

RETAIL LEASE AGREEMENT

between

CITY OF CORAL GABLES

and

FRANCESCO MIRACLE MILES, LLC

## TABLE OF CONTENTS

	Page
I. PREMISES .....	1
II. TERM .....	2
III. CONDITION OF PREMISES "AS IS" .....	2
IV. RENT .....	3
V. SECURITY DEPOSIT .....	5
VI. RENEWAL OPTION .....	5
VII. TENANT TRADE NAME .....	6
VIII. USE .....	6
IX. QUIET ENJOYMENT .....	7
X. INSURANCE .....	7
XI. GOVERNMENTAL AND OTHER REQUIREMENTS .....	11
XII. RELATIONSHIP OF PARTIES .....	11
XIII. OPERATION, UTILITIES, MAINTENANCE AND REPAIR EXPENSES .....	12
XIV. TAXES AND ASSESSMENTS .....	14
XV. MECHANIC'S LIENS .....	14
XVI. LOSS; DAMAGE .....	15
XVII. ESTOPPEL STATEMENT .....	15
XVIII. SUBORDINATION OF LEASE; ATTORNMENT; NON-DISTURBANCE .....	15
XIX. ASSIGNMENT .....	16
XX. INDEMNITY; HOLD HARMLESS OF LANDLORD .....	16
XXI. CASUALTY .....	18
XXII. CONDEMNATION .....	19
XXIII. DEFAULT .....	19
XXIV. LESSOR'S CONTROL OF LAWSUITS .....	22
XXV. LIEN FOR PAYMENT OF RENT .....	22
XXVI. NO WAIVER .....	23
XXVII. RIGHT OF ENTRY .....	23
XXVIII. HAZARDOUS MATERIALS .....	23
XXIX. NOTICE .....	25
XXX. SURRENDER; CONDITION OF PREMISES ON TERMINATION OF LEASE AND HOLDING OVER .....	25

XXXI. SIGNS .....	26
XXXII. TRIAL BY JURY .....	26
XXXIII. INVALIDITY OF PROVISION.....	26
XXXIV. TIME OF ESSENCE .....	26
XXXV. SUCCESSORS AND ASSIGNS .....	26
XXXVI. ATTORNEYS' FEES .....	27
XXXVII. MISCELLANEOUS .....	27
XXXVIII. EFFECTIVE DATE.....	28
XXXIX. BROKERAGE .....	29
XL. FORCE MAJEURE .....	29
XLI. TENANT'S AUTHORITY TO EXECUTE LEASE.....	29
XLII. RADON GAS .....	30
XLIII. ENTIRE AGREEMENT.....	30
XLIV. DRAFTING OF LEASE.....	30
XLV. COUNTERPARTS .....	30
XLVI. SURVIVAL .....	30
XLVII. RIGHT TO AUDIT.....	30
XLVIII. PUBLIC RECORDS.....	31
XLIX. SOVEREIGN IMMUNITY .....	32

## RETAIL LEASE AGREEMENT

THIS RETAIL LEASE AGREEMENT (the "Lease") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2022 (the "Effective Date"), by and between the City of Coral Gables, a municipal corporation existing under laws of the State of Florida (the "Landlord"), whose address for purposes hereof is 405 Biltmore Way, Coral Gables, Florida 33134, and Francesco Miracle Miles, LLC, a Florida limited liability company (the "Tenant"), whose address for purposes hereof is 278 Miracle Mile, Coral Gables, Florida 33134, Attn: Cesar Paniagua.

### WITNESSETH:

**WHEREAS**, Landlord is the owner of certain real property located at 278 Miracle Mile, Coral Gables, Florida 33134, and Tenant desires to lease such real property from Landlord in accordance with the terms set forth herein.

**WHEREAS**, the parties acknowledge that Landlord is both the owner of the Premises (as defined herein) and the municipal corporation having jurisdiction over the Premises, but whenever the term "Landlord" is used herein, such term shall refer to Landlord in its capacity as landlord only and not in its capacity as the municipal corporation having jurisdiction over the Premises.

### AGREEMENT

**NOW THEREFORE**, in consideration of the payments of rents and other charges provided for in this Lease, the covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby covenant and agree as follows:

- I. PREMISES:** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon the terms and conditions hereinafter set forth, those certain premises (the "Premises") deemed to consist of 3,147 square feet of floor space (the "Rentable Area") located at 278 Miracle Mile, Coral Gables, Florida 33134.

Although not a part of the Premises, the Tenant shall have the option, to place up to four tables of two (2) seats each under the building's overhang with the following conditions:

- a. Tenant shall keep the area clean and free of dirt, rubbish or spilled food (if Tenant fails to keep the area clean as outlined herein following five (5) days written notice from Landlord, Tenant agrees to pay Landlord the cost of Landlord cleaning the area, plus a 25% service charge); and
- b. Tenant shall indemnify and hold Landlord and its managing agent harmless from and against any and all claims for injury or damage resulting from the tables and chairs or any dirt, rubbish or spilled food, which claims arise from events occurring during the Lease Term, which indemnity shall survive expiration or earlier termination of this Lease.

In addition, should Tenant wish to place additional tables and seats in the public right-of-way, Tenant shall submit a Sidewalk Café application to the City which will be reviewed in the ordinary

course. Tenant acknowledges that there exists in the City of Coral Gables an ordinance or ordinances regarding the placing of tables and chairs outdoors, and that as with all governmental ordinances, it shall be required to comply with same. In addition:

- a. The tables and chairs shall not be placed in a manner which would in any way obstruct the flow of pedestrian traffic on the sidewalk;
- b. Tenant shall keep the area clean and free of dirt, rubbish or spilled food (if Tenant fails to keep the area clean as outlined herein following five (5) days written notice from Landlord, Tenant agrees to pay Landlord the cost of Landlord cleaning the area, plus a 25% service charge); and
- c. Tenant shall indemnify and hold Landlord and its managing agent harmless from and against any and all claims for injury or damage resulting from the tables and chairs or any dirt, rubbish or spilled food, which claims arise from events occurring during the Lease Term, which indemnity shall survive expiration or earlier termination of this Lease.

**II. TERM:** The Lease shall be for a term (the "Term" or "Lease Term") commencing on the date upon which both Landlord and Tenant have signed this Lease (the "Lease Commencement Date"), and shall expire seven (7) years after the Lease Commencement Date (the "Termination Date"), unless terminated or extended as provided in the Lease. Notwithstanding the foregoing, Tenant's obligation to pay Base Rent (as defined herein) shall commence one (1) year from Lease Commencement Date (the "Rent Commencement Date"). On the Lease Commencement Date, Tenant shall pay the following amount to Landlord: the Security Deposit.

**III. CONDITION OF PREMISES "AS IS":**

It is acknowledged that Tenant has previously inspected the Premises and conducted its own due diligence with regards to the conditions of the Premises and is accepting the Premises in "as is" condition. Landlord makes no representations as to the "Permitted Use" (as hereinafter defined) or suitability of the Premises for the Permitted Use. Tenant further acknowledges and agrees that possession of the Premises by Tenant shall be conclusive evidence against Tenant that the Premises are in satisfactory condition. Tenant is relying solely upon its own verification of Landlord's title to the Premises and restrictive covenants, easements and limitations or uses of record, its own inspection, investigation and analyses of the Premises in leasing the Premises and is not relying in any way upon the representations, statements, agreements, warranties, studies, reports, descriptions, guidelines or other information or material furnished by the Landlord or its representatives, whether oral or written, express or implied, of any nature whatsoever regarding the Premises.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, TENANT ACKNOWLEDGES AND AGREES THAT THE PREMISES ARE BEING LEASED IN AN "AS-IS," "WHERE-IS" CONDITION "WITH ALL FAULTS" RELATING TO THE PHYSICAL CONDITION OF THE PREMISES AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTIES AS TO THE PHYSICAL CONDITION OF THE

PREMISES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE, OR TYPE WHATSOEVER FROM OR ON BEHALF OF THE LANDLORD.


TENANT ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SET FORTH IN THIS LEASE, THE LANDLORD HAS NOT, DOES NOT AND WILL NOT MAKE ANY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, WITH RESPECT TO ANY WARRANTY OF TITLE CONDITION, MERCHANTABILITY, HABITABILITY, OPERABILITY OR FITNESS FOR A PARTICULAR USE, OR WITH RESPECT TO THE VALUE, PROFITABILITY OR MARKETABILITY OF THE PREMISES.

TENANT ACKNOWLEDGES AND AGREES THAT, LANDLORD HAS NOT, DOES NOT AND WILL NOT MAKE ANY REPRESENTATION OR WARRANTY WITH REGARD TO COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS INCLUDING BUT NOT LIMITED TO, THOSE PERTAINING TO THE HANDLING, GENERATING, TREATING, STORING OR DISPOSING OF ANY HAZARDOUS WASTE, MATERIAL OR SUBSTANCE.

#### IV. RENT:

A. **Base Rent:** Throughout the Term of the Lease, commencing on the Rent Commencement Date, Tenant agrees to pay Landlord a total "Base Rent", payable in monthly installments in the amount of \$45.00 per square foot for the Rentable Area during the first year of the Lease Term, increasing annually thereafter, on each anniversary of the Rent Commencement Date, for each year of the Lease Term at the rate of three percent (3%) per annum, as set forth in more detail in the chart below.

Lease Year	Rent Per Square Foot	Annual Base Rent
1	\$0.00	\$0.00
2	\$45.00	\$141,615.00
3	\$46.35	\$145,863.45
4	\$47.74	\$150,239.35
5	\$49.17	\$154,746.53
6	\$50.65	\$159,388.93
7	\$52.17	\$164,170.59



Each payment is to be made without any offset or deduction whatsoever, in lawful money of the United States of America, at Landlord's address above specified, attn. Finance Department – Collection Division, or elsewhere as designated from time to time by Landlord's written notice to Tenant.

The Base Rent, as set forth above, plus sales tax and any and all applicable tax, which such taxes are imposed at the applicable rate, is payable in advance on the first day of each month during the Term, the first such installment being due on the Rent Commencement Date (and subsequent installments on the first day of each month thereafter throughout the Term). Notwithstanding the foregoing, if the Rent Commencement Date commences on any day of a month other than the first day, Tenant shall pay Landlord Rent for such commencement month upon the Rent Commencement Date on a pro rata basis (such proration to be based on the actual number of days in the month that the Rent Commencement Date begins). Rent for any partial month of occupancy at the end of the Term will be prorated based on the actual number of days in such partial month. The term "Rent" as used in this Lease shall mean Base Rent, plus sales tax, any and all applicable tax, and all other charges and costs due by Tenant to Landlord under this Lease, including, without limitation, Additional Rent (as defined herein). The term "Lease Year" as used in this Lease shall mean a twelve (12) consecutive month period. Each Lease Year shall commence on the anniversary of the Lease Commencement Date up until the Termination Date, unless sooner terminated as provided herein. As set forth above, the yearly increases to the Base Rent shall occur on the anniversary of the Rent Commencement Date of each year throughout the Term of the Lease. Except as expressly set forth herein, Tenant shall not pay more than one month's rent in advance.

**B. Intentionally Deleted.**

**C. Additional Rent:** Throughout the Term of the Lease, commencing on the Rent Commencement Date, Tenant agrees to pay Landlord, on the first day of each month during the Term, the following, as "Additional Rent": (i) the real property taxes allocated to the Premises, and (ii) its proportionate share of Landlord's cost to insure the building where the Premises are located. Additional Rent is estimated to be \$13.50 per square foot as of the Lease Commencement Date, but is subject to subsequent increases commencing on the first Additional Rent Adjustment Date (as defined herein) following the Lease Commencement Date, in accordance with actual real property taxes and insurance expenses incurred by Landlord for the Premises. Throughout the Term of the Lease, Landlord shall adjust the Additional Rent at such times (the date of each adjustment shall be an "Additional Rent Adjustment Date") and in such amounts as Landlord shall deem reasonably necessary or desirable, based upon Landlord's payment of real estate taxes and/or insurance. Landlord may, at its option, maintain separate escrow accounts for the payment of real estate taxes and insurance premiums for the Premises.

**D. Payments**

Any payments due to Landlord other than Base Rent and Additional Rent shall be paid within thirty (30) days of the date such notice of payments due is sent to Tenant.

Without waiving other available rights and remedies, Tenant shall be required to pay Landlord the lesser of eighteen percent (18%) interest per annum or the maximum percentage permitted by law on any Rent due that remains unpaid for ten (10) days after its due date (the "Grace Period"), along with Rent equal to the greater of two hundred and fifty dollars (\$250) or ten percent (10%) of the Rent payment not paid after the expiration of the Grace Period to reimburse Landlord for its additional administrative costs. Said interest will be computed from the due date. Tenant shall pay as Rent an administrative fee of One Hundred Dollars (\$100) for

any returned check, and Landlord may require Tenant to provide a certified or cashier's check if more than one (1) of Tenant's checks are returned for insufficient funds. Landlord shall have the right to apply any payments made by Tenant first to any deficiency in the payment of the interest and administrative charges hereunder. If Tenant pays Rent after the expiration of the Grace Period three (3) or more times in any twelve (12) month period, in addition to Landlord's other remedies, Landlord may cancel this Lease.

There shall be no delay in the Rent Commencement Date and, no delay or abatement of the payment of Rent for any reason, including but not limited to, Tenant's failure to occupy the Premises or Tenant fails to complete any of Tenant Improvements (as defined herein) in a timely manner. All provisions of the Lease shall be in full force and effect upon the Effective Date, notwithstanding the fact that prior to the Rent Commencement Date, Tenant shall first perform and complete the Tenant Improvements required to be completed by that date.

Tenant shall pay all expenses of operation and any other monetary obligation incurred, pursuant to the terms of the Lease, commencing upon the Effective Date and such obligations shall be treated as Additional Rent. This is a triple net lease.

#### **V. SECURITY DEPOSIT:**

Simultaneous with the execution of this Lease, Tenant shall deposit with Landlord an amount representing the sum of three (3) months' Rent. The Security Deposit, therefore, shall equal \$45.00 PSF for three (3) months' Base Rent plus \$13.50 PSF for three (3) months' Additional Rent, or \$42,091.13, which amount shall be held by Landlord as security for Tenant's performance under this Lease, and not as an advance payment of Rent or a measure of Landlord's damages for default. Unless otherwise required by law, Tenant shall not be entitled to interest on such Security Deposit and Landlord may commingle such Security Deposit with any other funds of Landlord. Upon Tenant's default, Landlord, without prejudice to any other remedy, may apply any applicable portion of the Security Deposit to: (a) an arrearage of Rent, and/or (b) any other expense incurred by Landlord or any employee, agent, representative, trustee, officer or director of Landlord due to such default. Tenant shall pay to Landlord, on demand, the amount so applied pursuant to the immediately preceding sentence hereof in order to restore the Security Deposit to its original amount. If Tenant is not in default, then, within a reasonable time following termination of this Lease and satisfactory return of the Premises by Tenant to Landlord in accordance with this Lease, Landlord will return any remaining balance of the Security Deposit, if applicable, to Tenant. Tenant shall be responsible for any damage in excess of the Security Deposit. If Landlord transfers Landlord's interests in the Premises, then Landlord may assign the Security Deposit to the transferee and Landlord thereafter shall have no further liability for the return of the Security Deposit.

#### **VI. RENEWAL OPTION:**

Provided Tenant has not defaulted during the Term of this Lease and is not in default under the terms of this Lease at the time of exercise or commencement of this option, Tenant shall have the right, exercisable not more than twelve (12) months and less than six (6) months prior to the expiration of the initial Lease Term, to provide notice to Landlord (the "Renewal Notice") of its intent to renew this Lease for a period of five (5) years beginning on the first day following the



last day of the initial Lease Term and ending on the last day of the fifth anniversary thereof (the "First Renewal Period"), upon the same terms and conditions herein, except: the total Base Rent payable during the First Renewal Period shall be subject to an adjustment of no more than eight percent (8%) over the Base Rent at the end of the initial Lease Term, plus annual adjustments of three percent (3%), annually after the first Lease Year of the First Renewal Period. Upon receipt of the Renewal Notice, Landlord shall have thirty (30) days to approve or reject Tenant's renewal option.

Provided Tenant has not defaulted during the First Renewal Period and is not in default under the terms of this Lease at the time of exercise or commencement of this option, Tenant shall have the right, exercisable not more than twelve (12) months and less than six (6) months prior to the expiration of the First Renewal Period, to provide a Renewal Notice to Landlord of its intent to renew this Lease for an additional period of five (5) years beginning on the 1<sup>st</sup> day following the last day of the First Renewal Period and ending on the last day of the fifth anniversary thereof (the "Second Renewal Period"), upon the same terms and conditions herein, except: the total Base Rent payable during the Second Renewal Period shall be subject to an adjustment of no more than eight percent (8%) over the Base Rent at the end of the First Renewal Period, plus annual adjustments of three percent (3%), annually after the first Lease Year of the Second Renewal Period. Upon receipt of the Renewal Notice, Landlord shall have thirty (30) days to approve or reject Tenant's renewal option.

Provided Tenant has not defaulted during the Second Renewal Period and is not in default under the terms of this Lease at the time of exercise or commencement of this option, Tenant shall have the right, exercisable not more than twelve (12) months and less than six (6) months prior to the expiration of the Second Renewal Period, to provide a Renewal Notice to Landlord of its intent to renew this Lease for an additional period of five (5) years beginning on the 1<sup>st</sup> day following the last day of the Second Renewal Period and ending on the last day of the fifth anniversary thereof (the "Third Renewal Period"), upon the same terms and conditions herein, except: the total Base Rent payable during the Third Renewal Period shall be subject to an adjustment of no more than eight percent (8%) over the Base Rent at the end of the Second Renewal Period, plus annual adjustments of three percent (3%), annually after the first Lease Year of the Third Renewal Period. Upon receipt of the Renewal Notice, Landlord shall have thirty (30) days to approve or reject Tenant's renewal option.

#### **VII. TENANT TRADE NAME:**

Tenant shall conduct business in the Premises only in the name of "Francesco Restaurant" (the "Tenant Trade Name"). Tenant may not change the Tenant Trade Name without first obtaining Landlord's written approval.

#### **VIII. USE:**

The Tenant will use and occupy the Premises for the following use or purpose and for no other use or purpose: as a Peruvian white table-cloth restaurant and bar presenting high end cuisine with Italian and international influences to its menu. The name of the restaurant will be "Francesco Restaurant." This use defines the use that is permitted on site and is hereinafter considered the "Permitted Use".

Tenant shall be required to operate and be open for business to the public year-round the full Premises, a minimum of seven (7) days a week (excluding Thanksgiving, Easter and Christmas), and shall be open, at a minimum, between the hours of 11 A.M. and 10:00 P.M. and Tenant shall keep storefront lights and signage illuminated until 10:00 P.M. In the event that the Tenant uses the Premises for purposes not expressly permitted herein, the Landlord may, in addition to all other remedies available to it, terminate this Lease or restrain said improper use by injunction. Without the prior written consent of the Landlord, which shall not be unreasonably withheld, the Premises shall never be closed for business more than two (2) weeks continuously (and thirty (30) days in the aggregate) in any Lease Year, except for planned renovations, government mandated shutdowns, or situations that would be considered a "Force Majeure Event". Tenant shall open for business in accordance with the Permitted Use no later than one (1) year after the Lease Commencement Date.

Tenant shall not commit any nuisance; nor permit the emission of any objectionable noise or odor, nor burn any trash or refuse within the Premises; nor bring on, deposit or allow to be brought on or deposited on the Premises any hazardous or noxious materials or substances, as the same may be defined by federal, state or local laws, codes, ordinances, rules, or regulations; nor make any use of the Premises or any part thereof or equipment therein which is improper, offensive, a nuisance or contrary to law.

Tenant agrees to strictly enforce and comply with all applicable laws in the operation of the Premises.

**IX. QUIET ENJOYMENT:**

Upon payment by Tenant of the Rents herein provided, and upon the observance and performance of all terms and provisions, on Tenant's part to be observed and performed, Tenant shall have the right, subject to all of the terms and provisions of this Lease, to peaceably and quietly hold and enjoy the Premises for the Term hereby demised.

**X. INSURANCE:**

A. From and after the date hereof, and thereafter at all times during the Term of this Lease, and without limiting Tenant's indemnification of the Landlord, Tenant shall provide and maintain minimum insurance set forth in this Section:

1) **Property Insurance** on "All risk", for all furnishings and equipment and all of Tenant's property and all Tenant Improvements, on a full replacement cost basis; said policy or policies to be endorsed to reflect the hold harmless provision contained in Article XX. Said policy shall use minimum standard the equivalent terms and conditions included in the most recent edition of an unendorsed ISO (Insurance Services Office, Inc.) "Cause of Loss-Special Form." Property Insurance covering Tenant Improvements shall add Landlord as a Loss Payee. In addition, Tenant shall maintain business interruption coverage in an amount sufficient to reimburse Tenant for a minimum of one year's income for direct or indirect loss on an actual loss sustained basis shall be provided. In any event, Tenant waives any claim it may have against the Landlord and any insurer of the Landlord for any type of property insurance loss for Tenant's property, whether owned by Tenant or owned by others in the care, custody or control of Tenant, and for



any claim for business interruption. Failure to maintain adequate insurance coverage shall not relieve Tenant of its obligations as set forth in this Lease. Landlord may require Tenant to provide an appraisal to determine or substantiate that an appropriate amount of insurance coverage has been purchased. The deductible for any type of property insurance or inland marine insurance shall not exceed five thousand dollars (\$5,000) for all other perils and five percent (5%) for windstorm/hail coverage.

2) **Comprehensive boiler and machinery and/or equipment breakdown insurance**, with a deductible of not more than five thousand dollars (\$5,000) limits of not less than \$1,000,000; said policy or policies to be endorsed to reflect the hold harmless provision contained in Article XX, and shall include coverage for business interruption in an amount sufficient to reimburse Tenant for a minimum of one year's income on an actual loss sustained basis for direct or indirect loss, including overhead power lines.

3) **Comprehensive general liability insurance** with broad form endorsement or equivalent, including, liquor legal (dram shop) liability, completed operations and products liability, contractual liability, personal and advertising injury, severability of interests with cross liability provision, and personal injury liability with limits of no less than \$1,000,000 per occurrence for bodily injury and property damage, and \$2,000,000 in the aggregate, with a deductible not to exceed five thousand dollars (\$5,000). Said policy or policies shall be endorsed to name Landlord and Tenant as additional insureds on a primary and non-contributory basis, and shall reflect the hold harmless provision contained in Article XX.

4) **Worker's compensation insurance** for all employees of Tenant as required by Florida Statutes §440, and employer's liability insurance with limits of not less than \$1,000,000; said policy or policies shall, to the extent possible, be endorsed to name Landlord and Tenant as additional insureds and shall reflect the hold harmless provision contained in Article 12.

5) **Automobile Liability Insurance** covering all owned, non-owned and hired vehicles used in connection with the Premises in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. If vehicles are not owned or leased (long term) by the Tenant, then only hired and non-owned coverage applies.

6) **Excess Liability** with limits of \$5,000,000 per occurrence. Such coverage must be at least as broad as the underlying Commercial General Liability coverage.

7) **Liquor Liability** written on an occurrence basis with limits of no less than \$1,000,000.00 per occurrence.

8) Other (or increased amounts of) insurance which Landlord shall from time to time deem advisable or appropriate, it being reasonable for Landlord to require commercially available insurance of the types and in the amounts generally carried by other businesses which are similar to the Premises in size, style or character, such new or additional insurance to be effective as of the later of ninety (90) days after notice thereof or the next annual renewal of any policy being increased (as applicable).

**B.** All liability and workers compensation policies shall contain waiver of subrogation against Landlord. All liability policies shall name the Landlord as an additional insured on a



primary and non-contributory basis. All applicable property insurance policies shall name the Landlord as a loss payee and Tenant where applicable, shall expressly provide that such policy or policies are primary and non-contributory over any other collectible insurance that Landlord may have.

**C.** All of the above insurance is to be placed with A.M. Best or equivalent rated A-8 or better insurance companies qualified to do business under the laws of the State of Florida.

**D.** Certified copies of all policies and related endorsements shall be delivered to Landlord at or before the execution of this Lease, except that:

1) in the case of insurance relating to site preparation, or construction, repair, rehabilitation, furnishing or equipping the Premises, certified copies shall be delivered not later than ten (10) days prior to commencement of said activities;

2) in all instances, certified copies shall be delivered not later than thirty (30) days prior to the expiration date of any policy or policies of insurance required to be maintained during the Term hereof.

Certified copies shall be sent to Landlord at:

City of Coral Gables, Risk Management Division  
Insurance Compliance  
Attn: David Ruiz, Risk Manager  
Email: druiz@coralgables.com;  
cityofcoralgables@ebix.com  
2151 Salzedo Street, 5<sup>th</sup> Floor  
Coral Gables, Florida 33134

**E.** All policies shall provide for thirty (30) days' notice to Landlord prior to cancellation, material change, nor renewal.

**F.** Tenant acknowledges that the insurance coverage requirement set forth in this Section, in terms of both forms of insurance and amounts of coverage, represent the minimum protection required by Landlord. Tenant agrees to make and to rely upon the reasonable determination of Landlord regarding what additional forms of insurance or higher levels of coverage, if any, which are commercially reasonable in order to furnish Landlord and Tenant proper and adequate protection during the term hereof.

**G.** Tenant shall have the option to increase the limits of coverage on said policies or carry additional insurance.

**H.** The amount of any deductible or self-insured retention shall be subject to the written approval of Landlord.

**I.** Landlord reserves the right (but shall not be obligated) to provide any or all of the minimum insurance coverages not provided by Tenant. In such an event, the cost of the insurance shall be a reimbursable expense receivable by Landlord from Tenant on demand.



**J.** All applicable policies shall name the Landlord as an additional insured on a primary and non-contributory basis, and all applicable policies shall name the Landlord as a loss payee.

**K.** Said policies shall contain a “severability of interest or “cross liability” clause without obligation for premium payment of the Landlord. The Landlord reserves the right to request a copy of the required policies directly from their insurance representative for review at any time.

**L.** Failure on the part of the Tenant to obtain and maintain all required insurance coverage is a material breach upon which the Landlord may, in its sole discretion, terminate this Lease if Tenant does not provide such insurance within ten (10) days after written notice, or obtain such insurance on behalf of Tenant and charge the cost therefor to Tenant, along with a twenty percent (20%) administration fee as additional Rent. Tenant agrees to pay as Rent any increase in Landlord’s insurance premiums, resulting from Tenant’s activities, whether or not Landlord has consented to such activity.

**M.** Tenant’s contractors and subcontractors shall provide evidence of insurance to Tenant and Landlord, and Tenant shall include or cause to be included in each contract for work to be performed at the Premises on behalf of Tenant the following insurance requirements:

- a. Installation, floater or builder risk-completed value fire and extended coverage form covering damage to the construction and improvements to be made by Tenant in amounts at least equal to the estimated complete cost of the construction and improvements with one hundred percent (100%) coinsurance protection. Landlord and Tenant shall be named as an additional loss payee.
- b. Commercial General Liability insurance with broad form endorsement or equivalent, product liability, contractual liability, personal and advertising injury, severability of interests with cross liability provision, and personal injury and property damage liability with limits no less than \$1,000,000 per occurrence for bodily injury and property damage, and \$2,000,000 in the aggregate, and with a deductible not to exceed Five Thousand Dollars (\$5,000.00). Said policy or policies shall name the Tenant and Landlord as an additional insured on a primary and non-contributory basis, with a waiver of subrogation and shall reflect the hold harmless provisions contained herein.
- c. Worker’s Compensation Insurance for all employees of Contractor including statutory limits for employer’s liability insurance contained in Florida Statutes Section 440.
- d. Automobile Liability insurance covering all owned, non-owned and hired vehicles with a Combined Single Limit of no less than \$1,000,000 per occurrence. If vehicles are not owned or leased

(long term) by the Contractor, then only hired and non-owned coverage applies. Said policy or policies shall name the Tenant and Landlord as an additional insured on a primary and non-contributory basis, with a waiver of subrogation and shall reflect the hold harmless provisions contained herein.

Evidence of insurance of all contractors and subcontractors working under this Lease shall be maintained and kept for a period of time no less than the applicable statute of limitations and/or statute of repose for any claim that could be brought against Tenant and/or Landlord and/or for any claim that could be made against the contractor as a result of the work performed. These records must be made available to the Landlord upon request. Evidence of insurance shall include a Certificate of Insurance and copies of all applicable endorsements evidencing the required coverage. The Certificate of Insurance alone does not evidence insurance adequately. This includes, but is not limited to, endorsements evidencing additional insured status on a primary and non-contributory basis, waivers of subrogation, and endorsements amending the standard cancellation clause. The obligations set forth in this paragraph shall survive expiration or earlier termination of this Lease. Tenant and its contractors and/or subcontractors shall comply with Florida Statutes Section 255.05, as applicable.

Tenant shall pay its proportionate share of Landlord's cost to insure (i) the building structure (but not Tenant's improvements, furniture, fixtures, inventory or personal property, which remain Tenant's obligation to insure) for all risk coverage including windstorm, (ii) Commercial General Liability Insurance covering the common areas and shared facilities of the property, and (iii) any deductible required to be paid with regard to Landlord's policies.

#### **XI. GOVERNMENTAL AND OTHER REQUIREMENTS:**

Tenant shall faithfully observe in the use of the Premises all municipal and county ordinances, resolutions and codes and all state and federal statutes, rules and regulations now in force or which may hereafter be in force.

#### **XII. RELATIONSHIP OF PARTIES:**

Nothing herein contained to the contrary shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between Landlord and Tenant, it being expressly understood and agreed that neither the computation of Rent nor any other provisions contained in this Lease nor any act or acts of the parties hereto shall be deemed to create any relations between Landlord and Tenant other than the relationship of landlord and tenant. Notwithstanding the fact that the City of Coral Gables (the "City") is the landlord under this Lease and that there exists a landlord/tenant relationship between Landlord and Tenant, Tenant acknowledges that this Lease does not grant Tenant any rights or create any exceptions to its obligation to comply with and meet the requirements of all the City's ordinances, resolutions and codes, and that the landlord/tenant relationship shall have no effect upon the jurisdiction and governing rights of the City over the Premises and Tenant shall be required to fulfill and comply with all applicable laws, rules and regulations, ordinances and resolutions of the City as though no such landlord/tenant relationship

existed, including, without limitation, all requirements of the City's Building and Zoning Department or other pertinent City agencies.

### **XIII. OPERATION, UTILITIES, MAINTENANCE AND REPAIR EXPENSES:**

Tenant shall be solely responsible for the installation, operation and maintenance expenses of the Premises, including, without limitation, the cost of all HVAC, heating, electricity, water, sewer, garbage, gas and waste removal, other utility expenses, janitorial service, pest control and insurance. Tenant, at its sole cost and expense, during the entire Lease Term, shall be responsible for the repair, maintenance and replacement of the interior of the Premises, including, without limitation, all walls, plumbing, electricity, fixtures and all other appliances and equipment of every kind and nature and any mechanical systems servicing the Premises. After the expiration of the Lease, the Tenant agrees to assign to Landlord any cause of action arising, directly or indirectly, out of any improvements or alterations made to the Premises relating to defects in materials and workmanship for a period of one (1) year from the Termination Date. Notwithstanding the foregoing, Tenant warrants that any improvements or alterations made to the Premises during the Lease Term shall be free from any defects in materials and workmanship. Upon written request by the Landlord, the Tenant shall, within a period of thirty (30) days thereafter, cause to be corrected all such defects which are discovered within the warranty period or periods as set forth above, failing which the Landlord shall make such repairs and/or replacements of defective work and/or materials and the Tenant shall be liable to the Landlord for all costs arising therefrom. The Tenant also warrants that it shall be solely responsible for the repair of any damages to said improvements and/or alterations caused by Tenant, its employees, representatives and/or agents.

Tenant, at Tenant's own expense, will keep and maintain the Premises continuously in a neat and attractive manner, in good repair and in tenantable condition during the Term.

The Premises currently has hurricane glass and framing. Any replacement windows shall also contain hurricane glass and framing. Tenant shall indemnify and hold Landlord harmless with respect to all loss or damage that may occur to the Premises or personal property contained therein, arising out of or resulting from Tenant's failure to comply with the provisions of this paragraph. Tenant's indemnification obligation in this Section shall survive termination or earlier expiration of this Lease.

Except only furniture and trade fixtures which shall be readily removable without injury to the Premises, all additions, fixtures, carpets, and improvements shall be and remain a part of the Premises at the expiration of this Lease.

#### **Tenant Improvements**

Tenant shall, after the Effective Date, complete all renovations required to create a first class restaurant, at Tenant's sole cost and expense (the "Tenant Improvements"), with a minimum value of One Million Four Hundred Fifty Thousand and No/100 Dollars (\$1,450,000.00) (the "Budget Amount"), no later than one (1) year the Lease Commencement Date. If additional monies will be required to complete the Tenant Improvements, Tenant agrees to assume responsibility for and pay for any and all additional costs over and above the Budget Amount. Prior to commencing any work to complete the Tenant Improvements, Tenant shall provide

Landlord with a copy of a fully executed general contractor agreement and an audited construction budget and schedule reflecting a total minimum value equal to the Budget Amount. Tenant shall diligently and in good faith pursue the completion of the Tenant Improvements without any unreasonable delays or pause until the Tenant Improvements are completed. Beginning on the Lease Commencement Date and until the completion of Tenant Improvements, Tenant shall provide to Landlord, at least once per month, and at any time upon Landlord's request, a progress report on the status of the Tenant Improvements and any anticipated delays. Said progress reports shall show "substantial progress", as determined in the City Manager's discretion or that of his designee. Tenant's failure to provide any of the foregoing documentation to Landlord at the times set forth herein or Tenant's failure to show substantial progress in the completion of the Tenant Improvements shall constitute an Event of Default (as defined herein). During the construction of Tenant Improvements, Landlord shall have the right to access and inspect the Premises, upon twenty-four (24) hours' advance written notice. Upon completion of the Tenant Improvements, Tenant shall provide Landlord with an audited schedule of construction-related payments, copies of invoices evidencing the cost of all work completed, along with confirmation of payment for all such invoices. The foregoing documentation shall confirm that Tenant has paid no less than the Budget Amount in connection with the foregoing renovations. Furthermore, upon completion of the Tenant Improvements, which completion shall be evidenced by the issuance of a certificate of completion by the proper governmental authority, and within seven (7) days thereafter, Landlord will inspect and confirm, in writing, that the Tenant Improvements are complete in accordance with the required permits and plans filed in connection therewith. If Landlord disputes that the Tenant Improvements were so completed and the dispute cannot be resolved between Landlord and Tenant, within fifteen (15) days after the seven (7) day period described above, the matter shall be resolved by binding arbitration but no such dispute shall be the basis for either a delay by Tenant in its responsibilities under this Section or a claim of Force Majeure. During the time Tenant is completing the Tenant Improvements and beginning on the Effective Date, Tenant shall use good faith efforts and exercise due diligence to obtain all necessary permits to perform and immediately thereafter shall expeditiously complete, in the shortest time reasonably possible under the circumstances, the Tenant Improvements, which completion shall be evidenced by the issuance of a certificate of completion by the proper governmental authority. Tenant shall comply with all municipal and county building and zoning requirements and other laws, codes, ordinances, resolutions, rules and regulations in performing and completing the Tenant Improvements, including, without limitation, obtaining all necessary building permit(s) and certificate(s) of use and/or occupancy.

Tenant will not make any alterations, renovations, improvements or other installations in, on or to any part of the Premises (including, without limitation, any alterations of the storefront, signs, structural alterations, or any cutting or drilling into any part of the Premises or any securing of any fixture, apparatus, or equipment of any kind to any part of the Premises) unless and until Tenant shall have caused plans and specifications therefor to have been prepared, at Tenant's expense, by an architect or other duly qualified person and shall have obtained Landlord's approval (not to be unreasonably withheld or delayed) thereof. If such approval is granted, Tenant shall cause the work described in such plans and specifications, if applicable, to be performed, at its expense, promptly, efficiently, competently and in a good and workmanlike manner by duly qualified and licensed persons or entities, using first grade materials, without disruption to the operations of neighboring occupants. All such work shall comply with all applicable codes, rules, regulations and ordinances. Notwithstanding the foregoing, Tenant shall have the right to make



interior repairs or replacements which do not require any structural alteration or impose any greater load on any structural portion of the Premises, and are in accordance with Tenant's originally approved plans.

Landlord reserves the right at any time and from time to time to make or permit changes to the building in which the Premises is located, provided that any changes or additions by Landlord to Landlord's Property shall be performed in such a manner so as not to unreasonably interfere with Tenant's use of the Premises and shall not change in a material, adverse way the access to the Premises.

#### **XIV. TAXES AND ASSESSMENTS.**

**A. Taxes and Assessments:** Tenant shall be responsible for and shall pay before delinquency all other municipal, county or state taxes and assessments, without limitation, assessed during the Term of this Lease against any occupancy interest or personal property of any kind, owned by or placed in, upon or about the Premises by the Tenant (the "Taxes"). Tenant shall have the right to contest, at its sole expense, from time to time, any Taxes levied against the Premises by legal proceedings; provided, however, that such protest is made in accordance with applicable law and that all such Taxes are paid as and when due pursuant to such legal proceedings and further provided that the Landlord is held harmless by the Tenant in connection with such tax contest. Tenant shall be responsible to pay all amounts due hereunder to Landlord within thirty (30) days after receipt of an invoice therefor. In the event that Tenant fails to make the appropriate payment for Taxes when due, Tenant shall be responsible for any penalties imposed on the Landlord as a result of Tenant's delinquency in the payment of said Taxes.

**B. Business Improvement District and Other Assessments:** Tenant and Landlord both acknowledge that the Premises may be subject to certain assessments, including without limitation, Business Improvement District (BID) assessments. Tenant agrees to be solely responsible for its proportionate share of BID assessments based on the square footage of the Premises. Tenant shall be responsible to pay all amounts due hereunder to Landlord within thirty (30) days after receipt of an invoice therefor. In the event that Tenant fails to make the appropriate payment for assessments when due, Tenant shall be responsible for any penalties imposed on the Landlord as a result of Tenant's delinquency in the payment of said assessments.

#### **XV. MECHANIC'S LIENS:**

Tenant shall keep the Premises and all parts thereof at all times free of mechanic's liens and any other lien for labor, services, supplies, equipment or material purchased or procured, directly or indirectly, by or for Tenant. Tenant further agrees that Tenant will promptly pay and satisfy all liens of contractors, subcontractors, mechanics, laborers, materialmen, and other items of like character, and will indemnify Landlord against all expenses, costs and charges, including bond premiums for release of liens and attorneys' fees and costs reasonably incurred in and about the defense of any suit in discharging the Premises or any part thereof from any liens, judgments, or encumbrances caused or suffered by Tenant. In the event any such lien shall be made or filed, Tenant shall bond against or discharge the same within ten (10) days after the same has been made or filed. It is understood and agreed between the parties hereto that the expenses, costs and charges above referred to shall be considered as Rent due and shall be included in any lien for Rent.

The Tenant herein shall not have any authority to create any liens for labor or material on the Landlord's interest in the Premises and all persons contracting with the Tenant for the construction or removal of any facilities or other improvements on or about the Leased Premises, and all materialmen, contractors, mechanics, and laborers are hereby charged with notice that they must look only to the Tenant and to the Tenant's interests in the Premises to secure the payment of any bill for work done or material furnished at the request or instruction of Tenant, regardless whether Landlord has approved or consented to such work or improvements, and Tenant hereby agrees to notify such persons or entities in writing of the provisions hereof prior to the commencement of any such work or improvements. Landlord and Tenant further agree to execute, acknowledge and record in the Public Records of Miami-Dade County, Florida, a notice pursuant to Section 713.10, Florida Statutes. The provisions of this Article XV shall survive expiration or earlier termination of this Lease.

#### **XVI. LOSS; DAMAGE:**

Landlord shall not be liable for and Tenant hereby agrees to indemnify and hold Landlord harmless from all claims, demands, fines, suites, actions, proceedings, order, decrees and judgments of any kind or nature by, or in favor of, anyone whomsoever, and against and from any and all costs, damages and expenses, losses, liabilities, including, without limitations, attorneys' fees and court costs (and at trial and all other levels) resulting from, or in connection with any injury or damage to persons or property resulting from fire, explosion, falling plaster, gas, electricity, water, rain or leaks or from the pipes, appliances or plumbing works or from the roof, street or sub-surface or from any other place or by dampness, humidity or by any other cause or nature whatsoever; nor shall Landlord or its agents be liable for any such damage caused by other tenants or persons or caused by construction of any private, public or quasi-public work; nor shall Landlord be liable for any latent defect in the Premises. Tenant shall give immediate notice to Landlord in case of fire or accidents in the Premises or of defects therein or in any fixtures or equipment. Landlord shall not be responsible or liable for the theft, loss or damage to person or property in, on or about the Premises.

#### **XVII. ESTOPPEL STATEMENT:**

Tenant agrees that from time to time, upon not less than ten (10) days' advance written request by Landlord, Tenant will deliver to Landlord a statement in writing certifying (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease as modified is in full force and effect and stating the modifications); (b) the dates to which the rent and other charges have been paid; (c) that Landlord is not in default under any provisions of this Lease, or, if in default, the nature thereof in detail; and (d) other matters reasonably requested by Landlord. Failure to provide such estoppel statement as required shall be a material default of this Lease.

#### **XVIII. SUBORDINATION OF LEASE; ATTORNMENT; NON-DISTURBANCE:**

This Lease is subject and subordinate to any and all mortgages now or hereafter encumbering the Premises, and to any renewals, extensions and/or modifications thereof, and in the event Landlord's interest in the Premises is transferred by reason of foreclosure or other proceeding for enforcement of any such mortgage, Tenant agrees to attorn to and recognize the

rights of the transferee of Landlord's interest in the Premises as if such transferee were the Landlord under this Lease. This provision shall be self-operative without the execution of any further instruments. Notwithstanding the foregoing, however, Tenant hereby agrees to execute any instrument(s) which Landlord may deem desirable to further evidence such attornment the subordination of this Lease to any and all such mortgages. At the option of the holder of any such mortgage, upon written notice to Tenant, Tenant will simultaneously give to such holder a copy of any and all notices to Landlord and such holder shall have the right (but not the obligation) to cure or remedy any default of Landlord during the period that is permitted to Landlord hereunder plus an additional thirty (30) days, and Tenant will accept such curative or remedial action (if any) taken by Landlord's mortgagee with the same effect as if such action had been taken by Landlord. Tenant further agrees to execute any reasonable modification(s) of this Lease requested by any mortgagee.

So long as Tenant is not in default hereunder, Tenant and Landlord agree that Tenant's covenant to subordinate this Lease to any future lender shall be conditioned on such lender's agreement to recognize Tenant's rights and obligations under this Lease upon an attornment to such lender by Tenant.

Landlord's fee interest in and ownership of the Premises shall not be subject or subordinate to or encumbered by any lien or encumbrances affecting Tenant's interest in the Lease or the Premises or by any action or conduct of Tenant hereunder or by any lessee or sublessee. In this regard, the Base Rent then payable at any point in time during the term of the Lease shall be paid by the Tenant to Landlord and shall be superior in right to all claims or rights hereunder including but not limited to all expenses of operation, and any distributions of profit to the Tenant or any of its partners.

#### **XIX. ASSIGNMENT:**

Tenant shall not, directly or indirectly, assign, transfer, mortgage, pledge or otherwise encumber or dispose of this Lease or sublet the Premises or any part thereof or permit the Premises to be occupied by other persons, unless authorized by Landlord in writing, in its sole and absolute discretion. This prohibition includes, without limitation, any transfer which would otherwise occur by operation of law, merger, consolidation, reorganization, transfer or other change of Tenant's corporate, partnership or proprietary structure or ownership.

#### **XX. INDEMNITY; HOLD HARMLESS OF LANDLORD:**

In consideration of the Premises being leased to Tenant for the above Rent, Tenant agrees that Tenant, at all times, will indemnify, defend, and hold harmless Landlord (with counsel acceptable to Landlord) from all claims, demands, fines, suits, actions, proceedings, order, decrees and judgments of any kind or nature by, or in favor of, anyone whomsoever, and against and from any and all costs, damages and expenses, losses, liabilities, including, without limitations, attorney's fees and court costs (and at trial and all other levels) resulting from, or in connection with, loss of life, bodily or personal injury or property damage arising, directly or indirectly, out of, or from, or on account of, any accident or other occurrence in, upon, at or from the Premises, or occasioned in whole or in part through the use and occupancy of the Premises or any improvements therein or appurtenances thereto, or by any act or omission of Tenant, or its

employees, agents, contractors, invitees, guests or patrons, in, upon, at or from the Premises or its appurtenances. Landlord shall not be liable to Tenant for any damages, losses or injuries to the employees, agents, contractors, invitees, guests or patrons of Tenant or property of Tenant which may be caused by the acts, neglect, omissions or faults of any persons or entities. All personal property placed or moved into the Premises shall be at the risk of Tenant or the owner thereof, and Landlord shall not be liable to Tenant for any damage to said personal property. Tenant agrees to waive any rights of subrogation against Landlord for any injury or damage to persons or property.

In case Landlord shall be made a party to any litigation commenced against Tenant, then Tenant shall protect and hold Landlord harmless (with counsel acceptable to Landlord) and shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by Landlord in connection with such litigation and any appeal thereof.

The indemnification and hold harmless provision shall include, but not be limited to, all of the following:

- a. Damages awarded to any person or party.
- b. Attorney's fees and costs incurred in defending such claims. The City of Coral Gables may use the attorney or law firm of its choice in which event Tenant will pay such firm the fees it charges the City, provided such fees are reasonable in light of the prevailing market rate for similar legal services. Such fees shall be deemed reasonable if they are no greater than the fees that Landlord pays other counsel for representation in similar cases. If the City Attorney's Office provides the defense, Tenant will reimburse the City at the prevailing market rate for similar legal services.
- c. Attorney's fees and cost of any party that a court orders the City of Coral Gables to pay.
- d. Lost time that results from the City of Coral Gables or its officials or employees responding to discovery or testifying by deposition or in court in this regard, for any time the City of Coral Gables spends in responding to document requests or public records requests relating to such claims whether from Tenant or any other party, Tenant will reimburse Landlord at approximately \$50.00 for each employee work hour spent reviewing or responding to such requests. For any time spent testifying in court or in depositions, or preparing for such testimony, Tenant will reimburse Landlord on a per hour basis in the following estimated amounts:

- For the Mayor or City Commissioner. \$300.00 per hour
- For the City Manager: \$250.00 per hour
- For an Asst City Manager or Department Director: \$250.00 per hour
- For an Asst Department Director: \$100.00 per hour
- For City Attorney Prevailing market rates
- For other employees: \$50.00 per hour

Tenant recognizes that these amounts are estimates and subject to adjustments by Landlord from time to time. In addition, also Tenant recognizes that Landlord will expect that its City Attorney's Office will monitor such claims; review pleadings, orders, memorandums and motions; oversee such discovery; and independently or jointly prepare such witnesses and attend such depositions for which Tenant will reimburse Landlord at prevailing market rates. For any documents so produced Tenant shall reimburse Landlord \$.15 per single sided page and \$.20 per double sided page, subject to future adjustments that Landlord shall determine to be appropriate and reasonable from time to time.

- e. The expenses incurred by Landlord in complying with any administrative or court order that may arise from such claims.
- f. Miscellaneous expenses relating to such claims including expenses of hotels and transportation in trips relating to such claims; and
- g. Any other direct or indirect expense that Landlord would not have occurred but for a claim that arises out of this use agreement.

#### **XXI. CASUALTY:**

If any improvements on the Premises shall be destroyed or damaged in whole or in part during the Term, then Landlord, shall have the options (exercisable within one-hundred and eighty (180) days from the date of such damage or destruction) of terminating the Lease. If Landlord elects to repair, rebuild, restore or reconstruct the Premises it shall only be obligated to do so to the extent of the insurance proceeds available therefore. In the event that Landlord does not elect to terminate the Lease, then Tenant shall at its own expense promptly repair, restore, or reconstruct that portion of the Premises that constitutes the Premises including, without limitation, all interior walls, ceilings, and flooring. Tenant shall have the right to use for such purposes the proceeds of any hazard insurance policy(ies) maintained by Tenant for the Premises, however, Tenant shall be responsible for any amounts not covered by Tenant's insurance policy or policies. If Tenant fails, within thirty (30) days following written notice from Landlord, to commence such repair, restoration or reconstruction or fails thereafter diligently to prosecute the same to completion, then upon written notice to Tenant, Landlord shall have the right (but not the obligation) to assume full and exclusive control of Tenant's insurance proceeds and cause such repair, restoration or reconstruction to be done; provided, however that Tenant shall have such additional reasonable time as is necessary in order to coordinate its reconstruction efforts with any reconstruction being or to be done by Landlord. Tenant hereby expressly authorizes Landlord to enter the Premises for such purposes and Tenant agrees that such entry by Landlord shall have no other legal consequences. If the damage or destruction resulted from the gross negligence or willful misconduct of Tenant or any person occupying the Premises under Tenant, then all costs and expenses incurred in accomplishing repairs, restoration or reconstruction in excess of the insurance proceeds available therefore (if any) shall be paid by Tenant, and if Landlord shall advance any sums for such excess costs and expenses, then Tenant shall repay and reimburse Landlord therefore promptly upon demand and said sums shall be considered as additional Rent due and shall be included in any lien for Rent. Except in the event of the gross negligence or willful misconduct of Tenant or any person occupying the Premises under Tenant, the Rent under the Lease shall abate during any such period of repair, restoration or reconstruction to the Premises, undertaken by

Landlord, and Tenant shall have no right to cancel or terminate the Lease as a result of such damage or destruction. Nevertheless, to the extent that any of the above-described property damage is covered by valid, collected insurance, the Landlord hereby waives any subrogation rights against the Tenant, and the Tenant likewise hereby waives any subrogation rights against the Landlord.

## **XXII. CONDEMNATION:**

In the event that the Premises or any material part thereof is taken for any public or quasi-public use by condemnation or by right of eminent domain, or purchase in avoidance or settlement of a condemnation or eminent domain proceeding, Landlord and Tenant agree that this Lease shall be cancelled, and Rent shall abate as of the date of taking. Any and all condemnation awards shall be the property of the Landlord; provided, however, that Tenant shall be entitled to pursue a specific award to the extent of the value of its business, its fixtures and improvements.

## **XXIII. DEFAULT:**

A. Tenant shall be in default if any one or more of the following events (herein sometimes called "Events of Default") shall happen:

1. if Tenant fails to pay Rent or other charges due under the Lease within the Grace Period;  
or
2. if default shall be made by Tenant in the performance of, or compliance with, any of the covenants, agreements, or terms or conditions contained in this Lease, including, without limitation, Tenant's obligations with regards to the completion of the Tenant Improvements described in Article XIII, or default be made by Tenant in compliance or non-compliance with any and all municipal or county ordinances, resolutions or codes and all state and federal statutes, rules and regulations now in force or which may hereafter be in force; or
3. if Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, wage earner's plan, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other debtor's relief statute or law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or an assignment for the benefit of creditors or of all or any substantial part of Tenant's properties or of the Premises; or
4. if within ninety (90) days after commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other debtor's relief statute or law, such proceeding shall not have been dismissed, or stayed on appeal, or if, within ninety (90) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver or liquidator of Tenant or of all or any substantial part of Tenant's properties or of the Premises, such appointment shall not have been vacated

or stayed on appeal or otherwise, or if, within ninety (90) days after the expiration of any such stay such appointment shall not have been vacated; or

5. if the Premises or any portion thereof or contents therein shall be seized under any levy, execution, attachment or other process of court and the same shall not be promptly vacated or stayed on appeal or otherwise, or if the Tenant's interest in the Premises is sold by judicial sale and the sale is not promptly vacated or stayed on appeal or otherwise; or
6. if Tenant:
  - (a) prior to the completion of the Tenant Improvements, pauses construction of the Tenant Improvements for a period of more than thirty (30) days or fails to diligently and in good faith continuously pursue the completion of the Tenant Improvements,
  - (b) fails to complete the Tenant Improvements and open for business within one (1) year of the Effective Date,
  - (c) should vacate, abandon, or desert the Premises, or
  - (d) ceases the continual operation of Tenant's business therein for fifteen (15) continuous days and thirty (30) days (in the aggregate) in any consecutive twelve month period during the Lease Term, unless prevented from operating said business as a result of the occurrence of a Force Majeure Event, or
  - (e) violate any terms or conditions of this Lease Agreement more than two (2) times during the term of the Lease stated herein.

**B. In the Event of a Default, Landlord may, at its option:**

1. terminate this Lease and retake possession;
2. terminate this Lease and immediately recover from Tenant (i) all amounts past due as of the Event of Default date, (ii) the costs of repossession of the Premises and retelling the same (including reasonable attorney's fees and costs related thereto), and, in addition thereto, (iii) as liquidated damages the amounts set forth below in lieu of all damages following the Event of Default date (it being agreed that it would be impractical or extremely difficult to fix actual damages, that the following amounts constitute a good faith reasonable estimate of the damages which might be suffered by the Landlord upon the occurrence of Tenant's Event of Default, and that such amounts are intended not as a penalty, but as a full and final agreed upon liquidated damages). The liquidated damages amounts shall equal the sum of an amount equivalent to two (2) years of Base Rent and any operational, real estate taxes, or insurance costs payable by Tenant to Landlord.

3. take possession of the space without terminating the Lease to relet the Premises for the balance of the Term, or part thereof, for the account of Tenant, provided Tenant shall not be entitled to any surplus of rent obtained thereby;
4. for an Event of Default of any non-monetary term of the Lease, Landlord may cure the default and charge Tenant as Rent the cost to cure such default along with a twenty percent (20%) administrative fee;
5. remove all of Tenant's personal property, including, but not limited to Tenant's furniture, fixture and equipment, goods and chattels from the Premises if not removed within two (2) days of a termination by reason of Tenant's default, such items thereby being deemed abandoned, and dispose of the same in any manner, or store the same in a public warehouse or elsewhere for the account of and at the expense and risk of Tenant, or sell such items at public or private sale, in such manner and at such times and places as Landlord in its sole discretion may deem proper without notice or demand upon Tenant, and otherwise enforce Landlord's lien on such items by distress, foreclosure or otherwise; and/or
6. pursue any other right or remedy available at law or equity;

**C.** In addition to the foregoing, in the event Tenant defaults two or more times during the Term of this Lease, Landlord, at its option, may terminate this Lease.

**D.** All Rent not paid on the date of termination shall accrue interest at the highest rate allowed by law until paid ("Default Rate). Any such termination shall apply to any extension or renewal of the Term herein demised, and to any right or option on the part of the Tenant that may be contained in the Lease. Nothing herein contained shall be construed as precluding the Landlord from having such remedy as may be and become necessary in order to preserve the Landlord's right or the interest of the Landlord in the Premises and in the Lease, including but not limited to injunctive relief, even before the expiration of the grace or notice periods provided for in the Lease, if under particular circumstances then existing the allowance of such grace or the giving of such notice will prejudice or will endanger the rights and estate of the Landlord in the Lease or in the Premises.

**E.** The rights and remedies of the parties to the Lease, whether provided by law or by the Lease, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach, or of any of its remedies for any other default or breach by the other party. No waiver made by either party with respect to performance, or manner or time thereof, of any obligation of the other party or any condition to its own obligation under the Lease shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligations of the other party or condition to its own obligation beyond those expressly waived and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making



the waiver or in regard to any obligation of the other party. In no event shall Landlord be liable for indirect, consequential, or punitive damages or for damages based on lost profits. Upon an Event of Default, Landlord shall be permitted to place a leasing sign on the Premises. In all situations or under any provision hereof where injunctive relief is an available remedy to the Landlord, such relief shall be available to the Landlord without the requirement or posting a bond or other collateral.

F. Tenant agrees that, in exchange for the promises made in this Lease and other good and valuable consideration received from Landlord, in the event Tenant files a voluntary petition in bankruptcy or is the subject of an involuntary bankruptcy at any time during the Term or any extensions hereof, Landlord shall not be subject to the provisions of 11 U.S.C. §362, and shall automatically and immediately be entitled to relief from the stay imposed thereby without necessity of further action or court approval. Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove for and obtain, in proceedings for the termination of this Lease by reason of bankruptcy or insolvency, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above. The failure or refusal of Landlord to relet the Premises or any part or parts thereof shall not release or affect Tenant's liability for damages.

#### **XXIV. LESSOR'S CONTROL OF LAWSUITS:**

The parties agree that in any lawsuit brought in Landlord's name or defended in Landlord's name, Landlord must retain all final control and authority of the lawsuit. Therefore, in any lawsuit envisioned in this agreement in which Landlord is a party, Landlord retains full control of the lawsuit, including full authority to determine what legal actions or positions may be asserted to the courts in the name of Landlord and the full authority to settle or compromise any claim on behalf of Landlord. Tenant agrees that its responsibilities under this Agreement continue in full force and effect regardless of any decision of Landlord in this regard.

#### **XXV. LIEN FOR PAYMENT OF RENT:**

Tenant hereby pledges and assigns to Landlord, in addition to Landlord's statutory lien for Rent pursuant to Florida Statutes Chapter 83, as security for the payment of any and all Rent to other sums or amounts provided for herein, all of the permanent improvements, furniture, fixtures, personal property, equipment, goods and chattels owned by Tenant which shall or may be brought, put on, or regularly kept at the Premises, and Tenant agrees that said lien may be enforced by distress, foreclosure or otherwise, at the election of the Landlord. Tenant agrees hereby to execute and deliver within five (5) days of a written request by Landlord a standard Uniform Commercial Code Financing Statement, which Tenant acknowledges is in a form sufficient to perfect the lien in favor of Landlord created by this paragraph. Tenant agrees for itself and its assignees or sublessees that it shall execute such further documentation as may be required by Landlord in connection with the perfection or continuation of this lien. During the Term, Tenant shall not remove any property from the Premises, other than in Tenant's ordinary course of business, without Landlord's written consent. Removal of Tenant's property without Landlord's consent shall be an Event of Default under this Lease, and Landlord shall be entitled to enforce its rights by injunction in addition to any other remedy available under this Lease and applicable law.

## **XXVI. NO WAIVER:**

Failure of Landlord to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive such default, but Landlord shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, in law and/or in equity.

No waiver of any term, provision, condition or covenant of this Lease by Landlord nor the failure of Landlord to insist upon strict performance of one or more covenants or conditions of this Lease shall be deemed to imply or constitute a further waiver by Landlord of any other term, provision, condition or covenant of this Lease, and no acceptance of Rent or other payment shall be deemed a waiver of any default hereunder, nor shall such acceptance operate as a waiver of any provisions of the Lease or any of Landlord's rights, remedies, privileges or options.

## **XXVII. RIGHT OF ENTRY:**

Landlord, or any of its agents, shall have the right to enter the Premises during all reasonable hours and after twenty-four (24) hours' notice to Tenant (except in the event of an emergency, to be determined in Landlord's sole discretion, in which event no notice shall be required) to examine the same or to make such repairs, additions or alterations as may be deemed necessary for the safety, comfort, or preservation thereof or to otherwise exhibit the Premises to third parties, including, without limitation, mortgagees, insurance examiners and building inspectors. Said right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations, or additions which do not conform to this Lease. Landlord and Tenant agree that to the extent there is any restriction on Landlord's right of entry to the Premises set forth in this Lease, the restriction applies solely to Landlord in its capacity as a landlord and does not apply to Landlord in its capacity as a municipality with jurisdiction over the Premises and the property where it is located.

Tenant is and shall be in exclusive control and possession of the Premises, and Landlord shall not, in any event whatsoever, be liable for any injury or damage to any property or to any person happening in, on or about the Premises, nor for any injury or damage to any property of Tenant, or of any other person or persons contained therein. Notwithstanding the foregoing, however, Landlord is expressly permitted to enter and inspect the Premises at reasonable times and upon at least twenty-four (24) hours' advance written notice to Tenant. Such entering and inspections rights are, however, made for the sole and express purpose of enabling Landlord to be informed as to whether Tenant is complying with the agreements, terms, covenants and conditions of the Lease and if Landlord so desires, to do such acts as Tenant shall have failed to do after notice from Landlord as otherwise required herein. Such access and inspection rights shall not in any event impose on Landlord any obligations not expressly set forth herein.

## **XXVIII. HAZARDOUS MATERIALS:**

With the exception of minor amounts of Hazardous Materials customarily and lawfully used in conjunction with the Permitted Use, Tenant, its employees, contractors, agents, and any party acting on behalf of Tenant, shall not store, use, treat, generate, or dispose of Hazardous Materials at the Premises or other property owned by Landlord. "Hazardous Material(s)" means

any substance that, by itself or in combination with other materials, is either (i) generally regarded injurious to public health, safety, or the environment; or (ii) now or in the future regulated by any federal, state, or local governmental authority as potentially injurious to public health, safety, or the environment. Tenant, its employees, contractors, agents, and any party acting on behalf of Tenant shall comply, and shall keep the Premises in compliance, with all laws and regulations relating to Hazardous Materials ("Environmental Laws"); and in addition Tenant shall:

- (i) Promptly provide Landlord with copies of any document, correspondence, report or communication, written or oral, relating to Hazardous Materials at or affecting the Premises (x) to or from any regulatory body, or (y) stating a basis for any potential liability or responsibility of Tenant, Landlord, or the Premises; including all such documents, correspondence, reports or communications prepared by or on behalf of Tenant. In addition to the above, at Landlord's request, Tenant shall provide copies of any and all records and communications whatsoever relating to Hazardous Materials at or affecting the Premises.
- (ii) Immediately notify Landlord in the event of a suspected or confirmed release of a Hazardous Material or violation of Environmental Laws at or affecting the Premises or other property owned by Landlord and caused by or related to the operations of Tenant, its employees, contractors, agents, or any party acting on behalf of Tenant and, at Landlord's sole option, either promptly remediate or correct such release or violation to Landlord's satisfaction or reimburse Landlord's cost of remediation (including reasonable attorneys' and consultants' fees); and compensate Landlord and/or third parties for all resultant damage.
- (iii) Permit Landlord reasonable access to the Premises for the purpose of conducting an environmental audit or testing, the cost of which shall be borne by Landlord unless the results indicate activity prohibited by Environmental Laws or hereunder.
- (iv) Upon expiration or other termination of this Lease, remove all Hazardous Materials from the Premises caused by the acts or omissions of Tenant, its officers, agents, contractors, employees or invitees, and at Landlord's option cause to be performed and provided to Landlord an environmental audit of the Premises, using a consultant reasonably acceptable to Landlord, and correct, at its expense, any deficiencies noted by the audit.

The provisions regarding Hazardous Materials shall survive the expiration or other termination of this Lease.

## **XXIX. NOTICE:**

Any notice to be given Landlord as provided for in this Lease shall be in writing and shall be sent to Landlord by United States certified mail, postage prepaid, return receipt requested, addressed to Landlord at Landlord's office at the address set forth on page 1 hereof, hand delivered, or sent by a nationally recognized overnight courier to Landlord at such office. Any notice to be given Tenant under the terms of this Lease shall be in writing and shall be sent by United States certified mail, postage prepaid, return receipt requested, hand delivered, sent by a nationally recognized overnight courier to the Tenant at the Premises, or delivered to Tenant via electronic mail. Either party, from time to time, by such notice, may specify another address to which subsequent notice shall be sent. Any notice given by mail shall be deemed given on the date notice is delivered, refused, or delivery attempted. Any notice given by electronic mail shall be deemed given on the date sent. Whenever this Lease provides for Landlord or Tenant's approval or consent, said approval or consent shall be in writing, absent which any alleged approval or consent shall not be binding on Landlord or Tenant, as applicable. Whenever Tenant's approval or consent is required pursuant to this Lease, it shall not be unreasonably withheld or delayed, except as may otherwise be expressly provided herein. Either party, from time to time, by such notice, may specify another address to which subsequent notice shall be sent. Any notice given by mail shall be deemed given five (5) days following the date of mailing.

All requests for action or approvals by the Landlord shall be sent to the City Manager for decision as to whom within the Landlord, including the City Commission, must act or approve the matter on behalf of the Landlord. If the City Manager's office shall be vacant or if the City Manager shall not have the full authority to act or approve matters required of the Landlord pursuant to the Lease, then the Landlord shall, promptly upon written request by the Tenant, designate such, other officer or department as may be appropriate to perform the Landlord's obligations.

## **XXX. SURRENDER; CONDITION OF PREMISES ON TERMINATION OF LEASE AND HOLDING OVER:**

Tenant agrees to surrender to Landlord, at the end of the Term of this Lease and/or upon any cancellation or early termination of this Lease, the Premises in as good condition as the Premises were at the beginning of the Term of this Lease, ordinary wear and tear, and damage by fire, or other casualty not caused by Tenant's negligence excepted. Tenant agrees that if Tenant does not surrender the agrees Premises to Landlord at the end of the Term of this Lease, then Tenant will pay to Landlord, to the extent permitted by law, double the amount of the Rent paid by Tenant for the last full month of the Lease Term for each month or portion thereof that Tenant holds over, plus all damages that Landlord may suffer on account of Tenant's failure to so surrender to Landlord possession of the Premises, and will indemnify and save Landlord harmless from and against all claims made by any succeeding tenant of the Premises against Landlord on account of delay of Landlord in delivering possession of the Premises to the succeeding tenant so far as such delay is occasioned by failure of Tenant to so surrender the Premises in accordance herewith or otherwise.

No receipt of money by Landlord from Tenant after termination of this Lease or the service of any notice of commencement of any suit or final judgment for possession shall reinstate,

continue or extend the Term of this Lease, affect any such notice, demand, suit or judgment, or waive any of Landlord's rights and remedies set forth in this Lease.

No act or thing done by Landlord or its agents during the Term hereby granted shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless it be made in writing and signed by a duly authorized officer or agent of Landlord. Any personal property, furniture, fixtures, goods or chattels remaining in the Premises after the Termination Date shall be deemed abandoned. No surrender of the Premises prior to the end of the Term shall terminate this Lease unless Landlord agrees to such termination in writing.

**XXXI. SIGNS:**

Tenant shall have the right to install signs on the exterior of the Premises, subject to the Landlord's prior written consent; provided, however, that such signs comply with all requirements of municipal and county governmental requirements.

**XXXII. TRIAL BY JURY:**

It is mutually agreed by and between Landlord and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, and Tenant's use or occupancy of the Premises. Tenant further agrees that the provisions for payment of Rent herein are independent covenants of Tenant and Tenant shall not interpose any noncompulsory counterclaim(s) in a summary proceeding or in any action based upon non-payment of Rent or any other payment required of Tenant hereunder. Tenant expressly waives any and all rights of redemption granted by or under any present or future laws.

**XXXIII. INVALIDITY OF PROVISION:**

If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law. This Lease shall be construed in accordance with the laws of the State of Florida and venue shall be in Miami-Dade County.

**XXXIV. TIME OF ESSENCE:**

It is understood and agreed between the parties hereto that time is of the essence of all the terms and provisions of this Lease.

**XXXV. SUCCESSORS AND ASSIGNS:**

All terms and provisions of this Lease to be observed and performed by Tenant shall be applicable to and binding upon Tenant's respective heirs, personal representatives, successors and



assigns, subject, however, to the restrictions as to assignment and subletting by Tenant as provided herein.

**XXXVI. ATTORNEYS' FEES:**

If either party defaults in the performance of any of the terms or provisions of this Lease and by reason thereof the other party employs the services of an attorney to enforce performance of the covenants, or to perform any service based upon defaults, or in the event a party successfully defends an action against them for breach under this Lease, then in any of said events the prevailing party shall be, entitled to receive from the other party reasonable attorneys fees and expenses and costs incurred by the prevailing party pertaining thereto (including costs and fees relating to any appeal) and in enforcement of any remedy.

**XXXVII. MISCELLANEOUS:**

The terms Landlord and Tenant as herein contained shall include singular and/or plural, masculine, feminine and/or neuter, heirs, successors, personal representatives and/or assigns wherever the context so requires or admits. The terms and provisions of this Lease are expressed in the total language of this Lease and the Article or article headings are solely for the convenience of the reader and are not intended to be all-inclusive and shall not be deemed to limit or expand any of the provisions of this Lease. Anything herein to the contrary notwithstanding, Landlord shall not be or be deemed to be in default hereunder unless it has failed to cure its default within a reasonable time following its receipt of notice thereof. All exhibits attached to this Lease, if any, are hereby incorporated in and made a part hereof. Neither this Lease nor any memorandum or short form thereof shall be recorded in the Public Records of Miami-Dade County, Florida unless either party is required to do so in order to comply with any law, regulation, or court order, and to the extent that Landlord is a governmental entity and is required to comply with the Sunshine Law (Fla. Stat. Ch. 286, *et. seq.*), the Lease, memorandum, or short form thereof being made a public record as a result thereof shall not constitute a violation of this section. Tenant certifies that it is not acting directly or indirectly for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and that it is not engaged in this transaction, directly or indirectly on behalf of any such person, group, entity or nation. Tenant agrees to defend, indemnify and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification; this indemnity shall survive expiration or earlier termination of this Lease. Unless a different time frame has been agreed upon by the parties, Landlord shall not be deemed to be in default hereunder unless Landlord has failed to cure its default within thirty (30) days following its receipt of written notice thereof from Tenant.

Tenant agrees that, in the performance of its obligations hereunder, neither it nor its employees or agents will discriminate (nor will they permit to occur any discrimination) as to race, color, creed, handicap, or national origin in the operation of the Premises or in the performance by Tenant (or its employees, sub tenants, operator, or agents) of its obligations under the Lease. No covenant, agreement, lease, conveyance or other instrument concerning the sale, lease, use or

occupancy of the Premises or any portion thereof shall be effected or executed by Tenant, its successors, assigns or any subsequent owner or occupant, whereby the Premises or any portion thereof is restricted by Tenant or any successor, assign or subsequent owner or occupant, upon the basis of race, color, religion, sex, national origin, or handicap. Tenant and all such parties in interest shall comply with all applicable state and local laws, in effect from time to time, prohibiting discrimination or segregation by reason of race, color, religion, sex, national origin, or handicap in the use or occupancy of the Premises or any portion thereof. Furthermore, Tenant and all such parties in interest shall agree to make accommodations for the handicapped as required by law and that no otherwise qualified handicapped individual shall, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, be denied access to facilities within the Premises or any part thereof, to the extent required by law, or be subjected to discrimination under any program or activity allowed under the Lease except as permitted by law.

Tenant agrees that, during the term hereof, it will implement a Drug Free Workplace policy, in accordance with Exhibit "A", and will take such steps as may be necessary with regard to the hiring, disciplining and firing of its employees, agents, servants and contractors, as will insure that the Premises is operated in a drug free fashion.

The Lease shall be governed by the laws of the State of Florida. The Lease is subject to and shall comply with the Charter of City of Coral Gables and the ordinances of City of Coral Gables. Any conflicts between the Lease and the aforementioned laws and Charter shall be resolved in favor of the latter. If any term, covenant, or condition of the Lease or the application thereof to any person or circumstances shall to any extent, be illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity or becomes unenforceable because of judicial construction, the remaining terms, covenants and conditions of the Lease, or 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 the Lease shall be valid and be enforced to the fullest extent permitted by law.

No member, official, representative, or employee of Landlord shall have any personal interest, direct or indirect, in the Lease, nor shall any such member, official, representative or employee participate in any decision relating to the Lease which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. No member, official, elected representative or employee of Landlord shall be personally liable to Tenant or any successor in interest in the event of any default or breach by Landlord or for any amount which may become due to Tenant or successor or on any obligations under the terms of the Lease.

**XXXVIII. EFFECTIVE DATE:**

Submission of this instrument for examination does not constitute an offer, right of first refusal, reservation of or option for the Premises. This instrument becomes effective as a Lease only upon execution and delivery by both Landlord and Tenant.



**XXXIX. BROKERAGE:**

Tenant agrees to pay a brokerage commission of three percent (3%) of the Base Rent payable during the Lease Term to Berkshire Hathaway Home Services EWM Realty for services provided in connection with this Lease in accordance with the terms of a separate commission agreement. Further, in the event that Tenant exercises its option to renew this Lease for the First Renewal Period in accordance with the terms of Article VI herein, Tenant agrees to pay a brokerage commission of one and one half percent (1.5%) of the Base Rent payable during the Lease Term to Berkshire Hathaway Home Services EWM Realty upon commencement of the First Renewal Period. Except as specifically identified in this Article, Landlord and Tenant each represent to the other that they have not dealt, directly or indirectly, in connection with the leasing of the Premises, with any other broker or person entitled to claim a commission or leasing fees. In no event may this Lease be construed to create any express or implied obligation on the part of Tenant to perform this Lease on behalf of any broker (or any person claiming a commission or leasing fee) as primary obligee or as a third party beneficiary. Tenant agrees to indemnify and hold Landlord harmless from and against any claims by any other broker, salesman, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction. The provisions of this Article shall survive the termination of this Lease.

**XL. FORCE MAJEURE:**

Except with respect to payment obligations under this Lease, including Tenant's obligation to pay Rent, no party shall be liable for, nor shall such party be considered in breach of this Lease due to, any failure to perform its obligations under this Lease as a result of a cause beyond its control, including any act of God, terrorism, military or civil uprising, fire, flood, earthquake, hurricane, tornado, epidemic, pandemic, including COVID-19, unavailability of supplies, which could not have been prevented by such party with reasonable care and which, in the case of Tenant, prevents Tenant from safely and reasonably operating its business activities, but shall not include financial inability due to economic conditions (each, a "Force Majeure Event"). Within 24 hours of the occurrence of a Force Majeure Event, the affected party shall notify the other party of the occurrence by providing notice in accordance with Article XXIX herein, to the other party. The time for performance required of the affected party shall be extended by the period of such delay provided the party is exercising good faith and diligent efforts to overcome the cause of such delay. Notwithstanding anything contained herein, in no event shall Tenant be relieved or excused from its obligation to pay Rent.

**XLI. TENANT'S AUTHORITY TO EXECUTE LEASE:**

Tenant hereby represents and warrants to Landlord that the Lease has been duly authorized, executed and delivered by and on behalf of Tenant and constitutes a legal, valid and binding agreement of Tenant enforceable in accordance with its terms. Simultaneously with the execution of the Lease, Tenant shall deliver to Landlord a certified resolution of the Board of Directors of Tenant authorizing the execution and delivery of the Lease by Tenant and the performance of Tenant's obligations hereunder.



**XLII. RADON GAS:**

RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT.

**XLIII. ENTIRE AGREEMENT:**

This Lease contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by an agreement in writing signed and sealed by Landlord and Tenant. Tenant acknowledges and agrees that Tenant has not relied upon any statement, representation, prior written or prior or contemporaneous oral promises, agreements or warranties except such as are expressed herein.

**XLIV. DRAFTING OF LEASE:**

The drafting and negotiation of this Lease have been participated in by each of the parties, and for all purposes, therefore, this Lease shall be deemed to have been drafted jointly by each of the parties.

**XLV. COUNTERPARTS:**

This Lease may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute but one and the same instrument.

**XLVI. SURVIVAL:**

All provisions of this Lease intended by their terms to survive expiration or earlier termination shall survive, including, but not limited to all indemnification obligations contained herein.

**XLVII. RIGHT TO AUDIT:**

The Tenant shall maintain accurate and complete records of its activities and operations relating to this Lease in accordance with generally accepted accounting principles. Tenant agrees that the Landlord or its agents shall have access to and the right to examine, audit, excerpt, or copy any pertinent transaction, activity, records, software and any records in electronic form relating to this Lease including but not limited to financial statements, invoices, documents, receipts, costs, and any and all other agreement or sources of information that may in the Landlord's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by this Lease. All costs shall also be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of other accounting documents pertaining in whole or in part to this Lease and shall be clearly identified and readily accessible. The Landlord or its designee shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Lease.



The Tenant agrees to make such records, books of account, and other materials available to Landlord at its office during normal business hours and upon three (3) days' notice at a location in Miami-Dade County, Florida, provided that if any such material is located outside Miami-Dade County, then, at Landlord's option the Tenant shall pay the Landlord for the travel, per diem, and other costs incurred by the Landlord to examine, audit, excerpt or copy such material at such other location. At such times and in such form as the Landlord may require, there shall be furnished to Landlord such statements, records, reports, data, and information as the Landlord may request pertaining to matters covered by this Lease. All records, books of account, and other materials will be made available to Landlord during the term of this Lease including any and all renewals thereof and for a period of three (3) years after receipt of final payment or all pending matters are closed, whichever is later. If an audit, litigation or other action involving this Lease is started before the end of the three year period, the records shall be retained until all issues arising out of the action are resolved or until the end of the three year period, whichever is later. Any contract or other agreement issued by the Tenant or its contractors related to this Lease for work and/or any sublease shall have an audit clause similar in form and execution to this clause.

Such inspection and audit shall be at Landlord's expense unless it shall disclose a cumulative variance of more than three percent (3%) from the stated base rent and/or other payments in the agreement for any period covered by the inspection or audit, or if the audit reveals that the condition of the Tenant's records is such that the revenue due the Landlord cannot be properly determined. In the event of either condition described above, the cost of such inspection or audit, including any applicable travel costs, shall be at Tenant's expense and shall be immediately paid to the Landlord within five business days of receipt of invoice.

In the event that an audit is conducted by the Tenant specifically regarding this Lease by any Federal or State auditor, or by any auditor or accountant employed by the Tenant, then the Tenant shall file a copy of the audit report with the Landlord's auditor within thirty (30) days of Tenant's receipt thereof, unless otherwise provided by applicable Federal or State law. Landlord shall make a reasonable effort to maintain confidentiality of such audit report(s).

This audit right clause shall not construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the Landlord may have by State, City, or Federal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are express or implied.

#### **XLVIII. PUBLIC RECORDS:**

Records subject to the provisions of Public Records Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. Tenant acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the Landlord in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the Landlord for such disclosure and/or production. Tenant also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the City. Furthermore, Tenant agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein.

**XLIX. SOVEREIGN IMMUNITY:**

Landlord and Tenant acknowledge that the Florida Doctrine of Sovereign Immunity bars all claims against Landlord other than claims arising out of this Lease. Specifically, Tenant acknowledges that it cannot and will not assert any claims against Landlord, unless the claim is based upon a breach by Landlord of this Lease. Furthermore, Tenant understands that it has no right and will not make any claims based upon any of the following: (i) claims based upon any alleged breach by Landlord of warranties or representations not specifically set forth in this Lease; (ii) claims based upon negligence or any tort arising out of this Lease; (iii) claims upon alleged acts or inaction by Landlord, its elected officials, attorneys, administrators, consultants, agents, or any Landlord employee; or (iv) claims based upon an alleged waiver of any of the terms of this Lease. Nothing in this Lease is intended to operate as a waiver of Landlord's sovereign immunity, as set forth in the Florida Constitution and Florida Statutes Chapter 768.28.

[Signatures Follow]



**IN WITNESS WHEREOF**, the parties hereto have signed, sealed and delivered this Lease at Miami-Dade County, Florida, as of the day and year first above written.

**LANDLORD:**

**CITY OF CORAL GABLES, a  
municipal corporation of the State of Florida**

By: \_\_\_\_\_  
Peter J. Iglesias  
City Manager

ATTEST:

BY: \_\_\_\_\_  
Billy Y. Urquia  
City Clerk

Approved as to form and legal sufficiency

By: \_\_\_\_\_  
Miriam Soler Ramos  
City Attorney

**TENANT:**

**FRANCESCO MIRACLE MILES LLC, a  
Florida limited liability company**

By: \_\_\_\_\_  
Name: Cesar Paniagua  
Title: Manager

ATTEST/WITNESS:

By: Oscar Larrosa  
Name: \_\_\_\_\_

By: JULIO CESAR HIDALGO  
Name: \_\_\_\_\_

## EXHIBIT A

### DRUG FREE WORKPLACE POLICY

Tenant agrees to maintain a drug-free work place policy in the same manner as set forth in Section 287.087, Florida Statutes. Such policy shall include the following:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that maybe imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under solicitation a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under solicitation, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of these requirements.

