

**LEASE**

between

**CITY OF CORAL GABLES**

and

**RUMI MEDITERRANEAN CORP, D/B/A**  
**Rumi Mediterranean Kitchen & Bar**

Address: **2325 Galiano St.**

Execution Date: \_\_\_\_\_, 2009

Term Period: March 1, 2009 through June 30, 2016

Option Period: July 1, 2016 through June 30, 2019



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FINAL DRAFT

## **LEASE AGREEMENT**

THIS LEASE AGREEMENT (the "Lease") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the City of Coral Gables, a municipal corporation of the State of Florida, (the "Landlord"), whose address for purposes hereof is 405 Biltmore Way, Coral Gables, Florida 33134, and RUMI MEDITERRANEAN CORP, D/B/A Rumi Mediterranean Kitchen & Bar, a Florida corporation, (the "Tenant"), whose address for purposes hereof is 2325 Galiano St.; Coral Gables, FL 33134

### **WITNESSETH:**

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") consisting of approximately Three Thousand Nine Hundred Five (3,905) gross square feet of floor space (the "Rentable Area") located at 2325 Galiano St., Coral Gables, Florida 33134.

**II. TERM:** This Lease shall be for a term (the "Term" or "Lease Term") beginning on March 1, 2009 (the "Effective Date") and ending on June 30, 2016 (the "Termination Date"), unless sooner terminated as provided herein and subject to Tenant's option to renew for a three (3) year period, providing there are no violations of the default section of this Agreement.

There shall be no delay in the commencement of the Term of this Lease and there shall be no delay or abatement of the payment of "Rent(s)" (as hereinafter defined) where Tenant fails to occupy the Premises, nor shall same operate to extend the initial Term beyond the agreed expiration date hereof. All provisions of this Lease shall be in full force and effect upon the Effective Date.

This Lease does not grant any right to light or air over or about the Premises.

**III. CONDITION OF PREMISES "AS IS":** Tenant acknowledges and agrees that it has previously inspected the Premises and conducted its own due diligence with regard to the conditions of the Premises and is accepting the Premises in "as is" condition. Tenant further acknowledges and agrees that the taking of possession of the Premises by Tenant shall be conclusive evidence against Tenant that the Premises were in satisfactory condition when possession was taken.

**IV. BASE RENT:** Throughout the Term of the Lease, Tenant agrees to pay Landlord a total "Base Rent" of Dollars equal to Five Hundred Sixty-Seven

Thousand, Two Hundred Fifty-Two and 39/100 Dollars (\$567,252.39), payable in monthly installments as follows:

PERIOD DESCRIPTION	LEASE PERIOD	BASE RENT PER MONTH	BASE RENT PER SQUARE FOOT
4 Month Abatement	March 1, 2009-June 30, 2009	\$ 23.00	\$ 7,484.58
Year 1	July 1, 2009-June 30, 2010	\$ 23.00	\$ 7,484.58
Year 2	July 1, 2010-June 30, 2011	\$ 23.00	\$ 7,484.58
Year 3*	July 1, 2011-June 30, 2012	\$ 24.21	\$ 7,878.51
Year 4	July 1, 2012-June 30, 2013	\$ 24.21	\$ 7,878.51
Year 5*	July 1, 2013-June 30, 2014	\$ 25.42	\$ 8,272.43
Year 6	July 1, 2014-June 30, 2015	\$ 25.42	\$ 8,272.43
Year 7	July 1, 2015-June 30, 2016	\$ 25.42	\$ 8,272.43

\*Commencement of Base Rent increase

each payment 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. Monthly Base Rent shall be due and payable starting on July 1, 2009. Such date shall hereinafter be known as the "Rent Commencement Date."

The Base Rent, as set forth above, plus sales tax and any and all applicable tax, 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" (as hereinafter defined) 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. The term "Lease Year" as used in this Lease shall mean a twelve (12)

consecutive month period. After the initial four month rent abatement period in 2009, each Lease Year shall commence on July 1st and end on June 30th of each year up until the Termination Date, unless sooner terminated as provided herein. As set forth above, the increase(s) to the Base Rent shall occur at the commencement of years three (July 1, 2011), and five (July 1, 2013) in the Term of the Lease, and at the commencement of years eight (July 1, 2016), and ten (July 1, 2018) that occur within the Option period.

Tenant shall be required to pay Landlord ten percent (10%) interest on any Rent due that remains unpaid for ten (10) days after its due date. Said interest will be computed from the due date.

Tenant and Landlord both acknowledge that the Premises are subject to and are qualified for 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 BID 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.

**V. SECURITY DEPOSIT:** Simultaneously with the execution of this Lease, Tenant shall deposit with Landlord a security deposit in the amount of Seven Thousand Four Hundred Eighty Four and 58/100 Dollars (\$7,484.58) (the "Security Deposit") to 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 then in default, then, within a reasonable time following termination of this Lease and return of the Premises by Tenant to Landlord in accordance with this Lease, Landlord will return any remaining balance of the Security Deposit to Tenant. 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:** Unless, (i) this Lease has been previously terminated, in accordance with the provisions hereof, or (ii) there exists an uncured event of Default of the Tenant under the terms of this Lease at the time of exercise of this option or (iii) the Tenant has been in Default more than two (2) times during any

preceding twelve (12) month period, or (iv) Tenant notifies the City within six (6) months before the expiration of the term in question, that the Tenant is not going to elect to extend, otherwise Tenant shall be deemed to have elected to extend this Lease for the Three (3) year Option period provided herein on exactly the same terms and conditions, with the payment schedule presented below.

PERIOD DESCRIPTION	OPTION PERIOD	BASE RENT PER MONTH	BASE RENT PER SQUARE FOOT
Year 8*	July 1, 2016-June 30, 2017	\$ 26.63	\$ 8,666.36
Year 9	July 1, 2017-June 30, 2018	\$ 26.63	\$ 8,666.36
Year 10*	July 1, 2018-June 30, 2019	\$ 27.84	\$ 9,060.28

\*Commencement of Rent increase

**VII. TIME OF PAYMENT:** Tenant agrees that Tenant shall promptly pay said Rents at the times and place stated above and further shall promptly pay any other charges that accrue under this Lease.

**VIII. USE:** The Tenant will use and occupy the Premises for the following use or purpose and for no other use or purpose: a full service restaurant serving food from around the Mediterranean with special emphasis on grilled items and diverse appetizers, and an outdoor seating area serving food, beverages as well as cigars and hookahs. Full service bar serving various alcoholic drinks and fine wines. This use defines the sole use that is permitted on site and is hereinafter considered the "Permitted Use." There shall be no dancing at the restaurant.

Tenant shall be required to operate and be open for business to the public year round, six (6) days a week (excluding holidays), and shall be open, at a minimum, eight hours per day. 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 may 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 or situations that would be considered "Force Majeure".

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 all laws in the operation of the Premises and Tenant shall not cause or permit any "Hazardous Substances" or "Hazardous Materials" (as such term[s] is [are] defined by applicable federal, state and local laws) to be used, stored, generated or disposed of on or in the Premises by Tenant, its agents, employees, contractors, invitees, guests, or patrons.

**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, subject to all of the terms and provisions of this Lease, peaceably and quietly hold and enjoy the Premises for the Term hereby demised.

**X. INSURANCE:** Tenant shall maintain at its expense throughout the Term of this Lease the following insurance coverage:

- I. Liability insurance for bodily injury, personal injury and property damage including contractual liability and fire legal liability to protect both Landlord and Tenant against damages, costs, and attorney's fees arising out of accidents of any kind occurring on or about the Premises with combined single limit of liability of not less than \$1,000,000.00 per occurrence / \$2,000,000.00 annual aggregate. This policy will name the City as an additional insured as follows:

City of Coral Gables  
Risk Management Division  
2801 Salzedo Street, Second Floor  
Coral Gables, Florida 33134

In addition, the policy shall be endorsed to read "This coverage is primary over any other insurance or self-insurance available to the City of Coral Gables as respects any claims arising out of or in relation to this lease agreement."

2. Property Insurance for "all risks of physical loss or damage" in sufficient amount to cover the Premises and reimburse all of the Tenant's improvements and betterments to the Premises, as well as all of the Tenant's fixtures, equipment, personal property and inventory; and
3. Statutory Workman's Compensation including a specific waiver of subrogation in favor of the Landlord (City) and any and all insurance required by law.
4. Alcohol Liability Insurance of not less than \$1,000,000 and name the Landlord

as an additional insured.

All insurance shall be written by a company or companies qualified to do business in Florida and acceptable to Landlord. A certificate or duplicate policies showing such insurance in force, including all the required endorsements, shall be delivered to Landlord prior to commencement of the Lease Term, and such insurance and updated certificates or renewed policies shall be maintained with Landlord throughout the Term of this Lease. Each such policy shall name the Landlord and/or its appointee as an additional insured and shall be non-cancelable without thirty (30) days prior notice to Landlord. Tenant shall deliver to Landlord a copy of each such insurance policy, certified as true and correct by the issuing agent. Tenant agrees to update its insurance as required by Landlord.

**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, garbage, gas and waste removal, other utility expenses, janitorial service, pest control and insurance.

Tenant shall be responsible for and shall pay before delinquency all other municipal, county or state taxes 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.

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. The Tenant warrants any improvements or alterations made to the Premises shall be free from defects in materials and workmanship for a period of one (1) year from final acceptance by the Landlord. Upon demand by the Landlord, the Tenant shall 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.

Notwithstanding the foregoing, Landlord agrees to make any and all repairs required to the exterior walls, the foundation and structural portions of the Premises. Landlord shall have thirty (30) days after receipt of written notice from Tenant to perform such repairs of the items described in the foregoing sentence, or such additional time as may be reasonably required for the nature of the repair.

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.

Without the prior written consent of the Landlord, which shall not be unreasonably withheld, the Tenant shall make no alterations, additions or improvements of a structural nature in or to the Premises. Except only office 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.

**XIV. REAL PROPERTY TAXES.** Tenant shall be solely responsible for its portion of the real property taxes that are subject to ad valorem taxation. Tenant shall be responsible to pay all amounts due hereunder to Landlord within thirty (30) days after receipt of an invoice therefor. The Tenant shall have the right to contest, at its sole expense, from time to time, any taxes or tax assessments levied against the Premises by legal proceedings; provided, however, that such protest is made in accordance with applicable law and that all such taxes or assessments 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. In the event that Tenant

fails to make the appropriate payment for real estate 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.

**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.

**XVI. LOSS; DAMAGE:** Landlord shall not be liable for 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, unless due to the gross negligence of Landlord, its agents, or employees; 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 prior 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.

**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.

Landlord shall cause any mortgage now or hereafter encumbering the Premises to enter into a Subordination, Attornment and Non-Disturbance Agreement which shall be in form acceptable to the holder of such mortgage.

**XIX. ASSIGNMENT:** Without the written consent of Landlord, which may

not be unreasonably withheld provided the prospective tenant reflects a similar, high quality, use and represents the appropriate financial strength, 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. In the case of a subletting, Landlord's consent may be predicated, among other things, upon Landlord becoming entitled to collect and retain all rentals payable under the sublease. If this Lease be assigned, or if the Premises or any part thereof be sublet or occupied by anybody other than Tenant, the Landlord may, after default by the Tenant, collect or accept Rent from the assignee, undertenant, or occupant and apply the net amount collected or accepted to the Rent herein reserved, but no such collection or acceptance shall be deemed a waiver of this covenant or the acceptance of the assignee, subtenant, or occupant as Tenant, nor shall it be construed as or implied to be, a release of the Tenant from the further observance and performance by the Tenant of the terms, provisions, covenants and conditions herein contained.

Change in the ownership (legal or equitable) of and/or power to vote or control 50% or more of the stock or other capital or ownership interest of Tenant, whether such change in ownership is by sale, assignment, or operation of law shall not be deemed an assignment of the Lease; provided, however, that (i) the operation of the Premises remains the same; (ii) the transferee assumes all obligations under this Lease, and (iii) the Landlord receives prior written notice of the transfer with proof of transfer of ownership. In addition, the Tenant shall be permitted to assign its interest in the Lease in the following limited instances: (i) by gift to a family member or (ii) inheritance.

**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 and hold harmless 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, except when such injury, loss or damage results from the gross negligence of Landlord, its agents or employees. 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 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 \$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 as follows:

• 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

In addition, 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 \$.25 per page.

- 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:**

A. If any improvements on the Premises shall be destroyed or damaged in whole or in part during the Lease Term as a result of fire or other casualty not covered under the hazard insurance maintained by Landlord, or as a result of the gross negligence or willful misconduct of Tenant or any person occupying the Premises under Tenant, then Landlord shall have the option of not rebuilding the Premises and canceling the terms of this Lease. In the event that Landlord does not elect to terminate the Lease, then Landlord shall repair, rebuild, restore, or reconstruct the structure of the Premises, but only to the extent of the insurance proceeds available therefor. Tenant shall at its own expense promptly repair, restore, or reconstruct 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 coverage. 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 therefor (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 therefor 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 this 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 this Lease as a result of such damage or destruction except as specifically provided in this Article XXI. Nevertheless, to the extent that any of the above-described property damage is covered by valid, collectible insurance, the Landlord hereby waives any subrogation rights against the Tenant, and the Tenant likewise agrees to waive 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:** If any one or more of the following events (herein sometimes called "events of default") shall happen:

- A. if default shall be made in the payment of any Rent or other charges herein reserved upon the date the same become due and payable and such default continues for a period of ten (10) days after written notice thereof from Landlord to Tenant; or
- B. 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 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, and such default shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant; provided, however, that if Tenant is unable to cure such default within such ten (10) day period and such default results solely from the failure to obtain a building permit after diligent effort and such need for a building permit is not the result of any actions of Tenant, then, and in that event, Tenant shall have such additional reasonable time as is necessary; or
- C. 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 of all or any substantial part of Tenant's properties or of the Premises; or
- D. 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 Lessee, of any trustee, receiver or liquidator of Lessee or of all or any substantial part of Lessee'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

E. if the Premises 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

F. if Tenant:

- I. fails to take possession and open for business within One Hundred Eighty (180) days after the Lease Commencement Date, or
2. should vacate, abandon, or desert the Premises, or
3. ceases the continual operation of Tenant's business therein for fifteen (15) continuous days (excluding holidays and one day per week) and thirty (30) days, (excluding holidays and one day per week; in the aggregate) in any one year during the Lease Term, unless prevented from operating said business as a result of the occurrence of a natural disaster or of any other occurrence beyond Tenant's control, noting that Sundays and holidays are excluded from this provision, or
4. violate any terms or conditions of this Lease Agreement more than two (2) times during the term of the Lease stated herein,

then in any such event Landlord may at any time thereafter terminate this Lease and retake possession, declare the balance of the entire Rent for the entire rental term of this lease to be immediately due and payable (in which event Lessor may then proceed to collect all of the unpaid rent called for by this Lease by distress or otherwise), or pursue any other remedy afforded by law or equity, provided that such default and all other defaults at the time existing have not been fully cured, and all expenses and costs incurred by the Landlord, including reasonable attorneys' fees and court costs, at trial and all appellate levels, in connection with enforcing this Lease, shall not have been fully paid. 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 this Lease or any other agreement. 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 this Lease, even before the expiration of the grace or notice periods

provided for in this 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 this Lease or in the Premises. All rights and remedies granted in this Lease to Landlord or available at law or equity shall be cumulative and not mutually exclusive.

**XXIV. LESSOR'S CONTROL OF LAWSUITS:** The parties agree that in any lawsuit brought in its name or defended in its name, LESSOR must retain all final control and authority of the lawsuit. Therefore, in any lawsuit envisioned in this agreement in which LESSOR is a party, LESSOR 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 LESSOR and the full authority to settle or compromise any claim. LESSEE agrees that its responsibilities under this Agreement continue in full force and effect regardless of any decision of LESSOR in this regard.

**XXV. LIEN FOR PAYMENT OF RENT:** Tenant hereby pledges and assigns to Landlord 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, equipment, goods and chattels of Tenant which shall or may be brought or put on or into the Premises, and Tenant agrees that said lien may be enforced by distress, foreclosure or otherwise, at the election of the Landlord.

**XXVI. WAIVER OF DEFAULT:** 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 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.

**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 apply solely to Landlord in its capacity as a landlord and do not apply to

Landlord in its capacity as a municipality with jurisdiction over the Premises and the property where it is located.

**XXVIII. INSURANCE PREMIUMS:** If Landlord's insurance premiums for any separate insurance carried by Landlord exceed the standard premium rates for similar property because the nature of Tenant's operation results in extra hazardous exposure, then Tenant shall reimburse Landlord, immediately upon receipt of appropriate invoices from Landlord, for such increase in premiums. It is understood and agreed between the parties hereto that any such increase in premiums shall be considered as rent due and shall be included in any lien for Rent.

**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, or 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, or hand delivered or sent by a nationally recognized overnight courier to the Tenant at the Premises (except that prior to commencement of the Term, notices to the Tenant shall be sent to the address set forth on page 1 hereof). 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 three (3) days following the date of mailing.

**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 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.

**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.

The parties agree that in any lawsuit brought in its name or defended in its name, Landlord must retain all final control and authority of the lawsuit. Therefore, in any lawsuit envisioned in this Lease in which Landlord is a party, Landlord shall retain 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.

**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.

**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. All expressed covenants of this Lease shall be deemed to be covenants running with the land.

**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, then in any of said events the prevailing party shall be entitled to receive from the other party reasonable attorneys fees and all 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. Any formally executed addendum or rider to or modification of this Lease shall be expressly deemed incorporated by reference herein unless a contrary intention is clearly stated therein. 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.

**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 upon execution and delivery by both Landlord and Tenant.

**XXXIX. BROKERAGE:** Tenant represents and warrants that it has dealt with no broker, salesman, agent or other person in connection with this transaction and that no broker, salesman agent or other person brought about this transaction, and 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.

**XXXL. FORCE MAJEURE:** The term "force majeure" as used in this Lease shall mean "Acts of God", labor disputes (whether lawful or not), material or labor shortages, restrictions by any governmental or utility authority, civil riots or floods.

**XLI. TENANT'S AUTHORITY TO EXECUTE LEASE:** Tenant, if Tenant is a corporation, 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

Tenant, if Tenant is a partnership, hereby represents and warrants to Landlord that the Lease has been duly authorized by all of the general or managing partners of such partnership, and further represents and warrants to Landlord that the Lease has been duly executed and delivered and constitutes a legal, valid and binding agreement of Tenant enforceable in accordance with its terms. Tenant agrees that each and every present and future partner in Tenant shall be and remain at all times jointly and severally liable hereunder and that neither the death, resignation or withdrawal of any partner, and whether subsequent modification or waiver of any of the terms and provisions of the Lease, shall release any partner from liability hereunder until and unless Landlord shall have consented in writing to such release.

**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. No surrender of the Premises, or of the remainder of the Term of this Lease, shall be valid unless accepted by Landlord in writing. 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. PARKING:** Tenant and Landlord acknowledge that the Premises

are located at the ground floor of a City Public Parking Garage. As a result of the nature of Tenant's business, Tenant will have the right to purchase up to 8 (eight) nontransferable monthly permit parking spaces in Municipal Parking Garage No. 6 at a discounted rate of fifty percent (50%) of the standard monthly permit parking rate in Municipal Parking Garage No. 6 at any time during the term of this Lease, and the option term(s), provided the purchase follows the City's established monthly calendar. While Tenant may purchase additional monthly parking permits, if available, the additional permits will be sold at a non-discounted, standard rate. Regarding customer parking, the Landlord agrees to honor merchant validated parking, allowing Tenant and Landlord to share equally in the cost of Tenant's customers that utilize the Garage for hourly parking up to two hours. To effectuate this consumer validation, Tenant must purchase special 2 hour validation coupons from the City of Coral Gables Parking Department or through whatever other mean directed by the Parking Department. Tenant agrees that Tenant's employees will not be allowed to take advantage of the validation privilege and if such abuse happens, the Landlord will no longer offer this participation incentive.

#### **XLVII. FOOD AND BEVERAGE LICENSING & CERTIFICATIONS/OUTDOOR**

**SMOKING.** The Tenant shall be solely responsible for obtaining and maintaining all required licenses and permits for the operation and maintenance of a restaurant facility, including, without limitation, any and all licenses and permits required for the serving of alcoholic beverages. The Tenant shall assume all responsibility for compliance with any applicable State of Florida Division of Alcoholic Beverages and Tobacco licensing requirements. The Tenant shall further be responsible for complying with all requirements and qualifications of all federal, state and local health and rehabilitation service departments. The Tenant shall assume all responsibility for compliance with any applicable State of Florida legislation regarding smoking, including, but not limited to, the Florida Clean Indoor Air Act.

**[SIGNATURE PAGE FOLLOWS]**

**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: \_\_\_\_\_

Maria Alberro Jimenez  
Interim City Manager

ATTEST:

By: \_\_\_\_\_

Walter J. Foeman  
City Clerk

Approved as to form:

By: \_\_\_\_\_

Elizabeth M. Hernandez  
City Attorney

SECRETARY

CORPORATE SEAL

ATTEST/WITNESS:

By: \_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_

TENANT:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_