfer may be made, suffered or created by the Lessee, or any Owner without the prior written consent of the City Manager, which consent shall not be unreasonably withheld or delayed. The following Transfers shall be permitted hereunder without the written approval of the City Manager:

- (a) Any Transfer directly resulting from the foreclosure of Lessee's Leasehold Estate, provided that such purchaser or grantee is an institutional investor (including a bank or other similar financial institution) or an agent, designee or nominee of an institutional investor which is wholly owned or controlled by an institutional investor, and that such purchaser or grantee within six (6) months after taking possession of the Premises, shall have entered into an agreement for the management and operation of the Premises with an Acceptable Operator or is itself an Acceptable Operator;
- (b) the issuance of stock or stock options to Lessee's directors, officers, or employees, provided the stock or stock options issued constitute, in the aggregate, less than fifteen percent (15%) of the issued and outstanding stock of Lessee;

The Parties hereby acknowledge and agree that anything herein to the contrary notwithstanding, the "going public" by Lessee, including, but not limited to, the filing of a registration statement with the Securities and Exchange Commission and/or the creation of one or more classes of stock and the offering of shares of stock to the public for purchase, shall not constitute a Transfer hereunder and shall not require the consent of the Lessor.

Any consent to a Transfer shall not waive or abridge any of the Lessor's rights to consent to a subsequent Transfer. Any Transfer made in violation of the terms hereof shall be null and void and of no force and effect. Any transferee must be an institutional investor (as provided above) or an Acceptable Operator in each such instance.

### **10.6 Notice of Transfer**

With respect to any Transfer which must be approved by the City Manager, the Lessee shall give or cause to be given to the Lessor written notice (including all information necessary for the Lessor to make an evaluation of the proposed Acceptable Operator according to the requirements of this Lease) of any Transfer of which Lessee, or its officers shall have knowledge, not less than thirty (30) days prior to any such proposed Transfer, and the Lessor shall within thirty (30) days of its receipt of such information, advise Lessee in writing if it shall consent to same. If the Lessor shall not consent to a Transfer, the City Manager shall state the

reasons for such disapproval in his notice to Lessee. If the Lessor is not required to consent to a Transfer pursuant to the terms hereof, the Lessee shall notify the Lessor in writing of same within thirty (30) days after the date of Transfer. In the event that City Commission approval is required by this Lease, the City Manager shall use due diligence to present the request for Transfer to the City Commission as soon as practicable and the time for performance by Lessor shall be reasonably extended to provide sufficient time for presentation to the City Commission.

#### **10.7 Information as to Shareholders, etc.**

If applicable, Lessee shall from time to time throughout the Lease Term, as the Lessor shall reasonably request, furnish the Lessor with a complete statement, subscribed and sworn to by the President or Vice-President and the Secretary or Assistant Secretary of the Lessee, setting forth (to the extent known) the full names and addresses of material holders of stock interests in Lessee, and the extent of their holdings, and in the event any other parties have a material beneficial interest in such stock, their full names and addresses and the extent of such interest as determined or indicated by the records of Lessee. Notwithstanding the foregoing, the information required by this Section shall not be required to be furnished with respect to the shareholders of any Owner whose shares are publicly traded. As used in this section, the term "material" shall mean ownership of not less than a ten (10%) percent interest in Lessee.

#### **10.8 Effectuation of Permitted Transfers**

No Transfer shall be effective unless and until:

(1) all Rents, taxes, assessments, impositions, insurance, permitting and other charges required to be paid by the Lessee under this Lease shall be paid by the Lessee up to the date of transfer, and all other covenants and agreements to be kept and performed by the Lessee shall be substantially complied with at the date of the Transfer; and

(2) the entity to which such Transfer is made, by instrument in writing reasonably satisfactory to the City Manager (subject to approval as to legal form by the City Attorney) and in a form recordable among the land records, shall, for itself and its successors and assigns, and especially for the benefit of the Lessor, expressly assume all of the obligations of Lessee under this Lease, agree to be subject to all conditions and restrictions to which Lessee is subject, including the additional guarantees required under Section 16.5 of this Lease; provided, however, that any transferee shall not be required to assume any personal liability under this Lease with respect to any matter arising prior or subsequent to the period of such transferee's actual ownership, partial or whole, of the Leasehold Estate created by this Lease (it being understood, nevertheless, that the absence of any such liability for such matters shall not impair, impede or prejudice any other right or remedy available to the Lessor for default by Lessee). Nothing herein shall be construed to relive or release the Lessee from liability for the performance of all of the obligations of Lessee under this Lease.

#### **10.9 Criteria for Consent for Transfer**

The Lessor may, at its sole discretion, condition its consent to a permitted Assignment, Sublease or Transfer upon satisfaction of all or any of the following conditions:

- (1) The proposed entity to which the Leasehold is being assigned, transferred, or subleased ("Transferee"), shall be an Acceptable Operator;
- (2) Transferee shall satisfy the qualification requirements imposed upon Lessee and set out in the original RFP;
- (3) Transferee shall have no open permits, liens, fines, unsafe structures, or any open lawsuits;
- (4) The net assets of the Transferee immediately prior to the Transfer shall not be less than:  
(a) the net assets of the Transferor whose interest is being transferred immediately prior to the Transfer; (b) the net assets of said Transferor on the Lease Date adjusted for inflation; or (c) an amount reasonably necessary to discharge Lessee's remaining obligations hereunder;
- (5) Such Transfer shall not adversely affect the quality and type of business operation which the Lessee has conducted theretofore;
- (6) Such Transferee, shall possess qualifications for the Lessee's business substantially equivalent to Lessee or an Acceptable Operator, or shall engage an Acceptable Operator and shall have demonstrated recognized experience in successfully operating such a business, including, without limitation, experience in successfully operating a similar quality business;
- (7) Such Transferee shall agree to continue to operate a business similar to the use conducted at the Premises pursuant to this Lease;
- (8) Such Transferee shall assume in writing, in a form acceptable to Lessor, all of Lessee's obligations hereunder, and Lessee shall provide Lessor with a copy of all documents pertaining to such Transfer;
- (9) Transferee shall submit to a credit check and other background checks as Lessor sees fit. Failure or refusal to submit to said credit and background checks shall be an automatic disqualification of the potential transferee;
- (10) Lessee shall pay to the Lessor any due, but unpaid Rent.

#### **10.10 Liability of Lessee**

If a Transferee does not meet all of the criteria set forth in this Article, Lessor, at its sole option, may require Lessee or Owner transferring such interest to remain liable under this Lease for the performance of all terms, including, but not limited to, payment of Rent due under this Lease. If a Transferee does meet the criteria set forth in this Article, Lessee shall be released from any and all remaining liability and/or obligations set forth in this Lease from the effective date of such Assignment or Transfer, but shall remain liable and responsible as provided by this Agreement and applicable laws for performance of duties including, without limitation, payment of rent prior to the effective date of such transfer.

#### **10.11 Acceptance of Rent from Transferee**



The acceptance by Lessor of the payment of Rent following any Transfer prohibited by this Article shall not be deemed to be a consent by Lessor to any such Transfer, nor shall the same be deemed to be a waiver of any right or remedy of Lessor hereunder.

#### 10.12 Transfers of the Lessor's Interest

At the Lessee's request, Lessor shall provide the Lessee copies of any and all agreements or contracts pertaining to the total or partial sale, assignment, conveyance, mortgage, trust or power, or other transfer in any mode or form of or with respect to the Lessor's reversionary or fee interest in the Premises, or any part thereof, or any interest therein, or any contract or agreement to do any of the same, to any purchaser, assignee, mortgagee, or trustee. Lessor hereby agrees to incorporate the terms and conditions set forth in this Lease or in any agreement or contract with such purchaser, assignee, mortgagee, or trustee.

#### 10.13 Mortgages of Leasehold Interest

**10.13.1 Right to Mortgage.** All rights of Lessee pursuant to this Lease are mortgageable, pledgeable, assignable or transferable, in accordance with the terms of this Lease. Any successor to, or assignee of, the rights of Lessee hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure or otherwise) shall hold or be entitled to exercise the rights of Lessee hereunder as fully as if named as such party herein. No party exercising rights as Lessee hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights. In no way shall Lessee have any authority to mortgage the ownership interest belonging to Lessor.

**10.13.2 Requirements for Mortgage.** In addition to the requirements specified throughout this Lease, Lessee may only pledge, hypothecate, or otherwise mortgage the Leasehold Estate with the written permission of the City Manager, the permission for which shall not be unreasonably withheld.

**10.13.3 Notice.** In the event Lessor gives a notice of default under this Lease to Lessee, Lessor shall also send a copy of such notice to any holder of a Leasehold Mortgage, provided such holder or its mortgagor shall have sent Lessor a notice informing it of the existence of such Leasehold Mortgage and the name of the person or officer and the address to which copies of the notices of defaults are to be sent (each a "Mortgagee"). Such Mortgagee shall have an additional thirty (30) days to cure any default that is capable of being cured with the payment of money, and an additional thirty (30) days for all other defaults (and such additional time, as to non-monetary defaults, as the Mortgagee in good faith and with reasonable diligence either attempts to cure such default or commences and thereafter prosecutes with reasonable diligence, if not enjoined or stayed, appropriate proceedings for foreclosure or other enforcement of the liens securing its financing). Initiation of foreclosure proceedings against Lessee shall constitute "diligence" by a Mortgagee hereunder so long as such foreclosure proceedings are continuously pursued and all rent and additional rent is being paid to Lessor by Lessee or Mortgagee during the pendency of any foreclosure proceeding. The

foregoing requirements to give notice of default to a Mortgagee and allow such Mortgagee an opportunity to cure such default shall not delay the exercise of self-help remedies by Lessor in the event of an emergency.

**10.13.4 Rights of Mortgagees.** Once Lessor has received a notice as specified in the preceding section, then, from and after receipt of such notice:

- (1) No voluntary termination by Lessee of this Lease shall be effective unless consented to in writing by such Mortgagee; and any material amendment or material modification of this Lease or the exercise by Lessee of any option to terminate this Lease without the written consent of such Mortgagee shall be voidable as against such Mortgagee at its option. If any Mortgagee shall fail to respond to any written consent under this section within thirty (30) days after the receipt by such Mortgagee of such written request (which written request shall make specific reference to this section), the Mortgagee shall be deemed to have denied its consent to such request. No notice required to be given to Lessee by Lessor shall be effective as to such Mortgagee unless and until a copy thereof has been given to such Mortgagee.
- (2) Lessor shall accept performance of any and all of Lessee's obligations hereunder, including the obligations to pay rent, from any such Mortgagee and the performance of such obligation by such Mortgagee shall be deemed to have been a cure effected by Lessee. Lessor hereby consents to the entry onto the Premises by any such Mortgagee for the purpose of effecting the cure of any default by Lessee. In the event of a default by Lessee hereunder, any Mortgagee may affect the cure of such default by foreclosing its Mortgage, obtaining possession of the Premises and performing all of Lessee's obligations hereunder.
- (3) If it shall be necessary for any such Mortgagee to obtain possession of the Premises to effect any such cure of a default by Lessee under this Lease, then Lessor shall not commence any proceeding or action to terminate the Lease Term if (a) such Mortgagee shall have informed Lessor within the grace period applicable to such Mortgagee that such Mortgagee has taken steps to foreclose its Leasehold Mortgage, to obtain possession of the Premises, (b) the rent and all monetary obligations of Lessee shall be paid and all other provisions and requirements of this Lease which are capable of being observed and performed without obtaining possession of the Premises are so observed and performed while any such foreclosure, other action or other remedy is being prosecuted by any such Mortgagee and for so long thereafter as such Mortgagee shall have obtained possession of the Premises, and (c) such Mortgagee shall be diligently prosecuting such foreclosure or cancellation and attempting to effect a cure of the default. Nothing herein contained shall be deemed to require the Mortgagee to continue with any foreclosure or other proceedings, or, in the event such Mortgagee shall otherwise acquire possession of the Premises, to continue such possession, if the default in respect to which Lessor shall have given the notice shall be remedied.
- (4) Lessor agrees that in the event of the termination of this Lease by reason of any

default by Lessee or rejection of this Lease in a bankruptcy proceeding effecting Lessee, and if Lessor has prior to such termination been given written notice of the name and address of such Mortgagee, Lessor will enter into a new agreement for the Premises with any Mortgagee or a wholly owned subsidiary of Mortgagee for the remainder of the Lease Term, effective as of the date of such termination, at the rent and upon the terms, options, provisions, covenants and agreements as herein contained, provided:

- i. Such Mortgagee shall make written request upon Lessor for such new agreement prior to or within ten (10) days after the date of such termination and such written request is accompanied by payment to Lessor of all sums then due to Lessor hereunder;
  - ii. Such Mortgagee or its nominee shall pay to Lessor at the time of the execution and delivery of said new lease any and all sums which would at that time be due hereunder but for such termination; and
  - iii. That in the event there exists more than one Mortgagee, the first Mortgagee shall have the first option to become Lessee under the provisions of this section, with priority over the second Mortgagee.
- (5) No Mortgagee shall become liable under the agreements, terms, covenants or conditions of this Lease unless and until it becomes the owner of the estate held by Lessee.

All of the provisions contained in this Lease with respect to Leasehold Mortgage and the rights of Mortgagees shall survive the termination of this Lease for such period of time as shall be necessary to effectuate the rights granted to all Mortgagees by the provisions of this Lease.

Nothing herein contained shall require any Mortgagee or its nominee to cure any default by Lessee hereunder, unless Mortgagee accepts assignment and assumption; however this shall not preclude the City from seeking a judicial remedy for any such losses or breaches of the Lease in a manner consistent with the terms of this Lease.

## ARTICLE XI COMPLIANCE WITH LAWS

### 11.1 Compliance with Laws

Lessee shall, at Lessee's sole cost and expense, comply with all applicable Federal, State, and local laws, and all applicable permitting and regulatory requirements, rules, regulations, codes, ordinances, and written policies now in force, or which may hereafter be in force, pertaining to Lessee or its use of the Premises, and shall faithfully observe in the use of the Premises or in the performance of any alterations (including, without limitation, the construction of any Leasehold Improvements) all applicable laws now in force or which may hereafter be in force.

**ARTICLE XII  
ENVIRONMENTAL LIABILITY**

**12.1 Definition of Terms**

For purposes of this Article XII the following terms shall have the meaning attributed to them herein:

1. "Hazardous Materials" means any toxic or hazardous substance, material, or waste, and any other contaminant, pollutant or constituent thereof, whether liquid, solid, semi-solid, sludge and/or gaseous, including without limitation, chemicals, compounds, pesticides, petroleum products including crude oil and any fraction thereof, asbestos containing materials or other similar substances or materials which are regulated or controlled by, under, or pursuant to any federal, state or local statutes, laws, ordinances, codes, rules, regulations, orders or decrees including, but not limited to, all applicable laws.
2. "Environmental Laws" shall include all applicable laws, rules and ordinances, existing now or in the future during the Term, as amended, modified, supplemented, superseded or replaced at any time during the Term, that govern or relate to: the existence, cleanup and/or remedy of contamination of property; the protection of the environment from spilled, deposited or otherwise emplaced contamination; the control of hazardous or toxic substances or wastes; the use, generation, discharge, transportation, treatment, removal or recovery of Hazardous Materials; or otherwise regulating the impact of human activities on the environment.
3. "Costs" shall mean all costs incurred in connection with correcting any violations of any Environmental Laws and/or in connection with the clean-up of contamination on the Premises.
4. "Clean Up" shall mean any remediation and/or disposal of Hazardous Materials at or from the Premises which is ordered by any federal, state, or local environmental regulatory agency.

**12.2 Lessee's Environmental Covenant**

The Lessee shall not cause or permit any Hazardous Materials to be brought upon, treated, stored, disposed of, discharged, released, produced, manufactured, generated, refined, or used upon, about or beneath the Premises or any portion thereof by the Lessee, its agents, employees, contractors, licensees, or invitees except as may be customarily used and required to conduct Lessee's business or as may be used in compliance with Environmental Laws. Lessee shall not permit any activities on the Premises that would violate Environmental Laws. If Lessee should breach this covenant, Lessee shall take all actions necessary to comply with all Environmental Laws and shall, at Lessee's sole cost and expense, perform any and all Clean Up. Lessee's obligation under this section shall survive the expiration or earlier termination of this Lease for a period of two (2) years.

**12.3 Survival of Lessee's Obligations**

The respective rights and obligations of Lessor and Lessee under this Article XII shall survive the expiration or termination of this Lease for a period of one (1) year.

### ARTICLE XIII DAMAGE OR DESTRUCTION OF PREMISES

#### 13.1 Definitions

For the purposes of this Article XIII, the following words shall have the meanings attributed to them in this Section 13.1:

- (a) "Completely Destroyed" means the destruction of the safe, leasable use or occupancy of a substantial portion of the Premises under this Lease which damage cannot reasonably be repaired, restored or replaced within one hundred eighty (180) calendar days from the date on which the damage occurred.
- (b) "Partial Destruction" means any damage to the Premises which damage can reasonably be repaired, restored or replaced within one hundred eighty (180) calendar days from the date on which the damage occurred.

#### 13.2 Duty to Repair, Restore or Replace Premises after Damage

In the event of damage by fire or otherwise of the Premises including any machinery, fixtures or equipment which are a part of the Premises, the Parties agree as follows:

In the event of Partial Destruction of the Premises, within sixty (60) calendar days of the damage (subject to reasonable delay and/or Force Majeure), (i) the Lessee shall use the Gross Insurance Proceeds available, together with Lessee's own funds (if the Gross Insurance Proceeds are insufficient) to commence and diligently pursue to completion within one hundred eighty (180) calendar days from the date the damage occurred (subject to reasonable extension due to Force Majeure or delays by Lessor in the repair, restoration, or replacement of the damaged or destroyed portion of the Premises as required in order for the Lessee to commence the restoration of the Leasehold Improvements), the repair, restoration or replacement of the damaged or destroyed portion of the Leasehold Improvements ("Restoration Work"), and this Lease shall remain in full force and effect, with no abatement in Rent.

In the event the Premises are Completely Destroyed at any time during Lease Term, Lessee, in its sole discretion, shall have the option to select whether to terminate this Lease within sixty (60) days of the damage. In the event the Lessee shall determine not to terminate this Lease, then at the Lessee's sole cost and expense, (together with Gross Insurance Proceeds available for that purpose), Lessee shall commence and diligently pursue to completion the Restoration Work, in accordance with the provisions of Section 13.3 below, and Lessee shall complete the Restoration Work within twelve (12) months from the date the damage occurred (subject to reasonable extension due to Force Majeure or delays by Lessor in the repair, restoration, or replacement of the damaged or destroyed portion of the Premises as required in order for the Lessee to commence the restoration of the Leasehold Improvements), and this Lease shall remain in full force and effect, with no abatement in Rent. Alternatively, the Lessee may elect not to undertake the Restoration Work by providing written notice to Lessor and in which event this Lease shall terminate, and the Lessee shall, at the Lessee's sole cost and

expense, (but using along with the Lessee's own funds, Gross Insurance Proceeds available for that purpose) deliver possession of the Premises to Lessor free and clear of all debris and Lessor and Lessee shall each be released thereby from any further obligations hereunder accruing after the effective date of such termination, except that such release shall not apply to any Rent or other sums accrued or due, Lessee's obligations regarding surrender of the Premises including the removal of debris, and environmental liability as provided for in Article XII.

### **13.3 Performance of Restoration Work**

In the event Lessee undertakes any Restoration Work in accordance with the provisions of this Article, such Restoration Work by Lessee shall be substantially the same as possible to the condition that existed immediately prior to the damage, and shall be performed in accordance with the provisions of Article V applicable to the construction of any Leasehold Improvements. Lessor hereby acknowledges and agrees that Lessee's obligations hereunder and the time periods set forth above are subject to Force Majeure, and reasonable extensions based on the severity of the damage.

### **13.4 No Additional Right to Terminate**

Except for the Lessee's right to terminate this Lease in accordance with the provisions of Article XIII set forth herein, Lessee waives the provisions of any statute, code or judicial decision which grants Lessee the right to terminate this Lease in the event of damage or destruction of the Premises.

### **13.5 Lessee's Right to Terminate**

If Lessee elects to exercise the option given under Subsection 13.2, to terminate this Lease, then any and all Gross Insurance Proceeds paid for damage or destruction of the Premises shall be applied as follows:

First toward debris removal; and

Second, toward the balance of the proceeds, if any, after payment of any Rent due, shall be paid to the Parties as the respective Rent shall be prorated based on the useful life of the Premises prior to the casualty event as compared to the remaining term of the Lease and any option periods without consideration of the termination of the Lease as provided in this Section.

### **13.6 Payment for Construction of Restoration Work**

Except as otherwise provided for in this Article XIII, all Gross Insurance Proceeds shall be applied by the Parties to the payment of the cost of the Restoration Work to restore the Premises, and the Gross Insurance Proceeds shall be paid out, the Restoration Work shall be performed, and the Lessee shall make additional deposits with an escrow agent, if any are required, as may be applicable.

### **13.7 Collection of Insurance Proceeds**

The Lessor shall in no event be responsible for the non-collection of any insurance proceeds under this Lease but only for insurance money that shall come into its hands.

### 13.8 Unused Insurance Proceeds and Deposits

In the event any Gross Insurance Proceeds or sums deposited with an escrow agent or Lessor in connection with the Restoration Work shall remain in the hands of an escrow agent or the Lessor, if the Parties have agreed to allow the Lessor to hold the insurance proceeds until completion of the Restoration Work, and if the Lessee shall not then be in default under this Lease in respect of any matter or thing of which notice of default has been served on the Lessee, then the remaining funds shall be applied first towards any unpaid Rent, and the remaining balance paid to the Lessee.

## ARTICLE XIV EMINENT DOMAIN

### 14.1 Total Condemnation

In the event that all of the Premises (or such portion thereof as shall, in the good faith opinion of Lessor or Lessee, render it economically unfeasible for its intended purpose) shall be taken for any public purpose by the right of condemnation, the exercise of the power of eminent domain or shall be conveyed by the Lessor and Lessee acting jointly to avoid proceedings of such taking, the Rent pursuant to this Lease shall be prorated and paid by the Lessee to the date of taking or conveyance in lieu thereof, and this Lease shall terminate and become null and void as of the date of taking or such conveyance. Any damages resulting to Lessor and Lessee, respectively, and to their respective interests in and to the Premises, the Leasehold Improvements, and in connection with this Lease (which amount of damages shall be calculated based on the remaining term of the Lease and any option periods without consideration of the termination of the Lease as provided in this Section), shall be separately determined and computed by the court having jurisdiction and separate awards and judgments with respect to damages to Lessor and Lessee, respectively, and to each of their respective interests, shall be made and entered.

### 14.2 Partial Condemnation

In the event less than all of the Premises shall be taken for any public use or purpose by the right or the exercise of the power of eminent domain, or shall be conveyed by the Lessor and Lessee acting jointly to avoid proceedings of such taking, and Lessee shall be of the good faith opinion that it is economically feasible to effect restoration thereof, then this Lease and all the covenants, conditions and provisions hereunder shall be and remain in full force and effect as to the Premises not so taken or conveyed. Lessee shall to the extent the proceeds of the Gross Condemnation Award are made available to it, pursuant to the terms hereof, remodel, repair and restore the remaining portion of the Premises so that it shall be comparable to the Premises prior to the condemnation; provided, however, that in so doing, Lessee shall not be required to expend more than the amount of any Gross Condemnation Award actually received by Lessee.

The Gross Condemnation Award allowed to Lessor and Lessee shall be paid to and received by the Parties as follows:

- (a) There shall be paid to the Lessor the value of the portion of the land so taken and Lessor's reversionary interest in the improvements so taken, which land and reversionary improvements shall be valued as if unencumbered. Lessor shall further be paid an amount by which the Rent has been reduced by the taking;
- (b) There shall be paid to the Lessee any amount by which Lessee's profits and value of Lessee's interest in the Lease and the Premises have been reduced by the taking after any payment required by the Lease;
- (c) There shall be paid to the Lessee the amount required to complete the remodeling and repairs to the Premises pursuant to (a) above;
- (d) The Lessor and Lessee shall be paid portions of the balance of the Gross Condemnation Award or awards, if any, which are allocable to and represented by the value of their respective interest in the Premises as found by the court in its condemnation award.

#### **14.3 Adjustment of Rent Upon Partial Taking**

In the event a part of the Premises shall be taken for any public use or purpose by the exercise of the power of eminent domain, or shall be conveyed by Lessor and Lessee acting jointly to avoid proceedings of such taking, then Rent pursuant to this Lease shall be paid by Lessee to the Date of Taking or conveyance in lieu thereof, and after such date the Base Rent for the remainder of the Lease Term shall be reduced on an equitable basis and Percentage Rent shall continue at the same rate.

#### **14.4 Deposit of Condemnation Award with Escrow Agent**

Unless the effect of a condemnation proceeding shall be to terminate this Lease by operation of law or as provided in Section 14.2 above, any Gross Condemnation Award made in respect to the Premises in a condemnation proceeding shall be deposited with an escrow agent selected by the Lessor to be disbursed for the cost of restoring the Premises.

#### **14.5 Temporary Taking**

In the event that all or any portion of the Premises shall be taken by the right of condemnation or the exercise of the power of eminent domain for governmental use or occupancy for a temporary period, this Lease shall not terminate and Lessee shall continue to perform and observe all of its obligations (including the obligation to pay Rent as provided throughout this Lease) as though the temporary taking had not occurred except only to the extent that it may be prevented from so doing by the terms of the order of the authority which make the temporary taking or by the conditions resulting from the taking, including the loss of its possession of all or any part of the Premises. If the period of governmental occupancy extends beyond the termination of the Lease Term, the Lessor shall be entitled to receive that portion of the Gross Condemnation Award allocable to the period beyond the termination of the Lease Term. The amount of any Gross Condemnation Award payable to Lessee, on account of a



temporary taking of all or any part of the Leasehold Improvements, shall be deemed a part of the Lessee's Leasehold Estate for all purposes in this Lease. If the Gross Condemnation Award does not separately determine the amount applicable to the taking of the interest of the Lessor in this Lease and in the Leasehold Improvements and if Lessor and Lessee shall not agree in writing as to the proportion of the award so applicable to the respective Parties, then Lessor and Lessee shall submit the matter to the court on stipulation for the purpose of a judgment determinative of the interest of the Parties in accordance with the terms of this sub-section.

## ARTICLE XV

### PAYMENT OF TAXES, ASSESSMENTS AND OTHER IMPOSITIONS

#### 15.1 Payment of Taxes and Impositions

From and after the Lease Date, Lessee shall pay all ad valorem and similar taxes, surcharged, levies, charges, assessments, and impositions levied against the Premises before any fine, penalty, interest or costs are added for non-payment. All such ad valorem and similar taxes, governmental levies, charges, impositions and assessments shall be payable by Lessee directly to the taxing authority prior to delinquency (without penalty) of such taxes, provided that Lessor has advised Lessee of its share of such taxes and assessments in a written notice, including a copy of the tax bill prior to delinquency.

#### 15.2 Installment Payments of Ad Valorem Taxes and Impositions

Lessee agrees that the Premises or any interest thereon is subject to ad valorem taxation. Lessee, at its option, may enroll in the Miami-Dade County Ad Valorem Tax Payment Plan.

If by law, any ad valorem taxes or other Impositions are payable or may, at the option of the taxpayer, be paid in installments (whether or not interest shall accrue on the unpaid balance of the Imposition), the Lessee may pay the same (and any accrued interest on the unpaid balance of the Imposition), in installments before any fine, penalty, interest or cost is added for the nonpayment of any installment and interest. Any Imposition relating to a fiscal period of the taxing authority, a part of which period is included before the Lease Date and part of which is included after the Lease Date shall be adjusted as between the Lessor and the Lessee as of the commencement of the Lease Term, so that the Lessee shall pay that portion of the Imposition attributable to that part of the fiscal period included in the Lease Term, and the Lessor shall pay the remainder, if applicable. Any Imposition relating to a fiscal period of the taxing authority, a part of which period is included within the Lease Term and a part of which is included in a period of time after Lease Term shall be adjusted as between the Lessor and the Lessee as of the termination of the Lease Term, so that the Lessee shall pay that proportion of the Imposition attributable to that part of the fiscal period included in the Lease Term, and the Lessor shall pay the remainder, if applicable.

#### 15.3 Payment in Lieu of Taxes

The Lessee shall be responsible for the following payments or for payments in lieu of taxes ("PILOT") during the use period in the event the Property is deemed exempt from ad valorem real estate taxes; in which case, Lessee will pay the City an annual PILOT in an amount

initially equal to three thousand three hundred and seventy-six and 71/100 dollars (\$3,376.71) per year. The PILOT will increase on each anniversary of the Lease Date at a rate equal to three percent (3%). If Lessee is required to pay ad valorem taxes on the Property, it shall not be required to pay the PILOT.

#### **15.4 Proof of Payment**

The Lessee shall furnish to Lessor, within thirty (30) days after the date whenever any Imposition is payable by or on behalf of the Lessee, official receipts of the appropriate taxing authority, photocopies or other proof satisfactory to the Lessor, evidencing the payment.

#### **15.5 State-Owned Sovereignty Submerged Land**

In the event the Lessee wishes to utilize the Premises in a manner that would derive income directly or indirectly from the use of the State-owned sovereignty submerged lands, or otherwise is required to make payments under applicable law, the Successful Proposer shall be solely responsible for all fees, costs, expenses, impositions, and payments due.

### **ARTICLE XVI DEFAULT OF LESSEE**

#### **16.1 Lessee Default**

The occurrence of any one or more of the following events is deemed a "Lessee Default":

- a. If the Lessee defaults in the due and punctual payment of any installment of Rent, as and when due and payable in accordance with this Lease, and such default continues for more than ten (10) days after the sum is due;
- b. Except with respect to an event of Force Majeure, in the event Lessee shall cease to operate its business, unless in connection with alterations or renovations, for a period of fifteen (15) consecutive days;
- c. In the event a petition in bankruptcy under any present or future bankruptcy laws (including but not limited to reorganization proceedings or voluntary insolvency filing) be filed by or against Lessee and such petition is not dismissed or contested in good faith within sixty (60) days from the filing thereof, or in the event Lessee is adjudged a bankrupt;
- d. In the event an assignment for the benefit of creditors is made by Lessee;
- e. In the event of an appointment by any court of a receiver or other court officer of Lessee's Premises and such receivership is not dismissed or contested in good faith within sixty (60) days from the date of such appointment;
- f. In the event Lessee removes, attempts to remove, or permits to be removed from the Premises, except in the usual course of trade, a substantial portion of the Leasehold Improvements (furnishings, fixtures, and equipment) installed or placed upon the Premises by the Lessee during the Lease Term;

- g. In the event Lessee, before the expiration of the Lease Term, and without the written consent of Lessor, abandons the possession of the Premises, or uses the same for purposes other than the purposes for which the same are hereby leased or as otherwise permitted by Lessor, and such default continues for more than thirty (30) days after written notice of the default from the Lessor to the Lessee, In the event an execution or other legal process is levied upon the goods, furniture, effects or other personal property of Lessee brought on the Premises, or upon the interest of Lessee in this Lease, and the same is not satisfied, dismissed or contested in good faith within sixty (60) days from such levy; or
- h. In the event Lessee defaults in the due performance or observance of any Lease term, covenant, condition or provision, other than the payment of Rent, including without limitation failure to maintain insurance coverage in effect, failure to obtain permits or approvals required by law, or failure to timely pay taxes, fees, surcharges, or other impositions when required by law, and such default continues for more than thirty (30) days after written notice of the default from the Lessor to the Lessee, or such longer period as is reasonably necessary to diligently cure such default; or
- i. Inability of Lessee to produce financial records under the circumstances set forth in Article IV of this Lease.

## 16.2 Remedies of Lessor

If any Lessee Default occurs, Lessor shall have the right after the expiration of the applicable cure period, and at the sole discretion of Lessor, to terminate this Lease upon providing five (5) days written notice. An Event of Default shall be deemed to have occurred at the expiration of such five (5) day period if the default has not been cured by the expiration of such five (5) day period. Lessor may terminate the Lease irrespective of any suit or action brought by Lessee and the time period required for termination of this Lease shall not be tolled by the filing of a suit or action.

Additionally, if any Event of Default occurs, Lessor may, at its option, from time to time, without terminating this Lease, re-enter and re-let the Premises, or any part thereof, as the agent and for the account of Lessee upon such terms and conditions as Lessor may deem advisable or satisfactory, in which event the rents received on such re-letting shall be applied first to the expenses of such re-letting and collection including but not limited to, necessary renovation and alterations of the Premises, reasonable attorney's fees, any real estate commissions paid, and thereafter toward payment of all sums due or to become due to Lessor hereunder, and if a sufficient sum shall not be thus realized or secured to pay such sums and other charges, at Lessor's option, Lessee shall pay Lessor any deficiency immediately upon demand therefore, notwithstanding that Lessor may have received periodic rental in excess of the periodic rental stipulated in this Lease in previous or subsequent rental periods, and Lessor may bring an action therefore as such deficiency shall arise. Nothing herein, however, shall be construed to require Lessor to re-enter and re-let the Premises in any event. Lessor shall not, in any event, be required to pay Lessee any surplus of any sums received by Lessor on a re-letting of said Premises in excess of the rent provided in this Lease.

If any Event of Default occurs, Lessor shall have the right to obtain injunctive and declaratory relief, temporary and/or permanent, against Lessee for any acts, conduct or omissions of Lessee, and to further obtain specific performance of any term, covenant or condition of this Lease, including but not limited to the appointment of a receiver to operate Lessee's business at the Premises.

If any Event of Default occurs, Lessor shall have the right, at its option, to declare all Rent (or any portion thereof) for the entire remaining Lease Term, and other indebtedness owing by Lessee to Lessor, if any, immediately due and payable without regard to whether possession of the Premises shall have been surrendered to or taken by Lessor, and may commence action immediately thereupon and recover judgment therefore.

If any Event of Default occurs, Lessor, in addition to other rights and remedies it may have, shall have the right to remove all or any part of Lessee's personal property from the Premises and any personal property removed may be stored in any public warehouse or elsewhere at the cost of, and for the account of Lessee, and Lessor shall not be responsible for the care or safekeeping thereof whether in transport, storage or otherwise, and Lessee hereby waives any and all claim against Lessor for loss, destruction and/or damage or injury which may be occasioned by any of the aforesaid acts.

No such re-entry or taking possession of the Premises by Lessor shall be construed as an election on Lessor's part to terminate this Lease unless a written notice of such intention is given to Lessee. Notwithstanding any such re-letting without termination, Lessor may at all times thereafter elect to terminate this Lease for such previous default. Any such re-entry shall be allowed by Lessee without hindrance, and Lessor shall not be liable in damages for any such re-entry, or guilty of trespass or forcible entry.

It is expressly agreed that the forbearance on the part of Lessor in the institution of any suit or entry of judgment for any part of the Rent herein reserved to Lessor, shall not serve as a defense against nor prejudice a subsequent action for such Rent. Lessee hereby expressly waives Lessee's right to claim a merger or waiver of such subsequent action in any previous suit or in the judgment entered therein. Furthermore, it is expressly agreed that claims for liquidated Base Rent and/or Percentage Rent may be regarded by Lessor, if it so elects, as separate and independent claims capable of being separately assigned.

Any and all rights, remedies and options given in this Lease to Lessor shall be cumulative and in addition to and without waiver of, or in derogation of, any right or remedy given to it under any laws now or hereafter in effect.

### **16.3 No Waiver by Lessor**

The waiver (either expressed or implied by law) by Lessor of any default of any term, condition or covenant herein contained shall not be a waiver of any subsequent default of the same term or any other term, condition or covenant herein contained. The consent or approval by Lessor to or of any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent to or approval of any subsequent similar act by Lessee. No re-entry hereunder shall bar the recovery of rents or damages for the default or delay on the part of Lessor to enforce any right hereunder and shall not be deemed a waiver of any

preceding default by Lessee of any term, covenant or condition of this Lease, or a waiver of the right of Lessor to annul this Lease or to re-enter the Premises or to re-let same.

#### 16.4 Late Payment Fee

Any installment of Rent not received within five (5) days after the due date shall be subject to a late payment fee. Lessee shall pay, in addition to the payment then due, five percent (5%) of the amount due ("Late Fee"), and in the event that any check, bank draft, order for payment, or negotiable instrument given to Lessor for any payment under Lease shall be dishonored for any reason whatsoever not attributable to Lessor, Lessor, in addition to the five (5%) percent Late Fee, shall be entitled to make an administrative charge to Lessee of One Hundred and 0/100 Dollars (\$100.00), or the actual charge, to Lessor by Lessor's bank for dealing with such dishonored tender, whichever is greater. In the event that it shall be necessary for Lessor to give more than one (1) written notice to Lessee of any violation of this Lease, during the term hereof, Lessor shall be entitled to make an administrative charge to Lessee of Twenty-five and 0/100 Dollars (\$25.00) for each such subsequent notice after the first notice. Lessee recognizes and agrees that the charges Lessor is entitled to make upon the conditions stated in this section represent, at the time this Lease is made, a fair and reasonable estimate of the costs of Lessor in the administration of the Premises resulting from the events described herein, which costs are not contemplated or included in any Rent or other charges provided to be paid by Lessee to Lessor in this Lease. Any charges becoming due under this Section of this Lease shall be added to and become due with the late payment for which the charge was assessed, and shall be collectible as a part thereof.

#### 16.5 Additional Guarantees

In the event that Lessee defaults in accordance with the terms of this Article, or otherwise fails to perform any obligation required by this Lease, which directly or indirectly causes Lessor to suffer damages, and thereafter Lessee fails to cure or remedy the respective default in accordance to the terms of this Lease, Lessee's parent company, if any, and Lessee's President shall assume responsibility as a personal guarantors (collectively "Guarantor"), and shall pay the amounts due or perform the obligation required, as applicable. Guarantor may, at Lessor's option, be joined in any action or proceeding commenced by Lessor against Lessee in connection with and based upon the failure of Lessee to perform.

#### 16.6 Remedies Cumulative

No remedy conferred upon or reserved to the Lessor or the Lessee shall be considered exclusive of any other remedy, but shall be cumulative and shall be in addition to every other remedy given under this Lease or existing at law or in equity or by statute; and every power and remedy given by this Lease to the Lessor or the Lessee may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by the Lessor or the Lessee. No delay or omission of Lessor or Lessee to exercise any right or power arising from any default shall impair any right or power, nor shall it be construed to be a waiver of any default or any acquiescence in it.

**16.7 Lessor Default.**

In the event that Lessor shall at any time be in default of the terms of this Lease and any such default shall continue for a period of sixty (60) days after written notice to Lessor, and Lessor shall not thereafter cure or commence to cure the default, Lessee shall have the right at any time thereafter (but in no event shall be obligated) to cure such default for the account of Lessor, and Lessor shall reimburse Lessee for any amount paid and any expense or contractual liability so incurred upon invoice.

**ARTICLE XVII  
ACCESS BY LESSOR**

**17.1 Right of Entry**

Lessor and Lessor's agents shall have the right to enter the Premises at all reasonable times upon reasonable prior written notice to the Lessee (except in the case of an emergency when no notice is required) to examine the same. If Lessee shall not be personally present to open and permit entry into the Premises at any time, when for any reason an entry therein shall be necessary or permissible, Lessor or Lessor's agents may enter the same without in any manner affecting the obligations and covenants of this Lease. Nothing herein contained, however, shall be deemed or construed to impose upon Lessor any obligation, responsibility or liability whatsoever, for the care, maintenance or repair of the Premises or any part thereof, except as otherwise herein specifically provided.

**ARTICLE XVIII  
DAMAGE TO LESSEE'S PROPERTY**

**18.1 Loss and Damage**

Unless caused by a negligent act or omission of Lessor or Lessor's officers, employees, or agents, the Lessor shall not be responsible for any damage to any property of Lessee (including without limitation appliances, equipment, machinery, stock, inventory, fixtures, furniture, improvements, displays, decorations, carpeting and painting), or of others located on the Premises, nor for the loss of or damage to any property of Lessee, or of others by theft or otherwise. Lessor shall not be liable for any injury or damage to persons or Premises resulting from fire, smoke, explosion, falling plaster, steam, gas, electricity, water, rain, or leaks from any part of the Premises or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place by dampness or by any other cause of whatsoever nature. Lessor shall not be liable for any patent or latent defect in the Premises. All property of Lessee kept or stored on the Premises shall be so kept or stored at the risk of Lessee only and Lessee shall hold Lessor harmless from any and all claims arising out of damage to same, including subrogation claims by Lessee's insurance carriers.

**ARTICLE XIX  
HOLDING OVER & SUCCESSORS**

**19.1 Holding Over**

In the event Lessee remains in possession of the Premises after the expiration of the Lease Term, Lessee, at the option of Lessor, shall be deemed to be occupying the Premises as a Lessee at sufferance at a monthly rental equal to two (2) times the Base Rent and the Percentage Rent of the preceding Lease Year, payable during the last month of the Lease Term hereof. In addition, Lessee agrees to pay monthly: (a) one-twelfth (1/12) of the taxes for the Premises based upon the total taxes payable for the Lease Year immediately prior to the Lease Year in which the expiration occurs; (b) cost of insurance for which Lessee would have been responsible if this Lease had been renewed on the same terms contained herein; (c) all sales taxes assessed against such increased rent, and (d) any and all Additional Rent otherwise payable by Lessee hereunder. Such tenancy shall be subject to all the other conditions, provisions and obligations of this Lease. Lessee's obligation to pay any rents or sums provided in this Lease shall survive the expiration or earlier termination of this Lease.

**19.2 Successors**

All rights and liabilities herein given to, or imposed upon, the respective Parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors, and the assigns of the said Parties; and if there shall be more than one Lessee, they shall be bound jointly and severally by the terms, covenants and agreements herein. Nothing contained in this Lease shall in any manner restrict Lessor's right to assign or encumber this Lease and, in the event Lessor sells its interest in the Premises and the purchaser assumes Lessor's obligations and covenants, Lessor shall thereupon be relieved of all further obligations hereunder.

**ARTICLE XX  
EQUAL EMPLOYMENT OPPORTUNITIES**

**20.1 Equal Employment Opportunities**

The Lessee agrees that during the Lease Term; (a) it will not discriminate against any employee or applicant for employment because of race, creed, color, place of birth, religion, national origin, sex, age, marital status, veteran and disability status and will take definitive action to assure that applicants are employed and that employees are treated during employment without regard to race, creed, color, place of birth, religion, national origin, sex, age, marital status, veteran and disability status; (b) post in conspicuous places, available to employees and applicants for employment, notices, the form of which is to be provided by the Lessor, setting forth provisions for this nondiscrimination clause; (c) in all solicitations or advertisements for employees placed by or on behalf of the Lessee shall state that all qualified applicants will receive consideration for employment without regard to race, creed color or national origin; and (d) if applicable, to send to each labor union or representative of workers with which the construction contractor has a collective bargaining agreement or other contract or understanding

a notice, the form of which is to be provided by the Lessor, advising the union or representative of the Lessee's commitment and posting copies of the notice in a conspicuous places available to employees and applicants for employment.

## **20.2 Community Small Business Enterprise**

Lessee shall work towards achieving Community Small Business Enterprise ("CSBE") goals, employing the requirements of the Community Small Business Enterprises set forth in the City of Miami Procurement Ordinance, codified in Chapter 18, Article III, City Code, as a model; and shall try to attain, but not mandate, a plan for its achievement, which will strive to provide equal opportunity in hiring and promoting for Miami-Dade County certified CSBE companies, the disabled and veterans. Such plan shall include a set of positive measures taken to insure utilization of CSBE companies when practicable and nondiscrimination in the work place as it relates to hiring, firing, training and promotion.

## **20.3 Non-Discrimination**

Lessee represents and warrants to the Lessor that it will comply with §18-188, §18-189 and §18-190 of the City of Miami Code incorporated herein. Lessee hereby represents and warrants that it shall not engage in discriminatory practices and shall not discriminate in connection with Lessee's use of the Premises on account of race, national origin, ancestry, color, sex, religion, age, handicap, familial status, marital status or sexual orientation. Further, should the Lessee introduce or have existing membership rules for patrons at the Premises, that it will comply with the non-discrimination provisions incorporated within §18-188, §18-189, §18-190, and §18-191 of the City of Miami Code as incorporated herein by reference.

## **ARTICLE XXI MISCELLANEOUS**

### **21.1 Accord and Satisfaction**

No payment by Lessee or receipt by Lessor of a lesser amount than the Rent or other amount due as specified herein shall be deemed in satisfaction of any such amounts owed; nor shall any endorsement or statement on any check remitting partial payment or any letter accompanying any partial payment be deemed an accord and satisfaction of Lessee's debt. Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such Rent or pursue any other remedy provided herein or by law.

### **21.2 Public Records**

Lessee shall additionally comply with Section 119.0701, Florida Statutes, including without limitation: (1) keep and maintain public records that ordinarily and necessarily would be required by the City to perform this service; (2) provide the public with access to public records on the same terms and conditions as the City would at the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from disclosure are not disclosed except as authorized by law; (4) meet



all requirements for retaining public records and transfer, at no cost, to the City all public records in its possession upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from disclosure requirements; and, (5) provide all electronically stored public records to the City in a format compatible with the City's information technology systems.

**21.3 Entire Agreement**

This Lease and the Exhibits attached hereto and forming a part thereof as if fully set forth herein constitute all of the covenants, promises, agreements, conditions and understandings between Lessor and Lessee concerning the Premises and there are no covenants, promises, conditions or understandings, either oral or written, between them other than those set forth herein. All representations, either oral or written, made between the Parties shall be deemed to be merged into this Lease. No course of prior dealings between the Parties or their officer's employees, agents or affiliates shall be relevant or admissible to supplement, explain or vary any of the terms of this Lease. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement between the Parties or their affiliates shall not be relevant or admissible to determine the meaning of any of the terms of this Lease. Except as herein otherwise provided, no subsequent alteration, change or addition to this Lease shall be binding upon Lessor or Lessee unless reduced to writing and signed by the Parties. Any amendments to this Lease must be approved with the same formalities as were used in its execution; providing, however, that the City Manager may administratively execute non-material (i.e. non-substantial) amendments of the Lease in the exercise of his professional discretion. This Lease has been negotiated "at arm's length" by and between Lessor and Lessee, each having the opportunity to be represented by legal counsel of its choice and to negotiate the form and substance of this Lease, and therefore, in construing the provisions of this Lease neither party will be deemed disproportionately responsible for draftsmanship.

**21.4 Independent Parties**

It is understood and agreed by the Parties hereto that this Lease does not create a fiduciary or other relationship between the Parties, other than as Lessor and Lessee or contracting parties, as applicable. Lessor and Lessee are and shall be independent contracting parties and nothing in this Lease is intended to make either Party a general or special agent, joint venturer, partner or employee of the other for any purpose.

**21.5 Notices**

Any notice by the Parties required to be given must be served by certified mail return receipt requested, or by hand delivery, addressed to Lessor or Lessee at:

If to Lessor at:

If to Lessee at:

City Manager  
City of Miami

\_\_\_\_\_

444 SW 2nd Avenue, 10th Floor  
Miami, Florida 33130

\_\_\_\_\_  
Attn: \_\_\_\_\_

With copies to:

With a copy to:

City of Miami City Attorney  
Office of City Attorney  
444 SW 2nd Avenue, 9th Floor  
Miami, Florida 33130

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

City of Miami  
Director, Department of Real Estate and  
Asset Management  
444 SW 2nd Avenue, 3rd Floor  
Miami, Florida 33130

All notices given hereunder shall be effective and deemed to have been given upon receipt by the party to which notice is being given, said receipt being deemed to have occurred upon hand delivery or posting, or upon such date as the postal authorities shall show the notice to have been delivered, refused, or undeliverable, is evidenced by the return receipt or proof of deliver. Notwithstanding any other provision hereof, Lessor shall also have the right to give notice to Lessee in any other manner provided by law. If there shall be more than one Lessee, any notice required or permitted by the terms of this Lease may be given by or to any one thereof, and shall have the same force and effect as if given to all thereof.

**21.6 Captions and Section Numbers**

The captions, section numbers, and article numbers appearing in this Lease are inserted only for convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Lease nor in any way affect this Lease.

**21.7 Partial Invalidity**

If any term, covenant or condition of this Lease or the application thereof to any person or circumstances shall, to any extent, be deemed invalid or unenforceable by a Court with jurisdiction, the remainder of this Lease shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**21.8 Estoppel Certificate**

Each party agrees that it will, at any time and from time to time, within ten (10) business days following written notice by the requesting party specifying that it is given pursuant to this section, execute, acknowledge and deliver to the requesting party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect and stating the modifications), and the date to which the Base Rent, Percentage Rent and any other payments due hereunder from Lessee

have been paid in advance, if any, and stating whether or not there are defenses or offsets claimed by the certifying party and whether or not to the best knowledge of certifying party, the requesting party is in default in performance of any, covenant, agreement or condition contained in this Lease, and if so, specifying each such default of which certifying party may have knowledge.

The failure of the certifying party to execute, acknowledge and deliver to the requesting party a statement in accordance with the provisions of this Section within said ten (10) business day period, shall constitute an acknowledgment by the certifying party, which may be relied on by any person holding or proposing to acquire an interest in the Premises or any party thereof, that this Lease is unmodified and in full force and effect and that all Rent and dues have been fully paid to and including the respective due dates immediately preceding the date of such notice, and shall constitute, as to any person entitled as aforesaid to rely upon such statement, a waiver of any defaults which may exist prior to the date of such notice. It is agreed that nothing contained in the provisions of this Section shall constitute waiver by requesting party of any default in payment of rent or other charges existing as of the date of such notice and, unless expressly consented to in writing by requesting party and, certifying party shall still remain liable for the same. There will be a two hundred fifty dollar (\$250.00) regulatory fee per Section 166.221, Florida Statutes for each request made of Lessor for each Estoppel Certificate requested, payment in full shall be made at the time of the request. No certificate shall be issued without payment of the fee.

#### **21.9 Waiver**

Failure on the part of either party to complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be deemed to be a waiver by such party of any of its rights hereunder. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by either party shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval to or of any action by either party requiring such consent or approval shall not be deemed to waive or render unnecessary such consent or approval to or of any subsequent similar act by such party.

#### **21.10 Time is of the Essence**

Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

#### **21.11 No Discrimination**

It is intended that the Premises shall be operated in a manner whereby all customers, employees, licensees and invitees of the Lessee shall have the opportunity to obtain all the goods, services, accommodations, advantages, facilities and privileges of the Premises without discrimination because of race, creed, color, sex, age, national origin, ancestry, handicap or disability of any kind. To that end, Lessee shall not discriminate in the conduct and operation of its business in the Premises against any person or group of persons because of the race, creed,

color, sex, age, national origin, ancestry, handicap or disability of such person or group of persons.

**21.12 Governing Law, Venue, & Attorney's Fees**

It is the intent of the Parties hereto that all questions with respect to the construction of the Lease and the rights and the liabilities of the Parties hereto shall be determined in accordance with the laws of Florida. Additionally, all disputes civil action or legal proceeding arising out of or relating to this Lease shall be brought in the courts of record in Miami-Dade County. Each party shall bear their own attorney's fees in civil actions between them arising out of this Lease except the prevailing party may be awarded by the court in action for removal of the Lessee as provided by Florida Statute 83. 231, as amended or modified.

**21.13 Waiver of Counterclaims**

Lessee shall not impose any permissive counterclaim(s) for damages in a summary proceeding or other action based on termination or holdover, it being the intent of the Parties hereto that Lessee be strictly limited in such instances to bringing a separate action in the court of appropriate jurisdiction. The foregoing waiver is a material inducement to Lessor making, executing and delivering this Lease and Lessee's waiver of its right to counterclaim in any summary proceeding or other action based on termination or holdover is done so knowingly, intelligently and voluntarily.

**21.14 Waiver of Jury Trial**

Lessor and Lessee hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the Parties hereto against the other on, or in respect of, any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Lessor and Lessee hereunder, and/or Lessee's use or occupancy of the Premises.

**21.15 Quiet Enjoyment**

Subject to the terms of this Lease, upon the observance by the Lessee hereunder of all the terms, provisions, covenants and conditions imposed upon the Lessee, the Lessor covenants to the Lessee that Lessee shall peaceably and quietly hold, occupy and enjoy the Premises for the Lease Term without any interruption, disturbance or hindrance by the Lessor, its successors and assigns, or by persons claiming by, through or under the Lessor for the Premises leased herein, or by persons with title superior to the Lessor, its successors and assigns.

**21.16 Surrender of Possession**

Upon the expiration or earlier termination of the Lease pursuant to the provisions hereof, the Lessee shall deliver to the Lessor possession of the Premises in good repair and condition, reasonable wear and tear excepted.

**21.17 Joint and Several Liability**

If two or more individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) shall sign this Lease as Lessee, or by virtue of a Transfer assume the rights and obligations of the Lessee hereunder, the liability of each such individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) to pay Rent and perform all other obligations hereunder shall be deemed to be joint and several, and all notices, payments and agreements given or made by, with, or to any one of such individuals, corporations, partnerships or other business associations shall be deemed as having been given to all of them.

**21.18 Third Party Beneficiary**

Nothing contained in this Lease shall be construed so as to confer upon any other party the rights of third party beneficiary.

**21.19 Radon**

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 unit.

**21.20 No Liability for Act of other Party**

Lessee shall not sign any contract or application for any license or permit or do anything that may result in liability to the Lessor for any indebtedness or obligation of Lessee, unless expressly provided herein or approved in writing by the Lessor. Except as expressly authorized in writing or agreed to herein, neither Lessor nor Lessee shall make any express or implied agreement, warranties, guarantees or representations or incur any debt, or represent that their relationship is other than Lessor and Lessee, for the management and operation of the Premises; neither Lessor nor Lessee shall be obligated by or have any liability under any agreements or representations made by the other that are not expressly authorized in writing. Lessor reserves the right, at its sole option, to refuse an agreement for any Federal, State or local grants and loans when the acceptance of same by either Lessor or Lessee may impose a hardship upon Lessor or include obligations which extend beyond the Lease Term.

**21.21 Rights, Privileges and Immunities; Covenants**

The Lessee shall have, and the Lessor shall fully cooperate in providing to the Lessee, for its use and enjoyment, all rights, privileges and immunities as shall from time to time be granted or afforded by Federal, State or local law to restaurant operators or proprietors.

**21.22 Consents.**

Wherever in this Lease the consent of one party is required for an act of the other party, unless otherwise specified, such consent shall not be unreasonably withheld, delayed or conditioned.

The Parties agree that each of the terms, covenants and conditions hereof agreed to be observed or performed by each party shall constitute concurrent conditions of exchange.

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IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease, or have caused the same to be executed, as of the date and year first above written.

**LESSOR:**

**CITY OF MIAMI**, a municipal corporation  
of the State of Florida

By: \_\_\_\_\_  
Daniel J. Alfonso  
City Manager

**ATTEST:**

By: \_\_\_\_\_  
Todd B. Hannon  
City Clerk

**APPROVED AS TO INSURANCE  
REQUIREMENTS:**

By: \_\_\_\_\_  
Ann-Marie Sharpe, Director  
Risk Management Department

**APPROVED AS TO LEGAL FORM &  
CORRECTNESS:**

By: \_\_\_\_\_  
Victoria Méndez  
City Attorney

**LESSEE:**  
[INSERT LESSEE'S NAME]

\_\_\_\_\_  
Name of Authorized Agent  
Title

**CORPORATE SEAL**

**ATTESTED BY:**

**By:** \_\_\_\_\_  
Name  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Company Name

**By:** \_\_\_\_\_  
Name  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Company Name

**GUARANTOR:**  
By: [PARENT COMPANY]

\_\_\_\_\_  
Name of Authorized Agent  
Title

**CORPORATE SEAL**

**ATTESTED BY:**

**By:** \_\_\_\_\_  
Name  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Company Name

By: [PRESIDENT OF LESSEE]

\_\_\_\_\_  
Name  
President



**EXHIBIT A**  
**SURVEY/LEGAL DESCRIPTION OF PREMISES**

*[to be inserted prior to execution]*

**EXHIBIT B**  
**ANNUAL PERCENTAGE RENT STATEMENT**

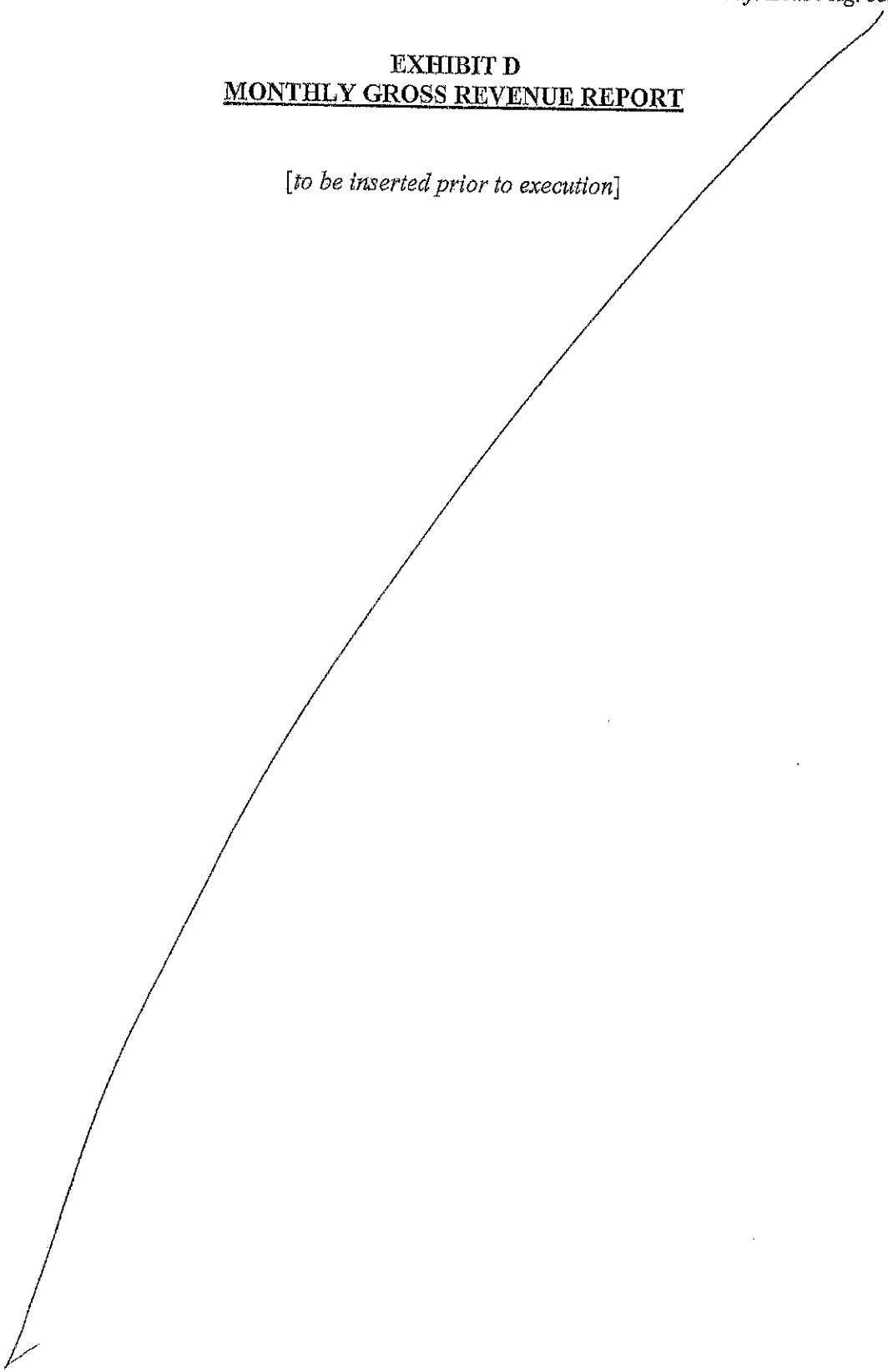
*[to be inserted prior to execution]*

**EXHIBIT C**  
**ANNUAL GROSS REVENUE REPORT**

*[to be inserted prior to execution]*

**EXHIBIT D**  
**MONTHLY GROSS REVENUE REPORT**

*[to be inserted prior to execution]*



**EXHIBIT E**  
**LESSEE'S LEASEHOLD IMPROVEMENTS**

*[to be inserted prior to execution]*

**EXHIBIT F**  
**PAYMENT & PERFORMANCE BOND**

*[to be inserted prior to execution]*

**EXHIBIT G**  
**CONTRACTOR INSURANCE REQUIREMENTS**

*[to be inserted prior to execution]*

**EXHIBIT H**  
**LEASEHOLD INSURANCE REQUIREMENTS**

*[to be inserted prior to execution]*