
LEASE

BETWEEN

THE CITY OF MIAMI

AND

FOR THE USE OF

**A CERTAIN PORTION OF
THE CITY-OWNED PROPERTY LOCATED AT**

2820 MCFARLANE ROAD

MIAMI FL. 33130

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GLASS HOUSE LEASE

This GLASS HOUSE LEASE ("Lease") is made as of the _____ day of _____, 2013, by and between the CITY OF MIAMI, FLORIDA ("Lessor"), a municipal corporation of the State of Florida having its offices at 3500 Pan American Drive, Miami, Florida 33133 ("Lessor" or "City") and _____, a _____ (type of company), having its offices at _____, Florida _____ ("Lessee").

The Lessor and Lessee, together the "Parties," agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.1 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 in this Section:

- 1) 1.1.1 "Acceptable Operator" means an entity possessing a minimum of five (5) years experience directly managing and operating a café, restaurant or food establishment or any combination thereof during the last fifteen (15) years or a minimum of any five (5) years experience directly involved in the ownership and day to day operation of a café, restaurant or food establishment during the last ten (10) years; a minimum of five (5) years experience in the management and operation for each additional use proposed; and meeting other threshold criteria outlined in Section VIII of RFP # 12-13-037 and in connection therewith, such entity shall have a good reputation in the business community; and such entity shall possess adequate financial resources and personnel necessary for the proper performance of all of Lessee's obligations under this Lease in a manner consonant with the quality, reputation and economic viability of the Lessee's business at the

Lease Area, including (without limitation) the obligation of payment of Rent payable by Lessee under this Lease.

1.1.2 “Additional Rent” means the Minimum Base Rent and Monthly Percentage Rent and all additional sums, charges, or amounts of whatever nature to be paid by Lessee in accordance with the provisions of this Lease, whether or not such sums, charges or amounts are referred to as additional rent.

1.1.3 “Applicable Law” 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.

1.1.4 “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 Lease Area and the rent and other obligations associated with the Lease, thereby substituting the old tenant’s rights and obligations.

1.1.5 “Assignee” refers to the third-party entity taking over the rights and obligations of the Lessee or assignor or owner of the leasehold estate.

1.1.6 “Assignor” refers to the Lessee which is transferring its rights and obligations under this Lease to a third-party entity. Unless otherwise provided herein and unless released from liability from the City, the Assignor shall remain liable for the obligations under the Lease, if the new Lessee (Assignee) defaults under the Lease.

1.1.7 “Business Days” means Monday through Friday excluding legal holidays.

1.1.8 “Cafe Operations” or “Garden Café Operations” means all services associated with the preparation, service and sale of food and beverages, including alcoholic beverages, entertainment (excluding adult entertainment), private banquets, catering, parties, cigar smoking, art shows, happy hour and such other activities ancillary to the sale of food and beverage including sales of merchandise related to the business conducted on the Lease Area.

1.1.9 Construction completion date means ten (10) months after Lease Date.

1.1.9 “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 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 Applicable Law.

1.1.10 “Fair Market Value of the Leasehold Estate” means the value that a similar property being used as set forth herein, with such additional uses as may be located on the Premises, as may be permitted by the Lease, would bring in a competitive and open market, the buyer and seller each acting prudently, knowledgeably, and assuming the sales price is not affected by undue stimulus. Implicit in this definition is consummation of a sale of a specified date under conditions whereby:

- (i) Buyer and seller are typically motivated;
- (ii) Both Parties are well-informed or well-advised and acting in what they consider their own best interest;
- (iii) A reasonable time is allowed for exposure in the open market;
- (iv) Payment is made in terms of cash in U.S. dollars in terms of financial arrangements comparable thereto; and
- (v) The price represents the normal consideration for property being sold under the current market conditions unaffected by special or creative financing or concessions granted by anyone associated with sale.

1.1.11 “Force Majeure” means any period of delay which arises from or through acts of God; strikes, lockouts, or labor difficulty; explosion, sabotage, accident, riot, or civil commotion; act of war; fire or other casualty; delays caused by the other party; and causes beyond the reasonable control of a party.

1.1.12 “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 and derived from the following sales sources, including without limitation:

- (i) all revenue from the commercial business and services conducted by Lessee and its Sub-lessees and/or assignees) on or from the Premises or Lease Area;

(ii) all revenues from sales of food, beverage, wine, beer, merchandise or services from the Premises or Lease Area;

(iii) all revenue derived from advertising and sponsorships conducted on the Premises or Lease Area, including but not limited to, movie, television commercials, etc.;

(iv) all amounts received from any catering food operations based at the Premises;

(v) all amounts received from valet concession sales or parking valet services (not reported in (a) above);

(vi) delivery charges;

(vii) sales made or performed by means of mechanical or other vending sales and services devices or machines on the Premises or Lease Area, including without limitation, pay telephones, vending machines, and entertainment devices both for cash and on credit, rendered in or upon the Premises;

(viii) 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 without limitation, banquets, parties, receptions held on or initiated from the Premises;

(ix) internet or telephone food/beverage orders received or filled at the Premises, or procured from the Premises by house-to-house or other canvassing, all deposits not refunded to purchasers, and orders taken, although said orders may be filled elsewhere, including proceeds of all video games;

(x) 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;

(xi) all donations and contributions received, the revenues of which are unrestricted or are to be used for general operating expenses;

(xii) and all other receipts whatsoever derived from other commercial operations conducted in or from the Premises or Lease Area 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. No deduction shall be allowed for direct or indirect discounts, unless generally offered to employees or to the public on a uniform basis.

Gross Revenues shall not include the following:

- i) direct or indirect discounts or other reductions on sales to employees;
- ii) any sums collected and paid out by Lessee for any sales, use or excise tax imposed by any federal, state or governmental authority directly on sales and collected from customers and accounted for by Lessee and/or Sub-lessees, provided that the amount is added to the selling price therein and paid by the Lessee to such governmental authority;
- iii) the exchange of merchandise between the stores of Lessee, a party controlled by Lessee, or Sub-lessees, if any, where such exchange of goods or merchandise is made solely for the convenient operation of the business of Lessee and not for the purpose of consummating a sale which has theretofore been made in or from the Premises and/or for the purpose of depriving Lessor of the benefit of a sale which otherwise would be made in or from the Premises;
- iv) the amount of returns to shippers or manufacturers;
- v) proceeds from the sale of trade fixtures, operating equipment or similar assets after use thereof in the conduct of Lessee's and Sub-lessees' business on the Premises;
- vi) the sales price, if Lessee sells part or all of the entire business;
- vii) all sums and credits received in settlement of claims for loss or damage to merchandise;
- viii) funds collected with regard to the Premises which are not actually related to the day-to-day business of the Premises such as, but not limited to the financing of the Lessee's interest in the Premises;
- ix) sale or assignment of Leasehold Estate;
- x) collection of insurance proceeds;

- xi) collection of eminent domain proceeds;
- xii) monies collected for events that are done for charities wherein the total amounts collected are paid to the charitable sponsor or not-for-profit organizations;
- xiii) all gratuities paid to employees;
- xiv) amounts received by Lessee as reimbursements of expenses and cost sharing (for example, reimbursement of taxes, insurance or utility bills);
- xv) any grants, subsidies, rebates, credits or similar benefits received by Lessee or Sub-lessee from any federal, state, regional or local body, agency, authority, department or organization;
- xvi) interest earned on Lessee's deposit accounts, earnings or profits on Lessee's investments;
- xvii) interest income from loans or credit facilities granted by Lessee and similar passive or investment income of Lessee related to Lessee's liquid assets, investments or loans/credit facilities granted by Lessee;
- xviii) rents or percentage rents and commissions paid to Lessee by any Sub-lessees where the City is collecting rent based on a percentage of Sub-lessee's Gross Revenues as provided in Section 10.1.
- xix) Amounts received by a valet parking concessionaire when Lessee is remitting the respective percentage due to Lessor as provided above.
- xx) Any restricted donations or contributions whose revenues are earmarked for capital expenditures, as approved by the Lessor, to the Property;

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.

Gross Revenues, whether for cash, credit, credit cards or otherwise, shall be recognized

in the period the service was provided or sale took place. Gross Revenues shall be reduced by the amount of any refund made upon any sale in or from the Premises, provided said amounts had been previously included in "Gross Revenues," not to exceed the sum so previously included, where the merchandise sold is thereafter returned by the purchaser and accepted by the Lessee or Sub-lessees, and if such refund is in the form of a credit to customer, such credit shall be included in Gross Revenues when used.

1.1.13 "Impositions" means all assessments, including assessments imposed by the City, 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.

1.1.14 "Lease Area" shall refer to that certain portion of the Glass House property which shall be designated for use by the Lessee, more particularly described in Exhibit "A2" attached hereto and incorporated.

1.1.15 "Lease Date" means the date this Lease is fully executed and legally binding upon the Parties, after approval by the City of Miami Commission, and the City's electorate, if required.

1.1.16 "Leasehold Estate" means all of Lessee's right, title and interest as Lessee in, to and under this Lease, the Premises and the Leasehold Improvements.

1.1.17 "Leasehold Improvements" means a description of remodeling/renovation work to be done to the physical plant as described in Exhibit "B" entitled "Schedule of Leasehold Improvements" and all furnishings, fixtures, or equipment to be installed in accordance with Section 5.1, and all other items and improvements installed or constructed thereafter, from time to time during the Lease Term that are hereafter located upon the Premises.

1.1.18 "Leasehold Mortgage" means a mortgage, deed of trust, or other instrument which constitutes, 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.

1.1.19 "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.

1.1.20 "Lease Year" means twelve (12) consecutive months. The first Lease Year shall begin on the Lease Date. Each succeeding Lease Year shall commence upon the anniversary date of the first Lease Year.

1.1.21 "Minimum Base Rent" shall mean the annual Minimum Base Rent due and payable by the Tenant on a monthly basis for the use of the subject Premises and which commences at \$4,750.00 per annum.

1.1.22 "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 .

1.1.23 "Gross Insurance Proceeds" means the actual amount of insurance proceeds paid following an insured casualty to the Leasehold Improvements.

1.1.24 "Parties" means the Lessor and Lessee.

1.1.25 "Percentage Rent" is calculated as a percentage of Gross Revenues from Lessee's operations, which includes revenues from those operations, services or activities furnished by the Lessee and Sub-lessees that enter into agreements with Lessee to provide the activities or vending machines on the Premises and collect payment directly from patrons or invitees to the site.

1.1.26 "Possession Date" means the date that the City delivers possession to the Lease Area to Lessee, by notice in writing, in accordance with this Lease. In the event that the Possession Date does not fall on the first day of the month, the Possession Date shall be adjusted to be the first day of the following month.

1.1.27 "Premises" means the land, building and improvements situated at the the "Glass House" location of 2820 MacFarlane Road, Miami, Florida, as more particularly described in Section 2.1 herein and Exhibit "A1" attached herewith and incorporated herein by reference.

1.1.28 "Proposal" means the document received by the Lessor from _____ dated _____, 2013 in response to the RFP.

1.1.29 "Rent" means Minimum Base Rent ("Minimum Base Rent") and monthly Percentage Rent ("Percentage Rent"), as such amounts are described and fixed in Section 4.1 and adjusted pursuant to the terms of Section 4.3.

1.1.30 "RFP" means the document entitled Request for Proposals # 12-13-037 for the Leasing of a certain portion of city-owned property as a garden café located at 2820 MacFarlane Road, Miami Florida, issued by the City of Miami on _____, 201_, a copy of which is available at the City Clerk's Office.

1.1.31 "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.

1.1.32 "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.

1.1.33 "Lessee" has the meaning ascribed to it in the opening paragraph of this Lease Agreement as well as Lessee's successors and assigns.

ARTICLE II LEASE OF PREMISES

Section 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 Lease Area, 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 term herein specified, unless this Lease shall be sooner terminated in a manner hereinafter provided. The Lease Area are legally described more particularly in Exhibit "A2" attached herewith and incorporated herein by reference.

Section 2.2 Purpose of Use and Occupancy.

The Lessee will use and occupy the Premises for Garden Cafe Operations and ancillary functions and services and for no other purpose or use of any kind. The Lessee will operate the Premises seven (7) days a week.

Section 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 Lease Area, or with respect to the suitability or fitness of the Premises or Lease Area, for the conduct of Lessee's Garden Cafe 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 Lease Area "AS IS", subject to the representations set forth in Section 2.4 herein, the RFP or elsewhere in this Lease.

Section 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 Lease Area by the Lessee:

(a) That Lessor has taken all requisite actions to make this Lease binding upon the Lessor, and the Lessor is indefeasibly seized of marketable, fee simple title to the Lease Area, and is the sole owner of and has good right, title and authority to convey and transfer all property, rights and benefits which are the subject matter of this Lease, free and clear of all liens and encumbrances.

(b) That no party except Lessee shall, on the Lease Date, be in or have any right to possession of the Lease Area.

(c) That there is on the Lease Date legal and physical ingress and egress to the Lease Area from a paved public street for legal and physical ingress and egress for pedestrian traffic.

(d) The Lease Area may be used and operated for the purpose set forth and as contemplated by the RFP and this Lease; and there are no Applicable Laws, private restrictions or other conditions which restrict or prevent the Lease Area from being used and operated for Garden Café Operations on the Lease Date. Nothing herein shall be construed to imply that Lessor herein warrants or represents that Lessee can obtain a liquor license.

(e) That as of the Lease Date, there are no ad valorem real or personal property taxes or assessments due and owing for the Premises for the year 2012 and all prior years.

(f) That all of the representations and warranties of Lessor contained in this Lease shall continue to be true as of the Lease Date and said representations and warranties shall be deemed to be restated and affirmed by Lessor as of the Lease Date without the necessity of Lessor's execution of any document with regard thereto, and the Lessor's liability (except with respect to the environmental condition of the Lease Area which is expressly addressed in Article XII of this Lease) therefore, shall survive the signing of this Lease. Should any of the representations and warranties prove to be incorrect, it shall be Lessor's obligation to cure those warranties and representations which are set forth herein forthwith at Lessor's expense.

Section 2.5 Possession.

On the Lease Date, the Lessor shall deliver possession of the Premises to Lessee.

Section 2.6 Existing Liens and Encumbrances.

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.

Section 2.7 Lease Execution

Lessee shall execute this Lease no later than thirty (30) days following the Lease Date.

ARTICLE III TERM

Section 3.1 Term of Lease.

The initial term of this Lease is for a period of twenty (20) years, commencing on the Lease Date. The term of this Lease 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.

Section 3.2 Option to Renew.

The Lessee has the option of extending this Lease for two (2) five-year periods, as long as the Lessee is not in default of any of the Lease provisions ("First Renewal Term" and "Second Renewal Term"). To exercise the First Renewal Term, the Lessee must give Lessor written notice not less than one hundred eighty (180) days before the expiration date of the Lease Term,

and to exercise the Second Renewal Term, the Lessee must give Lessor written notice not less than one hundred eighty (180) days before the expiration date of the First Renewal Term. The First Renewal Term and the Second Renewal Term will be on the same terms and conditions as the Lease Term, except that the Rent will be adjusted as set forth in Section 4.3 below.

ARTICLE IV RENT

Section 4.1 Construction Rent.

Commencing on the Lease Date and until the Construction Completion Date, , the Lessee shall pay a construction rent in the amount of _____ and ___/100 Dollars (\$_____) (“Construction Rent”) to the City in the manner described in Section 4.2(D) herein, with an allowance of seven (7) months free rent for the first seven (7) months of the construction period.

Section 4.2 Minimum Base Rent and Percentage Rent.

Commencing on the Construction Completion Date, and each and every calendar month during the Lease Term, Lessee hereby agrees to pay to the Lessor, no later than the fifteenth (15th) day of each month, the greater of the Minimum Base Rent or Percentage Rent in the manner described in Sections 4.2.1 through 4.2.4 below.

4.2.1 Minimum Base Rent. The guaranteed Minimum Base Rent shall be Four Thousand Seven Hundred and Fifty Dollars (\$4,750.00) per month (“Minimum Rent”). The Minimum Rent shall be adjusted and increased annually by the consumer price index (CPI) by the method described in Section 4.2.2 below.

4.2.2 Consumer Price Index (CPI) Escalation.

Lessee agrees that, except as provided in 4.1 above, the Minimum Base Rent shall be increased annually from the third lease anniversary date onwards, by any increase during the prior year in the consumer price index (“CPI”), which is the monthly indices for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor as the Consumer Price Index for All Items, Miami-Ft. Lauderdale, Florida, Base Year 1982-84=100. The CPI adjustment shall be hereinafter referred to as the “CPI Escalation”. The CPI

Escalation shall be capped at five (5%) Percent each time the CPI Escalation is made. The first CPI Escalation shall be at the beginning of Lease Year 4 (“CPI Escalation Date”).

The CPI Escalation of the Minimum Base Rent shall be equal to Minimum Base Rent in effect for the immediately preceding Lease Year plus the product of that Minimum Base Rent multiplied by the “CPI Percentage” (as defined below). The CPI Percentage shall equal the fraction (i) whose numerator equals the total of (a) the monthly Index published immediately prior to the anniversary date (or the nearest reported previous month), minus (b) the monthly Index published immediately prior to the anniversary date (or the nearest reported previous month) and (ii) whose denominator is the same monthly Index as (b) above. If the Index is discontinued with no successor Index, Lessor shall select a comparable index.

Lessor shall compute the CPI Escalations and send a notice, with calculations, to Lessee setting forth the adjusted Minimum Base Rent within sixty (60) days of the commencement of each CPI Escalation Date or as soon as such Index is available. In the event the Minimum Base Rent increases, Lessee shall pay to Lessor within thirty (30) days of receiving such notice, the Additional Rent owed for the months, which have elapsed in the current Lease Year.

4.2.3 Sales Tax.

The Lessee shall be liable for the prevailing State of Florida Use 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. Said tax is applicable to the Monthly Minimum Rent payments, unless otherwise determined by the State of Florida.

4.2.4 Percentage Rent.

Percentage Rent shall be due and payable to the Lessor upon exceeding the seven hundred and sixty thousand dollar (\$760,000) breakpoint (“Rent breakpoint”) simultaneously with the previous month’s Minimum Rent. Percentage Rent shall be equal to seven and one-half percent (7.5%) of the combined Gross Revenues of the Lessee and any and all Program Operator(s) for any preceding calendar month (“Percentage Rent”) over the Rent breakpoint . In the event that the Rent breakpoint Percentage Rent calculated for the preceding calendar month is more than the Minimum Rent in any given month, Lessee shall pay the Additional Percentage

Rent (“Additional Percentage Rent”) to the Lessor in the manner and method described herein. If there is any underpayment of Percentage Rent, Lessee shall pay the Lessor the amount of the deficiency within thirty (30) days of the Lessor receipt of the Percentage Rent payment. If the Percentage Rent is not paid after thirty (30) days, Lessee shall be charged a late payment fee in accordance with Section 16.4 until the amount of underpayment is paid in full.

4.2.5 Manner of Payment. Every 15th day of the calendar month, Lessee shall pay the Lessor the Monthly Minimum Rent, together with the Additional Percentage Rent and corresponding Gross Revenue Report for the preceding calendar month to the City of Miami, Department of Finance at the address noted below:

City of Miami
Department of Finance
Attention: Treasury Management/Receipts
444 SW 2nd Avenue, 6th Floor
Miami, Florida 33130

Lessee shall use a Gross Revenue Report, a sample of which is attached herewith and incorporated herein as Exhibit “C” to itemize any and all reportable Gross Revenues .

Section 4.3 Security Deposit.

Simultaneously with the execution of this Lease on the Lease Date, Lessee shall deposit with the Lessor, the sum of fourteen thousand two hundred fifty dollars (\$14,250) (“Security Deposit”) 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 Lessee shall default 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 (but Lessor shall not be obligated to do so) to the damages sustained by Lessor by reason of any such 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. 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 ten (10) 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 ten (10) day period may be treated by Lessor as a failure by Lessee to make timely payment of rent and as an Event of Default. In the event Lessee conveys or otherwise transfers the Lease Area, Lessor's remittance of the Security Deposit or any remaining portion thereof to the purchaser of the Lease Area shall release and relieve Lessor of any further obligation or liability to Lessee with respect to the Security Deposit.

Section 4.4 Lessee's Records.

Lessee shall prepare and keep full, complete and proper books 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 books and source documents to be kept by Lessee shall include, without limitation, true copies of all federal, state and local tax returns and reports, records of inventories and receipts of merchandise, daily receipts from all sales and other pertinent original sales records and records of any other transactions conducted in or from the Premises by Lessee.

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 in the Premise, 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.

Lessee shall record, at the time of each sale or other transaction, in the presence of the customer, all receipts from, such sale or other transaction, whether for cash, credit or otherwise, in a cash register or cash registers having a cumulative total which shall be sealed in a manner approved by Lessor and which shall possess such other features as shall be required by Lessor. Lessee shall be required to install point of sale terminals, pollable, point of sales cash register systems or such other point of sale equipment of a make and model mutually agreed to by the Parties.

Section 4.5 Reports by Lessee.

Within ninety (90) days after the end of each Lease Year, Lessee shall also furnish to Lessor a financial report by an independent certified public accountant ("Annual Report"), showing in all reasonable detail of the amount of such Gross Revenues made by Lessee from the Premises during the preceding Lease Year. Lessee shall in all events furnish to Lessor within fifteen (15) days after the end of each month of the Lease Term a written statement of Gross Revenues covering the preceding month, the statement to be in such form and style and contain such details and breakdown as Lessor may reasonably require. Any intentional misstatement of Gross Revenues will constitute a default under this Lease.

Section 4.6 Right to Examine Books.

Notwithstanding the acceptance by Lessor of payments of Minimum Rent and Percentage Rent, Lessor shall have the right to all rents and other charges actually due hereunder, and the right to examine, make extracts from and copy, at the Lease Area or Lessee's main accounting office, Lessee's books, source documents, accounts, records and sales tax reports filed with applicable government agencies by Lessee in order to verify the amount of Gross Revenues in and from the Lease Area. For a period of two (2) years after the expiration of each Lease Year, Lessee shall make all such documents and records available at the Lease Area or Lessee's main accounting office upon ten (10) days prior written notice from Lessor.

Section 4.7 Audit.

(a) At its option, Lessor may at any time, upon ten (10) 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 and Sub-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 Lease Area or Lessee's main accounting office on the day set forth in Lessor's notice, requiring such audit, all of the books, source documents, accounts and records referred to in Section 4.5 hereof and any other materials which such auditor deems necessary or desirable for the purpose of making 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 that Lessee's statement of Gross Revenues is at variance to the extent of ten percent (10%) or more, then Lessor, in addition to the foregoing remedy and other remedies available to Lessor, shall have the option, upon Lessee's failure to pay such additional sums within thirty (30) days after written notice to the Lessee, to declare this Lease terminated and the Lease Term ended, in which event this Lease shall cease and terminate on the date specified in such notice with the same force and effect as though the date set forth in such notice were the date originally set forth herein and fixed for the expiration of the Lease Term, and Lessee shall vacate and surrender the Lease Area but shall remain liable for all obligations arising during the balance of the original stated term as provided in this Lease. If such audit shall disclose an overpayment, Lessor shall credit such overpayment towards 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.

(b) In addition to all other remedies available to Lessor, in the event that any such audit shall disclose that Lessee's records and other documents as referred to in Section 4.4, 4.5, 4.6 and 4.7 hereof and such other materials Lessee provides to Lessor's auditor are inadequate, in the opinion of an independent CPA serving as Lessor's auditor, to disclose accurately Lessee's

Gross Revenues, then Lessor shall be entitled to collect as Additional Rent from Lessee an amount equal to fifty percent (50%) of the Monthly Minimum Rent payable by Lessee for the period in question. 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.

Section 4.8 Lien for Rent.

The whole amount of the Rent, Additional Rent, and each and every installment, and the amount of all taxes, assessments, water rates, insurance premiums and other charges and Impositions paid by the Lessee under the provisions of this Lease, and all costs, attorneys 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**

Section 5.1 Lessee's Obligation to Provide and Fund Leasehold Improvements.

Within thirty (30) days of the Lease Date, Lessee, at its own cost and expense, shall submit to Lessor its plans for the commencement and completion of the construction, and the acquisition and installation of the Leasehold Improvements. The plans shall include: a layout of the Lease Area, a lighting plan, a depiction of all fixtures to be added to Premises, interior finish and material samples, typical display technique, interior and exterior signage plan, store front and any work or equipment to be done or installed by Lessee affecting any structural, mechanical or electrical part of the Lease Area ("Plans"). Within ten (10) business days of receipt of the Plans, the Lessor shall give Lessee written notice of either, Lessor's approval or Lessor's disapproval setting forth the reasons therefore. In the event that Lessor disapproves the Plans, the 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. The modified Plans shall be

resubmitted to Lessor for Lessor's final review and approval.

Lessee, at its sole cost and expense, shall complete construction, acquisition and installation of the initial Leasehold Improvements as more fully described in Exhibit "B" attached hereto and made a part hereof, and acquire and install the furnishings, fixtures and all garden café equipment required for operation of the Lease Area within nine (9) months following Lessor's approval of the Plans.

Section 5.2 Possession Date.

The City shall deliver possession of the Lease Area to Lessee and Lessee shall take possession thereof, subject to force majeure delays, after the following conditions precedent have been complied with by the respective Parties:

i) On the Lease Date, the City shall deliver possession of the subject property to Lessee free and clear of all leases, claims of possession, licenses and parties in possession.

ii)

The City Manager or his/her designee shall have received and approved, which approval shall not be unreasonably withheld or delayed, evidence as may be reasonably satisfactory to the Lessor that Lessee has sufficient funding to complete the Leasehold Improvements to be constructed at the subject property; and

Lessee and the City shall use good faith efforts to satisfy all of the aforesaid conditions precedent to Lessee's taking possession of the Lease Area . It is recognized by the Parties hereto that it is not the intention of either party to encumber the Lease Area with this Lease for an indefinite period of time during the period of satisfaction of the aforesaid conditions precedent.

The Lessee or Lessor may therefore terminate this Lease if all of the aforesaid conditions precedent are not satisfied on or before six (6) months from the Lease Date, except that as to the possession condition, Lessor shall have twelve (12) months from the Lease Date in which to satisfy Section 5.2, prior to either Lessee or Lessor being able to terminate this Lease pursuant hereto, provided further that, either party may reasonably extend the time for performance of any of the conditions precedent and Lessee may postpone taking possession of the Lease Area in the event of a force majeure delay or delay in connection with review and approval by the City Commission and/or City Manager.

The date that the City delivers possession of the Lease Area to Lessee in accordance

with this section, by notice in writing, is herein called the "Possession Date." Lessor and Lessee agree to execute a Possession Date Certificate in the form of the certificate attached hereto as Exhibit "D."

Section 5.3 Payment and Performance Bond.

Within ten (10) days after the Lessor approves the plans for commencement and completion of the construction, and the acquisition and installation of the permanent Leasehold Improvements by the Lessee (as described in Exhibit "B" attached), 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 Construction Payment and Performance Bond.

The Construction Payment and Performance Bond shall be issued by a bonding company which shall be approved by Lessor, in an amount equal to one hundred percent (100%) of the costs to construct the Leasehold Improvements plus professional design fees related to the preparation of the construction documents for 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 Construction 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, 2013 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; and

(ii) to pay the Lessor all losses, damages, expenses, costs, and attorneys fees, including appellate proceedings, that the Lessor sustains because of a default by the 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, as described in Exhibit "B".

The Construction 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 Construction Payment and Performance Bond have been satisfactorily concluded, and by the issuance of a certificate of occupancy. The form of the Construction Payment and Performance Bond, a sample of which is attached herewith by reference as Exhibit "E," shall be approved by the City Manager, which approval shall not be unreasonably be withheld.

The City agrees that in the event the Lessee cannot obtain the above Construction Payment and Performance Bond, the Construction Payment and Performance Bond may be provided by the General Contractor(s) (in an amount acceptable to the City with respect to the work to be performed by the General Contractor(s), together with such Performance Bonds of the subcontractors as shall be required by the City, in lieu of the Lessee providing the same as Principal of the project. Said Construction Payment and Performance Bond(s) shall comply with all the requirements listed under in subsections (i) through (iii) above.

Section 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 satisfaction of the City protecting the Lessor and its respective commissioners, officers, agents, and employees, against any claim for personal injuries, death and property damage that may be asserted because of the construction, or the acquisition or installation of the Leasehold Improvements. The certificates must be in accordance to Exhibit "F1" in the Lease Agreement.

Section 5.5 Additional Consideration.

(a) The Lessee hereby, in consideration of the granting of this Lease shall upon termination or expiration of this Lease:

(i) grant and convey unto the 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, and

(ii) 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 Lease Area by the Lessee during the Lease Term, including all furnishings, and equipment at actual cost less actual "observed" depreciation as determined by an appraisal, provided that the Lessor by notice in writing to the Lessee of at least forty five (45) days prior to the expiration, or earlier termination of the Lease Term, notifies the Lessee of its election.

Section 5.6 Lessor's 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 shall at any time be filed against the Premises, the Lessee shall 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. Upon the Lessee's failure to do so, 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 costs incurred by the City in connection with such action, including all reasonable legal fees, costs and expenses.

Section 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**

Section 6.1 Use of Premises.

Upon completion of the Leasehold Improvements, Lessee shall occupy the Lease Area without delay, and covenants to continuously conduct its permitted business therein throughout the Lease Term. Lessee shall use the Lease Area solely for Garden Café Operations. Lessee shall not use, permit or suffer the use of the Lease Area for any other business or purpose. Lessee agrees to conduct its business upon the Lease Area in accordance with the highest ethical and operating standards of the restaurant industry of which Lessee forms a part.

Section 6.2 Operation of Lessee's Business.

At all times during the Lease Term, Lessee shall manage the Garden Café Operations at the Lease Area with due diligence and efficiency, in Lessee's sole and absolute discretion, and in a manner prudent and in accord with the current business techniques within the locale for Lessee's business so as to maximize the amount of Gross Revenues, subject to Force Majeure. Lessee shall carry at all times in the Lease Area a stock of merchandise of such quantity, character and quality as shall be in accord with advanced and highest quality business practices within the locale for Lessee's business.

Section 6.3 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. 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 and shall conform to the criteria Lessor establishes from time to time .

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

Section 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 Lease Area, including all operating equipment, utility services, and connections on the Lease Area. 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, sanitary condition and repair throughout the Lease Term. Lessee shall be responsible for painting the interior and exterior of the Lease Area and decorating the interior of the Lease Area, 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 Lease Area commensurate with maintenance, health, and safety standards established by the Lessor and Applicable Law.

Section 7.2 Lessee's Repair Obligation.

Lessee, at Lessee's sole cost and expense, at all times during the Lease Term, shall make all interior, exterior, structural repairs, including repairs to the roof, wires, pipes, conduits and other equipment or facilities for supplying heat, light, power, hot and cold water services, all

drainage and waste pipes or facilities leading from the Lease Area, and to all heating, ventilating and air-conditioning equipment and any other repair or replacement to the Lease Area and to the Leasehold Improvements.

Section 7.3 Changes/Alterations.

Lessee shall not make any changes, alterations, including without limitation, installing or causing to be installed any trade fixtures, exterior signs, exterior machinery, floor covering, interior or exterior lighting, plumbing fixtures, 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.

**ARTICLE VIII
INSURANCE AND INDEMNITY**

Section 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 types and amounts of insurance coverage set forth in Exhibit "F" attached hereto and incorporated herein by reference. 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 term of this Lease Agreement, 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 by the issuance of a notice in writing to the Lessee, which amended insurance requirements shall be subject to the reasonable approval by Lessee, which approval shall not be unreasonably withheld.

Section 8.2 Delivery of Insurance Policies.

All liability, workers compensation and employer's liability policies 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 to be provided and obtained 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 and beneficiaries of the policies shall contain waiver of subrogation rights endorsements, as required below. The Lessor shall have no obligation to pay premiums or make contributions to the insuring company or any other person or 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 and 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 which indicates less coverage than required does not constitute a waiver of the Lessee's obligation to fulfill the insurance requirements herein.

Section 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 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.

Section 8.4 Insurer To Be Approved-Premium Receipts.

All policies of insurance of the character described in Sections 8.1 and 8.2 shall be written by companies of recognized responsibility reasonably acceptable to the Lessor. On request by Lessor, Lessee shall provide photocopies of receipts showing the payment of premium for all insurance policies required to be maintained by this Lease.

Section 8.5 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 loss of life, personal injury and/or damage to or destruction of Premises arising from or out of any occurrence in, upon or at the Premises, or the occupancy or use by Lessee of the Premises or any part thereof, or occasioned wholly or in part by any act of omission of Lessee, its agents, contractors, employees, servants, customers, invitees, licensees, Sub-lessees or concessionaires. In case Lessor shall be made a party to any litigation commenced by or against Lessee covered by this indemnity provision, then Lessee shall protect and hold Lessor harmless and pay all costs and attorney's fees incurred by Lessor in connection with such litigation, and any appeals thereof. Lessee shall also pay all costs, expenses and reasonable attorneys' fees that may be incurred or paid by Lessor in enforcing the covenants and agreements in this Lease.

Section 8.6 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.

Section 8.7 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, 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 the development of the Premises and acquisition of the Leasehold Improvements, which may result from a third party challenging the validity or legality of this transaction under the City Charter or Code or the laws of the State of Florida, or arising out of the award of this Lease Agreement, or any subsequent assignment of this Lease by the Lessee or its assignees (the "Claim"). It is the intent of the Parties that this provision shall control over any other provision in this Lease Agreement 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, including expenses incurred in connection with the acquisition of this Lease or the financing, and/or installation of the Leasehold Improvements, or otherwise, as a result of any adverse judgment which may be entered or relief granted in connection with the Claim. The terms of this provision shall expressly be made a part of any future assignment or mortgage of the Leasehold Interest.

In the event a Claim is filed or asserted within forty (40) days of the Lease Date, either party shall have the right to terminate this Lease and except as otherwise hereafter provided in this paragraph, the Parties shall thereupon be relieved of any and all further responsibility hereunder and neither Party shall have any further obligation under this Lease. In the event of such termination, Lessor shall return the Security Deposit to the Lessee, without interest. Lessor shall further prorate the Minimum Rent due, without a discount, from the Lease Date to the date of termination and shall refund to the Lessee the difference between the pre-paid rent and the amount of rent due.

In the event a Claim is filed or asserted after the forty (40) day period has expired, or in the event the Parties agree not to terminate this Lease as provided above, Lessor agrees that it

will defend against the Claim in good faith and with reasonable diligence. Lessee agrees that it shall continue to comply with the terms and conditions of this Lease including the timely performance of all construction obligations under this Lease, and the Claim shall not constitute an Event of Force Majeure under this Lease.

Notwithstanding anything to the contrary in this Lease, in the event this Lease is terminated as a result of a Claim within the first two years of the Lease Term, Lessee shall be permitted to remove such movable trade fixtures installed as part of the initial Leasehold Improvements so long as same does not damage the Premises.

ARTICLE IX SERVICES AND UTILITIES

Section 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 Lease Area and the Leasehold Improvements, 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 Lease Area and the Leasehold Improvements. The Lessee shall also 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 Lease Area of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any such utilities, services or substitutes to the Lease Area.

Section 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 the Premises caused by or resulting 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 same shall not be deemed to constitute actual or constructive eviction, nor entitle Lessee to any abatement or diminution in rent payable under

this Lease.

**ARTICLE X
TRANSFERS AND SUBLETTING**

Section 10.1 Subleasing, Assignments and Transfers

(a) Lessee shall not, at any time during the term of this Lease, enter into any sublease, license, concession or permit agreement with respect to the Premises or any portion thereof, nor assign or transfer this Lease to any third party or parties other than Lessee, its authorized agents, employees, invitees and visitors to occupy or use the Premises or any portion thereof, without first procuring the prior written consent of Lessor's City Manager. Any such attempted subleasing of the Premises or assignment 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 Sub-lessee, assignee, or transferee and shall constitute a default under this Lease and the Lessor, at its election, may terminate this Lease.

The provisions of Subsection 10.1(b) constitute the sole means by which Lessee may request Lessor's consent to a sublease. The consent of Lessor shall not be unreasonably withheld or delayed.

It is agreed that all terms and conditions of this Lease shall extend to and be binding on all Sub-lessees as may be approved by Lessor and shall be for a period of time equal to or less than the Lease Term. Lessee shall be liable for acts and omissions by any Sub-lessee affecting this Lease. Lessor reserves the right to directly terminate the rights and interests of any Sub-lessee under any sub-lease 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 attorneys' fees, which Lessor incurs by reason of or in connection with a sub-lease, 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.

(b) Procedure for Sub-lease, Assignment or Transfer.

Should Lessee desire to enter into a sub-lease, assignment or 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 sub-lease, assignment or transfer, specifying in such notice the nature of such proposed sub-lease, assignment or 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 sub-lease, assignment, transfer, license, concession or permit agreement and any other documents or financial information Lessor may reasonably require in order to make a determination as to the suitability of the Sub-lessee, assignee or transferee. If requested by Lessor, Lessee shall provide to Lessor copies of all sub-leases, assignments, transfer documents and amendments thereto. Lessor shall, within twenty (20) days after its receipt of such notice of a proposed sub-lease from Lessee, by mailing written notice to Lessee of its intent to do so, either (i) withhold consent to the sub-lease, or (ii) consent to such sub-lease upon the terms and subject to the conditions provided for in this Article. Lessee acknowledges and agrees that the imposition of the conditions described in this Article X as a condition of Lessor's consent is reasonable.

(c) Additional Consideration Payable to Lessor.

Except as provided below with respect to a valet concession, if Lessor gives its consent to any sub-lease, assignment or transfer, City shall participate in any proceeds from any such assignment or transfer, with the City's participation capped at a maximum of 7% of gross proceeds from the sale if the lease is assigned, sublet, otherwise transferred or sold within Lease Years 1 – 5, 5% between Lease Years 5 – 10 and 3% after Lease Year 10. Lessee shall, in consideration of any sub-lease, assignment or 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 Semi-Annual Report. Sub-lessee's, Assignee's or Transferee's records shall be kept in accordance with Section 4.5. Additionally, Lessor reserves the right to examine Sub-lessee's books and audit Sub-lessee's entire records in accordance with Sections 4.7 and 4.8 of this Lease.

With respect to a valet concession, Lessee shall exercise its good faith effort to collect a fee from the valet concessionaire. In the event Lessee is able to obtain such a fee, Lessee shall

include any and all amounts Lessee receives from the valet concessionaire in Lessee's Gross Revenues and Lessor shall receive Percentage Rent from Lessee pursuant to Article IV.

The acceptance by Lessor of the payment of rent following any sub-lease, assignment or transfer prohibited by this Article shall not be deemed to be a consent by Lessor to any such sub-lease nor shall the same be deemed to be a waiver of any right or remedy of Lessor hereunder.

Section 10.2 Definitions.

As used in this Article the term:

(a) "Transfer" means:

(i) 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;

(ii) any transfer of more than fifteen percent (15%) 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 fifteen percent (15%) of the beneficial ownership of Lessee;

(iii) 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.

(b) "Owner" means:

(i) 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.

(c) "Owner whose shares are publicly traded" means an Owner:

(i) 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

(ii) 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.

Section 10.3 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 subparagraphs (a), (b) and (c) below, or as specifically approved pursuant Section 10.14 below, 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 City Manager, in his sole discretion, may, but shall not be obligated to, present any request for Transfer to the City Commission for its final approval. The following Transfers shall be permitted hereunder:

(a) Any Transfer directly resulting from the foreclosure of Lessee's Leasehold Estate, provided that such purchaser or grantee is an institutional investor 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) any Transfer to an Acceptable Operator consented to by the City Manager;

(c) 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, 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 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.

Section 10.4 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 the City Manager elects to exercise his right under Section 10.3 to present any request for Transfer to the City Commission for its approval, 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.

Section 10.5 Information as to Shareholders, etc.

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 the full names and addresses of holders of stock interests in Lessee, and the extent of their holdings, and in the event any other parties have a 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 10.5 shall not be required to be furnished with respect to the shareholders of any Owner whose shares are publicly traded.

Section 10.6 Effectuation of Permitted Transfers.

No Transfer of the nature described in Subsection 10.3(b) above shall be effective unless and until:

(a) 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

(b) the entity to which such Transfer is made, by instrument in writing reasonably satisfactory to the City Manager 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, and agree to be subject to all conditions and restrictions to which Lessee is subject; 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 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, unless the Lessor in writing expressly provides for such a release.

Section 10.7 Criteria for Consent for Transfer.

The Lessor may condition its consent to a permitted Transfer upon satisfaction of all or any of the following conditions:

(i) 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;

(ii) Such Transfer shall not adversely affect the quality and type of business operation which the Lessee has conducted theretofore;

(iii) Such Transferee, shall possess qualifications for the Lessee's business substantially equivalent to 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;

(iv) Such Transferee shall continue to operate the business conducted at the Premises pursuant to all the provisions of this Lease;

(v) 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;

(vi)

Lessee shall pay to the Lessor any due, but unpaid Rent.

Section 10.8 Liability of Lessee.

If a Transferee does not meet all of the criteria set forth in Section 10.7, 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.

Section 10.9 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, nor shall the same be deemed to be a waiver of any right or remedy of Lessor hereunder.

Section 10.10 Transfers of the City'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.

**ARTICLE XI
COMPLIANCE WITH LAWS**

Section 11.1 Compliance With Laws.

Lessee shall, at Lessee's sole cost and expense, comply with all regulations and all Applicable Laws 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, Lessee's work) all Applicable Laws now in force or which may hereafter be in force. Lessee shall indemnify (and such indemnity will survive the termination or expiration of the Lease for a period of three (3) years), defend and save Lessor harmless from penalties, fines, costs, expenses, suits, claims, or damages resulting from Lessee's failure to perform its obligations in this Lease.

ARTICLE XII ENVIRONMENTAL LIABILITY

Section 12.1 Definition of Terms. For purposes of this Article XII the following terms shall have the meaning attributed to them herein:

12.1.1 "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.

12.1.2 "Environmental Laws" shall include, but shall not be limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendment and Reauthorization Act of 1986 ("Sara"), 42 U.S.C. §9601, et seq. (hereinafter collectively "CERCLA"); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA") and subsequent Hazardous and Solid Waste Amendments of 1984, also known as the 1984 "RCRA" amendments, 42 U.S.C. §9601, et seq.; the Hazardous Material Transportation Act, 49 U.S.C. §1801, et seq.; the Clean Water Act, as amended, 33 U.S.C. §1311, et seq.; the Clean Air Act, as amended, 15 U.S.C. §2601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. §136-136y; the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRTKA" or EPCRA"), as amended, 42 U.S.C. §11001, et seq. (Title III of Sara); the Occupational Safety and Health Act of 1970 ("OSHA"), as amended, 29 U.S.C. §651, et seq.;

any similar state statute, including without limitation Chapters 252,255,376,403,442, Florida Statutes, as amended; and the regulations promulgated thereunder, and any other local laws regulations, including, but not limited to Chapter 24, Environmental Protection, of the Code of Miami-Dade County, Florida, as all of the foregoing may be amended, modified, supplemented, superseded or replaced at any time during the Term, that govern or relate to:

- (i) The existence, cleanup and/or remedy of contamination of property;
- (ii) The protection of the environment from spilled, deposited or otherwise emplaced contamination;
- (iii) The control of hazardous or toxic substances or wastes; or
- (iv) The use, generation, discharge, transportation, treatment, removal or recovery of Hazardous Materials.

12.1.3 “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.

12.1.4

12.1.4 “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.

Section 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 Restaurant Operations. 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 Clean Up. Lessee’s obligation under this section shall survive the expiration or earlier termination of this Lease for a period of one (1) year.

Section 12.3 Representation by Lessor. The Lessor represents and warrants that no lawsuits, claims, legal or administrative, have been brought against Lessor, in connection with

the environmental condition of the Premises as a result of the Lessor's or any prior Lessee's use or occupancy of the Premises, nor is Lessor aware of the existence of any Hazardous Materials thereon, except as may be present in connection with the asbestos containing materials as expressly provided for herein.

Section 12.4 Lessee's Indemnification. Lessee shall indemnify, protect, defend and hold Lessor free and harmless from and against any and all suits, actions, claims, regulatory actions, liabilities, penalties, losses, injuries, and expenses, including attorney's fees, resulting from the death or injury to any person, destruction or damage to property, 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.

Section 12.5 Asbestos.

The Lessee acknowledges that prior to the Lease Date, the Lessee has undertaken an environmental site assessment of the Premises and accordingly, the Lessee knows that there may be asbestos containing materials ("ACM") in the form of ceiling tiles, plaster walls and roofing material. The Lessee shall, at Lessee's sole cost and expense, Clean Up any such ACM in the event that as a result of building renovations or modifications such ACM becomes friable.

Section 12.6 Survival of Lessee's and Lessor'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**

Section 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 Lease Area under this Lease which damage cannot reasonably be repaired, restored or replaced within one hundred and eighty (180) calendar days from the date on which the damage occurred.

- (b) “Partial Destruction” means any damage to the Lease Area which damage can reasonably be repaired, restored or replaced within one hundred eighty (180) calendar days from the date on which the damage occurred.

Section 13.2 Lessee’s Duty to Repair, Restore or Replace the Lease Area After Damage.

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

(i) In the event of Partial Destruction of the Lease Area, within sixty (60) calendar days of the damage (subject to reasonable delay and/or Force Majeure), the Lessee shall use the Gross Insurance Proceeds available for that purpose, 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 and/or Force Majeure), the repair, restoration or replacement of the damaged or destroyed portion of the Lease Area (“Restoration Work”), and this Lease shall remain in full force and effect, with no abatement in Rent.

(ii) In the event the Lease Area is Completely Destroyed at any time during Lease Years One (1) through Eighteen (18) of the Lease Term, and in Lease Years Nineteen (19) through Twenty-two (22), if the second option has been exercised, within sixty (60) days of the damage, the Lessee, in its sole discretion, shall have the option (a) at the Lessee’s sole cost and expense, (together with Gross Insurance Proceeds available for that purpose), to 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 and this Lease shall remain in full force and effect, with no abatement in Rent, or (b) to 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 Lease Area 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 (aa) to any Rent or Additional Rent or other sums accrued or due

(bb) Lessee's obligations regarding surrender of the Lease Area including the removal of debris, and (cc) environmental liability as provided for in Article XII.

(iii) In the event the Lease Area are Completely Destroyed at any time during Lease Years Nineteen (19) or Twenty (20), if the second option has not been exercised, and at any time during Lease Years Twenty-three (23), Twenty-four (24) and Twenty-five (25), either Party, in its sole discretion, shall have the right to terminate this Lease by giving written notice to the other Party within ninety (90) days from the date the damage occurred. In the event this Lease is terminated as provided above, the Lessee shall, at the Lessee's sole cost and expense, (but using along with the Lessee's own funds, Net 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 (aa) to any Rent or Additional Rent or other sums accrued or due (bb) Lessee's obligations regarding surrender of the Premises including the removal of debris, and (cc) environmental liability as provided for in Article XII.

Section 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 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 the initial 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.

Section 13.4 No Right to Terminate.

Except for the Lessee's right to terminate this Lease in accordance with the provisions of Subsections 13.2(ii)(b) and (iii), 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.

Section 13.5 Lessee's Right to Terminate. If Lessee or Lessor elect to exercise the option given under Subsections 13.2(ii) or (iii), respectively, to terminate this Lease, then any

and all Gross Insurance Proceeds paid for damage or destruction of the Lease Area shall be applied as follows:

(i) First toward debris removal; and

(iii) Second, toward the balance of the proceeds, if any, after payment of any Rent and/or Additional Rent due, shall be paid to the Parties as their respective interests may then appear.

Section 13.6 Payment for Construction of the Restoration Work.

All Gross Insurance Proceeds shall be applied by the Parties to the payment of the cost of the Restoration Work to restore the Lease Area. 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.

Section 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.

Section 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 balance paid to the Lessee.

**ARTICLE XIV
EMINENT DOMAIN**

Section 14.1 Total Condemnation. In the event that all of the Lease Area (or such portion thereof as shall, in the good faith opinion of Lessor or Lessee, render it economically unfeasible to effect restoration thereof 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 and money to be treated as Additional 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; and the amount of damages resulting to Lessor and Lessee, respectively, and to their respective interests in and to the Lease Area, the Leasehold Improvements, and in connection with this Lease, 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.

Section 14.2 Partial Condemnation.

(a) In the event less than all of the Lease Area 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 all of the Lease Area 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 Lease Area so that it shall be comparable to the Lease Area prior to the condemnation, taking into consideration the fact of 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.

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

(i) 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 Lessor's Rent and Additional Rent have been reduced by the taking;

(ii) There shall be paid to the Lessee any amount by which Lessee's profits and value of Lessee's interest in the Lease Agreement and the Lease Area have been reduced by the taking after any payment required by the Lease;

(iii) There shall be paid to the Lessee the amount required to complete the remodeling and repairs to the Lease Area pursuant to (a) above;

(iv) 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 Lease Area as found by the court in its condemnation award.

Section 14.3. Adjustment of Rent Upon Partial Taking.

In the event a part of the Lease Area 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, and money to be treated as Additional 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 Rent for the remainder of the Lease Area shall be reduced in the same proportion that Gross Revenues have been reduced due to such taking compared to the Gross Revenues immediately prior to the taking.

Section 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 Lease Area in a condemnation proceeding shall be deposited with an escrow agent selected by the Lessor to be disbursed for the cost of restoring the Lease Area.

Section 14.5. Temporary Taking. In the event that all or any portion of the Lease Area 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 Lease Area. 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 Section 14.6.

ARTICLE XV
PAYMENT OF TAXES, ASSESSMENTS AND OTHER IMPOSITIONS

Section 15.1 Payment of Taxes and Impositions

Lessee shall pay all Impositions levied against the Lease Area before any fine, penalty, interest or costs is added for non-payment.

Section 15.2 Installment Payments of Ad Valorem Taxes and Impositions

Lessee agrees that to the extent the Lease Area 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 term of this Lease, and the Lessor shall pay the remainder, if applicable.

Section 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 hundred seventy-five dollars (\$375)_per month. The PILOT will increase on each anniversary of the Lease Date at a rate equal to the greater of the CPI Adjustment or three percent (3%). If Lessee is required to pay ad valorem taxes on the Property, it shall not be required to pay the PILOT.

Section 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 in behalf of the Lessee, official receipts of the appropriate taxing authority, photocopies or other proof satisfactory to the Lessor, evidencing the payment.

Section 15.5 Lessee's Right to Contest Impositions

Anything herein to the contrary notwithstanding, Lessee shall have and retain the right to appeal or contest by legal proceedings, or in such other manner as it may deem suitable, any Imposition, (including but not limited to ad valorem taxes on the Lease Area and the Leasehold Improvements), or any valuation in connection therewith, without the consent of Lessor, even if the same ultimately results in the payment of any interest, costs or penalties. In the event that Lessee contests any Imposition, Lessee shall immediately notify the City Manager or his/her authorized designee of its intention to appeal said Imposition.

If at any time during the last Three (3) years of the Lease Term, Lessee shall contest an Imposition, Lessee may defer payment of a contested item upon the condition that, before instituting any such proceedings, Lessee shall furnish and keep in effect a surety bond, cash deposit or other security satisfactory to the City Manager or his/her designee in an amount sufficient to pay one hundred percent (100%) of the contested Imposition , with all interest on it and costs and expenses, including reasonable attorneys’ fees to be incurred in connection with it. The legal proceedings herein referred to shall include appropriate proceedings to review tax assessments and appeals from an order issued therein and appeals from any judgments, decrees or orders. Any such contest shall delay the time periods set forth in Section 15.2 above.

Lessor agrees to pay such Impositions in a lump sum payment or on an installment basis. Failure of the Lessee to pay such Impositions or any installment payment thereof shall constitute a default under this Lease.

**ARTICLE XVI
DEFAULT OF LESSEE**

Section 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 Minimum Rent, Percentage Rent or any other sums required to be paid hereunder as Additional 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 permitted by Lessor 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 within thirty (30) 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 Lease Area and such receivership is not dismissed within thirty (30) days from the date of such appointment;

(f) In the event Lessee removes, attempts to remove, or permits to be removed from the Lease Area, except in the usual course of trade, the Leasehold Improvements (furnishings, fixtures, and equipment) installed or placed upon the Lease Area by the Lessee during the Lease Term;

(g) In the event Lessee, before the expiration of the term of this Lease, and without the written consent of Lessor, vacates the Lease Area or abandons the possession

thereof, or uses the same for purposes other than the purposes for which the same are hereby leased, or ceases to use the Lease Area for the purposes herein contained;

(h) In the event Lessee does not accept the adjusted Minimum Rent and Percentage Rent rates determined by the independent appraiser.

(i) 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 Lease Area, or upon the interest of Lessee in this Lease, and the same is not satisfied or dismissed within thirty (30) days from such levy; or

(j) In the event Lessee defaults in the due performance or observance of any lease covenant or condition or provision, other than the payment of Rent, and such default continues for more than fifteen (15) 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.

Section 16.2 Remedies of Lessor.

(a) If any Lessee Default occurs, Lessor shall have the right after the expiration of the applicable cure period, at the option of Lessor, to terminate this Lease upon providing fifteen (15) days written notice if the default has not been cured by the expiration of such fifteen (15) day period. An Event of Default shall be deemed to have occurred at the expiration of such fifteen (15) day period if the default has not been cured by the expiration of such fifteen (15) day period. 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 Lease Area, 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 Lease Area, reasonable attorneys 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 Lease Area 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 Lease Area in excess of the rent provided in this Lease.

(b) If any Event of Default occurs, Lessor shall have the right to obtain injunctive and declaratory relief, temporary and/or permanent, against Lessee or any acts, conduct or omissions of Lessee, and to further obtain specific performance of any term, covenant or condition of this Lease.

(c) 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 Lease Area shall have been surrendered to or taken by Lessor, and may commence action immediately thereupon and recover judgment therefore.

(d) 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 Lease Area 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.

(e) No such re-entry or taking possession of the Lease Area 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.

(f) Any Rent which may be due Lessor, whether by acceleration or otherwise as herein provided in this Article, shall include Minimum Rent, Percentage Rent and any other rents, costs and expenses denominated as Additional Rent in this Lease.

(g) 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 Minimum Rent and/or Percentage Rent may be regarded by Lessor, if it so elects, as separate and independent claims capable of being separately assigned.

(h) 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.

Section 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 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 Lease Area or to re-let same.

Section 16.4 Late Payments.

In the event any payment due Lessor under this Lease shall not be paid on the due date, Lessee agrees to pay, in addition to the payment then due, one-half (0.5%) percent of the amount due, for each day that the payment is late, ("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 one-half (0.5%) 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 more. 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 which 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 and liquidation of the costs of Lessor in the administration of the Premises resulting from the events described 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.

Section 16.5 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.

**ARTICLE XVII
ACCESS BY LESSOR**

Section 17.1 Right of Entry.

Lessor and Lessor's agents shall have the right to enter the Lease Area at all reasonable times upon reasonable 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 Lease Area 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 Lease Area or any part thereof, except as otherwise herein specifically provided.

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

Section 18.1 Loss and Damage.

Unless caused by a negligent act or omission of Lessor or the 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 Lease Area, 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 Lease Area resulting from fire, smoke, explosion, falling plaster, steam, gas, electricity, water, rain, or leaks from any part of the Lease Area 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 latent defect in the Lease Area. All property of Lessee kept or stored on the Lease Area 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**

Section 19.1 Holding Over.

In the event Lessee remains in possession of the Lease Area after the expiration of the Lease Term, Lessee, at the option of Lessor, shall be deemed to be occupying the Lease Area as a Lessee at sufferance at a monthly rental equal to two (2) times the Minimum 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 Lease Area 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.

Section 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 Lease Area and the purchaser assumes Lessor's obligations and covenants, Lessor shall thereupon be relieved of all further obligations hereunder.

**ARTICLE XX
EQUAL EMPLOYMENT OPPORTUNITIES**

Section 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 affirmative 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.

Section 20.2 Affirmative Action

Lessee shall have in place an Affirmative Action/Equal Opportunity “goal” 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 women, minorities, the disabled and veterans. Such plan will include a set of positive measures which will be taken to insure nondiscrimination in the work place as it relates to hiring, firing, training and promotion. This is an inspirational goal and not a requirement.

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

**ARTICLE XXI
MISCELLANEOUS**

Section 21.1 Accord and Satisfaction.

No payment by Lessee or receipt by Lessor of a lesser amount than the Rent herein stipulated to be paid shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and 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.

Section 21.2 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 Lease Area and there are no covenants, promises, conditions or understandings, either oral or written, between them other than as are herein set forth. Neither Lessor nor Lessor's agents have made nor shall be bound to any representations with respect to the Lease Area except as herein expressly set forth, and all representations, either oral or written, shall be deemed to be merged into this Lease. No course of prior dealings between the Parties or their officers 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. 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.

Section 21.3 Independent Parties

It is understood and agreed by the Parties hereto that this Lease does not create a fiduciary or other relationship between Lessor and Lessee, other than 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.

Section 21.4 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

With a copies to:

With a copy to:

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

City of Miami
Department of Public Facilities
Asset Management Division
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.

Section 21.5 Captions and Section Numbers.

The captions, section numbers, and article numbers appearing in this Lease are inserted only as a matter of 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.

Section 21.6 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 invalid or unenforceable, the remainder of this Lease, the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, 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.

Section 21.7 Estoppel Certificate.

Lessee agrees that it will, at any time and from time to time, within ten (10) business days following written notice by Lessor specifying that it is given pursuant to this section, execute, acknowledge and deliver to Lessor 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 Minimum 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 Lessee and whether or not to the best knowledge of Lessee, Lessor is in default in performance of any, covenant, agreement or condition contained in this Lease, and if so, specifying each such default of which Lessee may have knowledge. The failure of Lessee to execute, acknowledge and deliver to Lessor a statement in accordance with the provisions of this Section within said ten (10) Business day period shall constitute an Event of Default hereunder and shall also constitute an acknowledgment by Lessee, which may be relied on by any person holding or proposing to acquire an interest in the Premises or any party thereof or this Lease from or through the other party, that this Lease is unmodified and in full force and effect and that such rents have been duly and 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 Lessor 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 Lessor and, Lessee shall still remain liable for the same.

Section 21.8 Waiver.

Failure on the part of either part of 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.

Section 21.9 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.

Section 21.10 No Discrimination.

It is intended that the Premises shall be developed so that all customers, employees, licensees and invitees of the Lessees shall have the opportunity to obtain all the goods, services, accommodations, advantages, facilities and privileges of the Lease Area 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.

Section 21.11 Governing Law.

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 and that all disputes arising hereunder shall be heard and decided in Miami-Dade County, Florida.

Section 21.12 Waiver of Counterclaims.

Lessee shall not impose any counterclaim or counterclaims 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.

Section 21.13 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, Lessee's use or occupancy of the Lease Area and/or any claim of injury or

damage.

Section 21.14 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 the Lessee shall peaceably and quietly hold, occupy and enjoy the Lease Area 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 Lease Area leased herein, or by persons with title superior to the Lessor, its successors and assigns.

Section 21.15 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 Lease Area in good repair and condition, reasonable wear and tear excepted.

Section 21.16 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 (or any combination of two or more thereof) shall be deemed to have been given or made by, with or all of them.

Section 21.17 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.

Section 21.18 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.

Section 21.19 No Liability for Act of other Party

Lessee shall not sign any contract, 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, 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, unless otherwise agreed to herein for the management and operation of the Lease Area and 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 as aforesaid. 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.

Section 21.20 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.

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.

THIS SPACE LEFT INTENTIONALLY BLANK

LESSOR:
CITY OF MIAMI, a municipal
corporation of the State of Florida

By: _____
Johnny Martinez, P.E.
City Manager

ATTEST:

By: _____
Todd Hannon
City Clerk

**APPROVED AS TO INSURANCE
REQUIREMENTS:**

By: _____
Calvin Ellis, Director
Risk Management Department

**APPROVED AS TO FORM AND
CORRECTNESS:**

By: _____
Julie O. Bru
City Attorney

LESSEE:

By: _____

Print Name

Title

ATTESTED BY:

By: _____
Name

Title

Company Name

CORPORATE SEAL

By: _____
Name

Title

Company Name

EXHIBIT "A1"
LEGAL DESCRIPTION
[TO BE INSERTED]

EXHIBIT "A2"
LEASE AREA

EXHIBIT "B"
SCHEDULE OF LEASEHOLD IMPROVEMENTS

EXHIBIT "C"
GROSS REVENUE REPORT

EXHIBIT "D"
POSSESSION DATE CERTIFICATE

This Possession Date Certificate is entered into by Lessor and Lessee pursuant to Section 5.2 of the Lease (as hereinafter defined). Capitalized terms not defined herein shall have the meanings provided in the Lease.

1) *Definitions.* In this certificate the following terms have the meanings given below:

Lessor: City of Miami

Lessee: _____

Lease: Lease dated as of _____ between City and Lessee.

Subject Property: As legally described and identified in Exhibit ___ attached to the Lease.

2) *Confirmation of Possession Date:* Lessor and Lessee confirm that the Possession Date of the Lease is _____ and the expiration date of the Initial Term is _____.

3) *Acceptance of the Subject Property:* Lessee accepted the Subject Property on _____, 20___ with the rent and any other fees due under the Lease, including but not limited to the fees described in Section _____, commencing on the same date.

Lessor and Lessee have executed this Possession Date Certificate as of the dates set forth below:

ATTEST:
corporation of the State of Florida

LESSOR:
CITY OF MIAMI, a municipal

Todd Hannon
City Clerk

By: _____
Johnny Martinez, P.E.
City Manager

**APPROVED AS TO FORM AND
CORRECTNESS:**

Julie O. Bru
City Attorney

STATE OF FLORIDA)
COUNTY OF DADE)

The foregoing instrument was acknowledge before me this _____ day of _____,
20__, by _____, who is personally known to me or who has
produced _____(type of identification) as identification and who did (did
not) take an oath.

Signature of Notary Public

Print Name

Commission No.

LESSEE:

_____,'

a Florida corporation

ATTESTED BY:

By: _____

Name

Title

Company Name

By: _____

Name

Title

Company Name

STATE OF FLORIDA)

COUNTY OF DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, who is personally known to me or who has produced _____(type of identification) as identification and who did (did not) take an oath.

Signature of Notary Public

Print Name

Commission No.

WITNESSES:

By: _____

Name

Title

Company Name

By: _____

Name

Title

Company Name

STATE OF FLORIDA)
COUNTY OF DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, who is personally known to me or who has produced _____(type of identification) as identification and who did (did not) take an oath.

Signature of Notary Public

Print Name

Commission No.

**EXHIBIT “E”
PAYMENT AND PERFORMANCE BOND**

BY THIS BOND, We _____, as Principal, hereinafter called CONTRACTOR, and _____, as Surety, are bound to the City of Miami, Florida, as Obligee, hereinafter called CITY, in the amount of _____ Dollars (\$_____) for the payment whereof CONTRACTOR and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, CONTRACTOR has by written agreement entered into a Contract, Bid/Contract No.: _____, awarded the _____ day of _____, 20____, with CITY which Contract Documents are by reference incorporated herein and made a part hereof, and specifically include provision for liquidated damages, and other damages identified, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if CONTRACTOR:

1. Performs the Contract between CONTRACTOR and CITY for construction of _____, the Contract being made a part of this Bond by reference, at the times and in the manner prescribed in the Contract; and
2. Pays CITY all losses, liquidated damages, expenses, costs and attorney's fees including appellate proceedings, that CITY sustains as a result of default by CONTRACTOR under the Contract; and
3. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract; then THIS BOND IS VOID, OTHERWISE IT REMAINS IN FULL FORCE AND EFFECT.

Whenever CONTRACTOR shall be, and declared by CITY to be, in default under the Contract, CITY having performed CITY obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- 3.1. Complete the Project in accordance with the terms and conditions of the Contract Documents; or

- 3.2. Obtain a bid or bids for completing the Project in accordance with the terms and conditions of the Contract Documents, and upon determination by Surety of the lowest responsible Bidder, or, if CITY elects, upon determination by CITY and Surety jointly of the lowest responsible Bidder, arrange for a contract between such Bidder and CITY, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by CITY to CONTRACTOR under the Contract and any amendments thereto, less the amount properly paid by CITY to CONTRACTOR.

No right of action shall accrue on this bond to or for the use of any person or corporation other than CITY named herein.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect Surety's obligation under this Bond.

00710. FORM OF PERFORMANCE BOND (Page 3 of 3)

Signed and sealed this _____ day of _____, 20_____.

WITNESSES:

Secretary

(CORPORATE SEAL)

(Name of Corporation)

By: _____
(Signature)

(Print Name and Title)

IN THE PRESENCE OF:

INSURANCE COMPANY:

By: _____
Agent and Attorney-in-Fact

Address: _____
(Street)

(City/State/Zip Code)

Telephone No.: _____

00721. CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the Secretary of the corporation named as Principal in the foregoing Performance and Payment Bond (Performance Bond and Payment Bond); that _____, who signed the Bond(s) on behalf of the Principal, was then _____ of said corporation; that I know his/her signature; and his/her signature thereto is genuine; and that said Bond(s) was (were) duly signed, sealed and attested to on behalf of said corporation by authority of its governing body.

Secretary (on behalf of)

Corporation

(SEAL)

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

Before me, a Notary Public duly commissioned, qualified and acting personally, appeared _____ to me well known, who being by me first duly sworn upon oath says that he/she has been authorized to execute the foregoing Performance and Payment Bond (Performance Bond and Payment Bond) on behalf of CONTRACTOR named therein in favor of CITY.

Subscribed and Sworn to before me this ____ day of _____, 20____.

My commission expires: _____
Notary Public, State of Florida at Large

Bonded by _____

EXHIBIT "F1"
INSURANCE REQUIREMENTS

I. Commercial General Liability (Primary & Non Contributory)

Limits of Liability

Bodily Injury and Property Damage Liability	
Each Occurrence	\$ 1,000,000
General Aggregate Limit	\$ 2,000,000
Personal and Advertising Injury	\$ 1,000,000
Products & Completed Operations	\$ 1,000,000
Damage to Rented Premises	\$ 100,000

Endorsements Required

City of Miami included as an Additional Insured
Premises & Operations Liability
Contingent Liability & Contractual Liability

II. Business Automobile Liability

Limits of Liability

Bodily Injury and Property Damage Liability	
Combined Single Limit	\$ 300,000
Owned Autos/Scheduled Autos	
Including Hired, Borrowed or Non-Owned Autos	

Endorsements Required

City of Miami included as an Additional Insured

III. Business Personal Property

Causes of Loss: Special Form
Valuation: Replacement Cost
Deductible: \$1,000 Maximum
Business Income included

IV. Worker's Compensation

Limits of Liability
Statutory-State of Florida

V. Employer's Liability

- A. Limits of Liability
 - \$100,000 for bodily injury caused by an accident, each accident.
 - \$100,000 for bodily injury caused by disease, each employee
 - \$500,000 for bodily injury caused by disease, policy limit

VI. Liquor Liability

- A. Limits of Liability
 - Each Occurrence \$ 1,000,000
 - Policy Aggregate \$ 1,000,000

The above policies shall provide the City of Miami with written notice of cancellation or material change from the insurer in accordance to policy provisions.

Companies authorized to do business in the State of Florida, with the following qualifications, shall issue all insurance policies required above:

The company must be rated no less than "A-" as to management, and no less than "Class V" as to Financial Strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. All policies and /or certificates of insurance are subject to review and verification by Risk Management prior to insurance approval.

EXHIBIT "F2"
**INSURANCE REQUIREMENTS FOR A CERTIFICATE OF
INSURANCE- CONSTRUCTION REQUIREMENTS GLASS HOUSE**

I. Commercial General Liability

Limits of Liability

Bodily Injury and Property Damage Liability	
Each Occurrence	\$ 1,000,000
General Aggregate Limit	\$ 2,000,000
Products/Completed Operations	\$ 1,000,000
Personal and Advertising Injury	\$ 1,000,000

Endorsements Required

City of Miami listed as an Additional Insured
Primary Insurance Clause Endorsement
Contingent and Contractual Liability
Premises/Operations Liability
Explosion, Collapse and Underground Hazard
Loading and Unloading

II. Business Automobile Liability

Limits of Liability

Bodily Injury and Property Damage Liability	
Combined Single Limit	
Any Auto/Owned/Scheduled	
Including Hired, Borrowed or Non-Owned Autos	
Any One Accident	\$ 1,000,000

Endorsements Required

City of Miami listed as an additional insured

III. Worker's Compensation

Limits of Liability
Statutory-State of Florida
Waiver of Subrogation

IV. Employer's Liability

- B. Limits of Liability
 - \$1,000,000 for bodily injury caused by an accident, each accident.
 - \$1,000,000 for bodily injury caused by disease, each employee
 - \$1,000,000 for bodily injury caused by disease, policy limit

V. Umbrella Policy (Excess Follow Form)

- A. Limits of Liability
 - Bodily Injury and Property Damage Liability
 - Each Occurrence \$ 3,000,000
 - Aggregate \$ 3,000,000

City of Miami listed as an additional insured

VI. Payment and Performance Bond \$TBD
City of Miami Listed as Obligee

VII. Owner's & Contractor's Protective Policy

- A. Limits of Liability
 - Each Occurrence \$1,000,000
 - Policy Aggregate \$1,000,000

City of Miami listed as named insured

VIII. Builders' Risk

Causes of Loss: All Risk-Specific Coverage Project Location

Valuation: Replacement Cost

Deductible: \$2,500 All other Perils

5% maximum on Wind

Flood Coverage included

City of Miami listed as an additional insured

A. Limit/Value at Location or Site \$ TBD

B. Coverage Extensions as provided by carrier

The above policies shall provide the City of Miami with written notice of cancellation or material change from the insurer in accordance to policy provisions.

Companies authorized to do business in the State of Florida, with the following qualifications, shall issue all insurance policies required above:

The company must be rated no less than "A-" as to management, and no less than "Class V" as to Financial Strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. All policies and /or certificates of insurance are subject to review and verification by Risk Management prior to insurance approval.