

**RETAIL LEASE**  
**FOR**  
**THE PLAZA CORAL GABLES**  
  
**AGAVE PLAZA RETAIL, LLC**  
**AS LANDLORD**  
  
**AND**  
  
**CITY OF CORAL GABLES**  
**AS TENANT**

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## RETAIL LEASE

This Retail Lease (this "**Lease**") is made this 1 day of November, 2024 (the "**Effective Date**") by and between **AGAVE PLAZA RETAIL, LLC**, a Florida limited liability company ("**Landlord**") and **CITY OF CORAL GABLES**, a municipal corporation of the State of Florida ("**Tenant**").

### 1. BASIC LEASE PROVISIONS:

1.1 **Project:** The buildings and improvements constructed and to be hereinafter constructed on the land located along Ponce de Leon Boulevard in Coral Gables (the "**City**"), Miami-Dade County (the "**County**"), Florida (the "**State**"), to be known as The Plaza Coral Gables, consisting of multiple Elements (each an "**Element**"), including, but not limited to, two (2) office towers (each an "**Office Element**"), a hotel (the "**Hotel**" or the "**Hotel Element**"), a residential tower (the "**Apartment Element**"), low rise residential apartments (the "**Townhouse Element**"), a retail Elements (the "**Retail Element**"), and structured parking (the "**Parking Element**"), along with the Common Areas, and more particularly reflected in the sketch of the ground floor level of the Project attached hereto as **Schedule 1**.

1.2 **Premises:** Approximately 913 square feet of Floor Area (defined below in **Section 2.5**), located within the Retail Element, as reflected on the site plan of the Premises attached hereto as **Schedule 2** (the "**Site Plan**").

1.3 **Lease Commencement Date:** The Delivery Date.

1.4 **Delivery Date:** The date upon which Landlord has delivered the Premises to Tenant following substantial completion of Landlord's Work as set forth in the Construction Rider attached hereto as **Schedule 3**, in broom clean, raw shell condition.

(a) Landlord estimates that the Delivery Date will be on or around the date that is one hundred and eighty (180) days after the Effective Date ("**Estimated Delivery Date**"); provided, however, that in the event that Landlord is unable to deliver the Premises to Tenant in such condition within such timeframe (whether because of Unavoidable Delay or otherwise), such shall not be an event of default. Landlord may delay delivery of the Premises from the anticipated Delivery Date for up to one hundred eighty (180) days by providing Tenant with thirty (30) days' prior written notice. (*See Section 3.1*)

(b) Upon delivery of the Premises, Tenant shall inspect the Premises and, at Landlord's request, sign an acknowledgment (X) that Landlord has complied with its obligation to deliver the Premises in the required condition (or specifying the aspects of Landlord's Work with which Landlord has not complied), and (Y) setting forth the Delivery Date, in the form attached hereto as **Schedule 5**, or in such other form as may be reasonably requested by Landlord.

 1.5 **Rent Commencement Date:** The Delivery Date.

1.6 **Expiration Date:** The last day of the tenth (10<sup>th</sup>) Lease Year following the Rent Commencement Date, subject to extension pursuant to the terms and conditions of **Section 52**.

1.7 **Tenant's Percentage Share:** Initially, Tenant's Percentage Share will be 0.59% based upon a fraction of which (X) the numerator is the sum of (i) the Floor Area (defined below) contained within the Premises, and (Y) the denominator of which is the total square feet of Floor Area in the Retail Element. However, Tenant's Percentage Share shall be adjusted each time that either the Floor Area of the Premises changes and/or the Floor Area of the Retail Element changes in the same manner as determined above (subject to the provisions of **Section 3.3**).

1.8 **Security Deposit:** N/A.

1.9 **Prepaid Rent:** N/A.

1.10 **Base Rent:** An annual Base Rent of \$10.00 for each Lease Year during the Term.

1.11 **Operating Expense Rent:** Tenant's Percentage Share of Operating Expenses. (*See Section 6*)

1.12 **Percentage Rent:** N/A

1.13 **Permitted Trade Name(s):** N/A.

1.14 **Guarantor(s):** N/A

1.15 **Address for payment of rent and notices:**

Rent payments only shall be sent to Landlord care of the property manager at the following address:

Agave Plaza Retail, LLC  
c/o Jones Lang LaSalle  
2811 Ponce de Leon Blvd.  
Management Office, Suite 740  
Coral Gables, FL 33134  
Attn: The Plaza Coral Gables Property Manager

Notices shall be sent to Landlord at the following address:

Agave Plaza Retail, LLC  
2811 Ponce de Leon Blvd., Suite 310  
Coral Gables, FL 33134  
Attn: Jose Antonio Perez

With a copy to:



Bilzin Sumberg Baena Price & Axelrod LLP  
1450 Brickell Avenue, 23rd Floor

Miami, Florida 33131  
Attention: Suzanne Amaducci, Esq.  
Phone: (305) 350-2370  
E-mail: SAmaducci@Bilzin.com

Notices shall be sent to Tenant at the following address:

City of Coral Gables  
Coral Gables Police Department  
2151 Saldezo St.  
Coral Gables, FL 33134  
Attn: Chief Edward J. Hudak, Jr.

With a copy to:

City of Coral Gables  
405 Biltmore Way  
Coral Gables, Florida 33134  
Attn: Cristina Suarez  
Telephone: 305-476-7231  
Email: csuarez@coralgables.com

Holland & Knight LLP  
701 Brickell Avenue, Suite 3000  
Miami, Florida 33131  
Attn: Vivian de las Cuevas-Diaz, Esq.  
Telephone: 305-789-7452  
Email: vivian.cuevas@hklaw.com

1.16 **Broker:** N/A.

1.17 **Permitted Use:** Tenant shall use the Premises solely for the operation of an active auxiliary office for operation and coordination of City of Coral Gables Police Department police bike network with on-duty bike patrol officers present during Hours of Operation together with reasonably related ancillary uses including, without limitation, the maintenance, parking, storage, and washing of bikes, as well as a storage locker room and pantry for use by officers, and for no other purpose. Maintenance shall be limited to what is reasonably necessary and should not be visible from the exterior of the Premises. The Premises shall not be converted to a repair facility for a majority of its use (*See Section 7.2*)

1.18 **Hours of Operation:** Tenant shall cause bike patrol officers to be present on the Premises at such times as are necessary for required police operations as reasonably determined by Tenant.

1.19 **Renewal Option:** Tenant shall have the right, subject to the terms and conditions of **Section 52** below to renew its tenancy of the Premises for one (1) renewal option (the "**Renewal Option**"), for a period of five (5) years (the "**Renewal Term**").

1.20 **Allowance:** N/A.

1.21 **Radius Restriction:** N/A.

1.22 **Break Point:** N/A.

**2. DEFINITIONS:** Unless the context otherwise specifies or requires, the following terms will have the meanings set forth below:

2.1 **"Building":** The building in which the Premises are located (and all appurtenances thereto).

2.2 **"Business Day":** Any day other than a Saturday, Sunday, or legal holiday or a day on which federal banks located in Florida are authorized or obligated to close.

2.3 **"Common Areas":** All areas and facilities outside the Premises and within the exterior boundaries of the Project that are not leased to other tenants (or used exclusively by other tenants) and that are provided and designated by Landlord, in its sole discretion, from time to time, for the general use and convenience of Tenant and other tenants of the Project and their authorized representatives, employees, invitees, and the general public. Common Areas include, but are not limited to, areas within and outside of the Building, such as pedestrian walkways, patios, canopies, landscaped areas, curbing, sidewalks, service corridors, elevators, escalators, restrooms, stairways, decorative walls, plazas, water features, mall throughways, loading areas, parking areas and roads, restrooms, mechanical rooms (containing machinery, equipment or controls for the air conditioning, security, telecommunications, elevators, and other Building systems), janitorial closets, electrical and telephone closets, vending areas, driveways, trash storage areas, generators and roofs.

2.4 **"Environmental Law":** Any law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environment including, without limitation, CERCLA (Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended), RCRA (Resources Conservation and Recovery Act of 1976) and SARA (Superfund Amendments and Reauthorization Act of 1986).

2.5 **"Floor Area":** With respect to the Premises and any other leasable area of the Project (including any Element), the number of square feet contained within the Premises or such other leasable area of the Project, as the case may be, without deduction for the width of or space occupied by air conditioning units or shafts and/or by columns, sprinkler risers, roof drains, structural braces, expansion joints and/or shear walls and/or floor openings for stairwells, elevators, escalators or other facilities installed by or for any occupant (including any previous occupant) of that area.

(a) Floor Area is measured (i) from the exterior surface of building walls (and extensions thereof, in the case of openings), (ii) from the exterior surface of perimeter demising partitions, (iii) from the center line of interior demising partitions or vertical neutral strips, and (iv) from any lease line.

(b) As of the Effective Date, the Floor Area of the Retail Element is 155,208 square feet.

2.6 **"Grease Trap Expenses"**: N/A.

2.7 **"Gross Sales"**: N/A

2.8 **"Hazardous Substance"**: shall mean any substance, material or waste which is or becomes designated, classified or regulated as being "toxic" or "hazardous" or a "pollutant", which is or becomes similarly designated, classified or regulated, under any Environmental Law, including asbestos, petroleum and petroleum products, or which becomes hazardous to the health and welfare of any occupants in the Project.

2.9 **"Lease Year"**: The first Lease Year will commence upon the Delivery Date and will end on the last day of the 12th full calendar month after the Delivery Date (recognizing that the first Lease Year may be longer than twelve (12) months). Each subsequent 12-month period after the first Lease Year during the Term shall be a Lease Year, and the last Lease Year will end on the Expiration Date (unless this Lease is earlier terminated as provided for herein).

2.10 **"Legal Requirements"**: shall mean any and all statutes, ordinances, rules, regulations and requirements of all local, municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises and/or the Project occasioned by or affecting the use thereof by Tenant, including, but not limited to, the Americans With Disabilities Act, as amended from time to time.

2.11 **"Master Declarations"**: (i) That certain Declaration of Restrictive Covenant in Lieu of Unity of Title dated February 2, 2018 and recorded February 7, 2018 in Official Records Book 30854, Page 2866 of the Public Records of Miami-Dade County, Florida, together with (ii) that certain Reciprocal Easement and Operating Agreement dated February 2, 2018 and recorded February 9, 2018 in Official Records Book 30858, Page 1771 of the Public Records of Miami-Dade County, Florida, together with (iii) that certain Declaration of Covenants, Restrictions and Easements for The Plaza Coral Gables dated October 30, 2022 and recorded November 1, 2022 in Official Records Book 33447, Page 2696 of the Public Records of Miami-Dade County, Florida, as amended by that certain First Amendment and Supplemental Declaration of Declaration of Covenants, Restrictions and Easements for The Plaza Coral Gables dated November 16, 2023 and recorded November 20, 2023 in Official Records Book 33976, Pages 2749-2897 of the Public Records of Miami-Dade County, Florida (the **"Plaza Declaration"**), together with (iv) that certain Amended Development Agreement dated March 28, 2017 and recorded May 17, 2017, in Official Records Book 30537, Page 2536 of the Public Records of Miami-Dade County, Florida, and together with (v) that certain Declaration of Restrictions recorded July 5, 2018 in Official Records Book 31045, Page 460, of the Public Records of Miami-Dade County, Florida, each as amended or as may be amended from time to time.

2.12 **"Operating Expenses"**: All costs of operating, servicing, administering, repairing, landscaping, and maintaining the Project (excluding costs paid directly by Tenant and other tenants in the Project or otherwise reimbursable and actually reimbursed to Landlord) incurred by



Landlord, including, but not limited to, those costs initially incurred by the Shared Facilities Manager and assessed by the Shared Facilities Manager to Landlord.

(a) Operating Expenses shall include, but shall not be limited to: (1) wages, salaries, fringe benefits and payroll burden for employees on-site utilized in the day to day operation of the Project; (2) Landlord's Insurance (defined below) including any deductibles paid by Landlord or the Shared Facilities Manager and amounts that would be charged as premiums if Landlord or Shared Facilities Manager self-insures any of the insurance risks; (3) water, sewer, heating, air conditioning, ventilating and all other utility charges (other than with respect to utilities separately metered and paid directly by Tenant or other tenants); (4) Taxes (defined below), including, but not limited to, the good faith, reasonable cost of contesting the validity or amount of such Taxes (regardless of whether such efforts succeed or not); (5) janitorial services; (6) access control; (7) window cleaning; (8) elevator maintenance; (9) fire detection and security services; (10) landscaping costs; (11) all costs of snow and ice removal; (12) trash, rubbish, garbage and other refuse removal; (13) pest control; (14) painting; (15) facade maintenance; (16) lighting; (17) exterior and partition (demising) wall repairs; (18) roof repairs; (19) maintenance of all steam, water and other water retention and discharging piping, lakes, culverts, fountains, pumps, weirs, lift stations, catch basins and other areas and facilities, whether or not on-site; (20) canal embankment and related maintenance; (21) maintenance, repair and repainting of sidewalks and general resurfacing and maintenance of parking areas; (22) sanitary control; (23) depreciation of any and all capital items used in any of such maintenance and repair activities; (24) repair, maintenance and replacement of signage located in the Project; (25) management fees; (26) valet parking expenses; (27) the costs (amortized together with a reasonable finance charge) of any capital improvements that are: (X) made to the Project by Landlord primarily for the purpose of reducing Operating Expenses (regardless of whether such reduction occurs or not); or (Y) made to the Project by Landlord to comply with any Legal Requirements (defined below) that was not required of Landlord prior to the Rent Commencement Date; and (28) costs or expenses for marketing, advertising or promotion of the Project generally (but not promotional expenses incurred for individual other tenants within the Project) or any event or entertainment thereon (including, without limitation, any costs or expenses associated with any merchant's association or similar association, except as otherwise expressly provided in this Lease); and (29) the costs of supplies, materials and tools used for any of the above.

(b) Operating Expenses shall not include: (1) depreciation on the Project or any Common Areas; (2) costs of space planning, tenant improvements, marketing expenses, finders fees and real estate broker commissions; (3) any and all expenses for which Landlord is reimbursed (either by an insurer, condemnor, tenant or other person or entity), but only to the extent of such reimbursement; (4) that portion of the salaries for on or off site personnel to the extent any of them work for other projects owned by Landlord or the Project's managing agent (provided, however, that this shall not prohibit Landlord or the Project's managing agent from charging a management fee for managing the Project, which will be considered an Operating Expense); (5) costs in connection with services or benefits of a type which are not otherwise Operating Expenses and are not available to Tenant, but are available to another tenant or occupant; (6) mark-ups on utilities in excess of Landlord's costs therefor; (7) Landlord's general overhead and administrative expenses not directly allocable to the operation of the Project; (8) attorneys' fees and cost related to negotiating or enforcing any tenant lease, or resolving disputes with any lender of Landlord or obtaining any financing for the Project; (9) cost of capital improvements unless expressly provided

for in the foregoing Section; (10) interest on debt or amortization payments on any mortgage/deed of trust, or rent on any ground lease; and (11) federal and state taxes on income, death, estate or inheritance; or franchise taxes.

2.13 **"Operating Expense Rent"**: Shall have the meaning set forth in **Section 6.1**.

2.14 **"Outdoor Area"**: N/A.

2.15 **"Rent"**: Shall mean Base Rent, Operating Expense Rent and all other sums due by Tenant to Landlord under this Lease.

2.16 **"Schedules"**: Shall mean the Schedules attached hereto and incorporated herein by reference. This Lease contains the following Schedules:

**Schedule 1** Sketch of Ground Floor of the Project

**Schedule 2** Site Plan of the Premises

**Schedule 3** Construction Rider

**Schedule 4** N/A

**Schedule 5** Tenant Acceptance Letter

**Schedule 6** Rules and Regulations

**Schedule 7** Prohibited Uses

**Schedule 8** Existing Exclusives

**Schedule 9** Sign Criteria

**Schedule 10** Reserved Rights

**Schedule 11** Valet Drop-Off Area

**Schedule 12** Technical Infrastructure and IT Plans

2.17 **"Shared Facilities Manager"**: The entity which does or may own and/or control certain of the Common Areas of the Project and/or which may govern and/or enforce the Master Declarations and/or the Rules and Regulations for the Lease and/or the Project, as same may be changed from time to time. The initial Shared Facilities Manager is anticipated to be Plaza Shared Facilities, LLC.

2.18 **"Taxes"**: All real and personal property taxes, assessments (whether they be general or special), sewer rents, rates and charges, transit taxes, taxes based upon the receipt of Rent and any other federal, state or local government charge, general, special, ordinary or extraordinary (but not including income or estate taxes), which may now or hereafter be levied or assessed against the land upon which the Project stands or the Project for such year or the furniture,

fixtures, machinery, equipment, apparatus, systems and appurtenances used in connection with the Project (including those incurred by the Shared Facilities Manager) for the operation thereof.

2.19 **"Tenant Delay"**: Shall mean an act or omission of Tenant (i) which is not cured within three (3) Business Days following Tenant's receipt of notice from Landlord specifying the act or omission of Tenant, and (ii) which has delayed or will delay Landlord in the substantial completion of the Landlord's Work.

2.20 **"Term"**: Shall mean the period of Tenant's occupancy of the Premises permitted pursuant to the terms and conditions of this Lease. It shall commence as of the Delivery Date and end as of the Expiration Date, unless sooner terminated as provided herein or extended pursuant to the terms of this Lease. If Tenant timely and properly exercises the Renewal Option, the Term shall be deemed to include the Renewal Term, as appropriate.

### 3. PREMISES:

3.1 Lease of Premises: Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term and subject to the agreements, covenants, conditions and provisions set forth in this Lease, to which Landlord and Tenant hereby mutually agree, the Premises.

(a) Within ten (10) Business Days following Landlord's request, Tenant shall execute and deliver to Landlord a Tenant Acceptance Letter in the form attached hereto as **Schedule 5**, and Tenant shall be deemed to have accepted the Premises and agreed that the obligations of Landlord under **Schedule 3** have been fully performed.

(b) If Landlord is unable to substantially complete all of Landlord's Work as described in the Construction Rider attached hereto as **Schedule 3**, and deliver possession of the Premises to Tenant (with the Premises, upon such completion and delivery, hereafter being defined as being **"Ready for Occupancy"**) on or before the date that is one hundred and eighty (180) days following the Estimated Delivery Date (the **"Outside Delivery Date"**), subject to Unavoidable Delay and Tenant Delay, Tenant shall be entitled to a one (1) day abatement in Base Rent and Operating Expense Rent for each day of delay thereafter until Landlord delivers possession of the Premises to Tenant Ready for Occupancy; provided, however, that the Term shall be extended on a day for day basis for each day of abatement.

(d) If Landlord is unable to deliver possession of the Premises to Tenant Ready for Occupancy within ninety (90) days after the Outside Delivery Date, subject to Unavoidable Delay and Tenant Delay, either party may terminate this Lease by providing thirty (30) days prior written notice to the other party (a **"Delivery Failure Termination Notice"**); provided, however, if Landlord delivers the Premises to Tenant Ready for Occupancy during such thirty (30) day period, the Delivery Failure Termination Notice shall be null and void and this Lease shall continue in full force and effect. If this Lease is terminated pursuant to the provisions of this **Subsection 3.1(d)**, because Landlord is unable to deliver the Premises Ready for Occupancy, Landlord shall not be liable for any damage caused thereby, except that in the event Landlord's failure to timely deliver the Premises is caused by Landlord's willful misconduct, Landlord shall reimburse Tenant for its actual out-of-pocket costs incurred in connection with this Lease, up to \$3,000.00.

3.2 Project: The Premises are a part of the Project. Landlord, the owners of other Elements ("**Other Owners**"), and/or the Shared Facilities Manager may increase, reduce or change the number, dimensions or locations of the walks, buildings, mall areas, parking and other Common Areas and other improvements located in the Project in any manner that the Other Owners, and/or the Shared Facilities Manager, each in its sole discretion, shall deem proper.

3.3 Right to Measure: Following the Delivery Date, Landlord may, at its sole cost and expense, direct its architect or consultant to determine the Floor Area of the Premises as actually constructed and certify as to same to both Landlord and Tenant. If the Premises as determined by Landlord's architect or consultant is greater or less than the amount specified in the Basic Lease Provisions, the Floor Area of the Premises shall be adjusted to equal the amount as so determined, and the Tenant's Percentage Share, and any other amounts specified in this Lease as a function of the Floor Area of the Premises shall be adjusted proportionately. If Landlord does not direct its architect or consultant to determine the Floor Area of the Premises following the Delivery Date pursuant to this **Section 3.3**, the Floor Area shall be deemed to be the figure set forth in the Basic Lease Provisions. Regardless of the actual Floor Area of the Premises, Landlord shall not be deemed to have represented the accuracy of the square footage of the Premises set forth in the Basic Lease Provisions.

#### **4. COMMON AREAS:**

4.1 Tenant's Right to Use Common Areas: Landlord grants Tenant and its authorized representatives and invitees the non-exclusive right to use the Common Areas with others who are entitled to use the Common Areas, subject to Landlord's rights as set forth in this Lease, and subject to the terms and conditions of the Master Declaration.

4.2 Landlord's Control; Rights of Shared Facilities Manager: In addition to the rights of Landlord and/or Shared Facilities Manager concerning the Project as set forth in **Section 3.2**, Landlord and/or Shared Facilities Manager have the right to: (a) establish and enforce reasonable rules and regulations applicable to the Retail Element and/or tenants of the Project (the "**Rules and Regulations**") on a non-discriminatory basis concerning the maintenance, management, use and operation of the Common Areas; (b) close, if necessary, any of the Common Areas to prevent dedication of any of the Common Areas or the accrual of any rights of any person or of the public to the Common Areas; (c) close temporarily any of the Common Areas for maintenance purposes or for health and safety purposes (e.g. bomb threat, hurricane); (d) select a person, firm or corporation, which may be an entity related to Landlord, to maintain and operate any of the Common Areas; and (e) designate other lands outside the exterior boundaries of the Project to become part of the Common Areas. The initial Rules and Regulations are attached hereto as **Schedule 6**. Notwithstanding the provisions of this **Section 4**, in exercising its rights hereunder, Landlord and/or Shared Facilities Manager shall provide Tenant with a means of reasonable access to and from the Premises.

#### **5. BASE RENT/PERCENTAGE RENT:**

5.1 Base Rent: Tenant will pay to Landlord as Rent for the use and occupancy of the Premises at the times and in the manner provided below, Base Rent in the amount specified in **Section 1** payable in U.S. funds, in advance starting on the Rent Commencement Date and on or

before the first day of each and every successive calendar month thereafter during the Term without demand, setoff or deduction.

(a) If the Rent Commencement Date shall be other than the first day of a calendar month, then (i) the Rent and all other sums which are required to be paid by Tenant, shall be prorated based on the portion of such calendar month from and after the Rent Commencement Date, and (ii) such prorated amount, together with Rent for the first full calendar month of the Term, shall be due and payable on the Rent Commencement Date.

(b) The obligation of Tenant to pay all Rent and other sums hereunder provided to be paid by Tenant and the obligation of Tenant to perform Tenant's other covenants and duties hereunder constitute independent, unconditional obligations to be performed at all times provided for hereunder, save and except only when an abatement thereof or reduction therein is hereinabove expressly provided for and not otherwise. Tenant waives and relinquishes all rights which Tenant might have to claim any nature of lien against or withhold, or deduct from or offset against any Rent and other sums provided hereunder to be paid to Landlord by Tenant. Tenant waives and relinquishes any right to assert (either as a claim or as a defense) that Landlord is bound to perform or is liable for the nonperformance of any implied covenant or implied duty of Landlord not expressly herein set forth.

(c) Notwithstanding anything in this Lease to the contrary, to the extent any computation or other provision of this Lease is based upon, or provide for any action to be taken on, an entire Lease Year basis, an appropriate proration or other adjustment shall be made in respect of any period of time during the Term that is less than a whole Lease Year (and such proration or adjustment being based upon the actual number of days in such period of time).

5.2 Percentage Rent: N/A.

5.3 Monthly Statement of Gross Sales: N/A.

5.4 Books and Records/Audit Rights: N/A.

5.5 Retention of Records/Cost of Audit: N/A.

5.6 Yearly Statement/Adjustment: N/A.

5.7 Sales Tax; Additional Rent: In addition to the Base Rent, Tenant agrees to pay Landlord monthly (together with each payment of Base Rent and Operating Expense Rent), all sales or use taxes or excise taxes imposed or levied by the State of Florida or any other governmental body or agency against any Rent or any other charge or payment required hereunder to be made by Tenant to Landlord, but only if any such taxes are charged. To the extent that Tenant is exempt from certain of these taxes it shall provide Landlord and annual certificate confirming any applicable exemption. All such sums of money as shall become due and payable by Tenant to Landlord under this Lease, including, without limitation, sales tax and Tenant's Percentage Share of Operating Expenses (and sales tax thereon), shall be considered "**Additional Rent**", which Tenant shall be obligated to pay in the same manner as other components of Rent. Landlord shall have the same remedies for default in the payment of Additional Rent as are available to Landlord in the case of a default in the payment of Base Rent and Operating Expense Rent.

5.8 Taxes Payable by Tenant: Tenant shall be directly responsible for taxes upon, measured by or reasonably attributable to, the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises or by the cost or value of any leasehold improvements made in or to the Premises by or for Tenant other than the initial improvements to be installed at Landlord's expense, if and to the extent applicable, regardless of whether title to such improvements is vested in Tenant or Landlord.

5.9 Late Fee / Default Interest:

(a) Any installment of Rent not paid within seven (7) days of the date upon which such installment was due and payable (a "**Late Payment**") shall be subject to a late fee (the "**Late Fee**") in the amount equal to five percent (5%) of the amount due.

(b) In addition to the Late Fee, any Late Payment not paid within thirty (30) days of the date that such payment becomes due and payable shall bear interest at twelve percent (12%) per annum (the "**Default Rate**") from the date due until paid.

(c) In the event any check, bank draft or negotiable instrument given for any payment under this Lease shall be dishonored at any time for any reason whatsoever not attributable to Landlord, Landlord shall be entitled, in addition to any other remedy that may be available, to an administrative charge of \$250.00.

(d) No Late Fee, default interest or the like chargeable by Landlord hereunder shall be in excess of the maximum amount permitted by applicable Legal Requirements, and in the event that either Default Interest or the Late Fee or both are or may be in excess of the maximum amount permitted by applicable Legal Requirements, they shall be deemed to be reduced to the maximum amount permitted by applicable Legal Requirements, and any excess over said amount shall be applied to Rent.

5.10 Security Deposit and Prepaid Rent: N/A.

**6. OPERATING EXPENSES:**

6.1 Operating Expense Rent: In addition to Base Rent, Tenant shall pay Tenant's Percentage Share (as specified in **Section 1**) of all other Operating Expenses paid or incurred by Landlord (collectively, "**Operating Expense Rent**").

(a) Notwithstanding anything contained herein to the contrary, Tenant's Percentage Share of Controllable Costs payable by Tenant hereunder (whether such Controllable Costs are for Operating Expenses incurred directly by Landlord or for Operating Expenses initially incurred by Shared Facilities Manager and passed-through to Landlord) shall not increase more than five percent (5%) per year of the Term on a non-cumulative basis.

(b) "**Controllable Costs**" means all Operating Expenses other than: (i) insurance costs and expenses for all types of insurance carried by Landlord (or Shared Facilities Manager) applicable to the Project; (ii) Landlord's (and/or Shared Facilities Manager's) utility costs and expenses including, but not limited to, those for electricity, gas, steam, other fuels and forms of power or energy, water charges, sewer and waste disposal, heating and air conditioning; (iii)

Taxes, (iv) increases to Operating Expenses occasioned by changes to any applicable law which become effective subsequent to the date of this Lease, including, without limitation, increases in the federal or state mandated minimum hourly wage rates, (v) the provision of security for the Common Areas obtained by Landlord due to extraordinary events, such as hurricanes, riots or other extreme events requiring enhanced security protocols, (vi) costs of compliance with governmental codes, ordinances, rules and regulations, (vii) management fees, and (viii) other Operating Expenses that are outside of Landlord's reasonable control.

6.2 Payment: Operating Expense Rent shall be paid as follows:

(a) On or before the Rent Commencement Date Landlord shall provide Tenant with its updated estimate of Operating Expense Rent for the remainder of the calendar year which includes the Rent Commencement Date. During December of such year and each subsequent calendar year (or as soon thereafter as practicable), Landlord shall provide Tenant with a written notice of its estimate of Operating Expense Rent for the ensuing calendar year.

(b) On or before the first day of each month during the remainder of the calendar year which includes the Rent Commencement Date and each ensuing calendar year, Tenant will pay to Landlord 1/12th of such estimated amounts, provided that if such notice is not given in December, Tenant will continue to pay on the basis of the prior year's estimate until the month after such notice is given. If at any time or times it appears to Landlord that the amounts payable for Operating Expense Rent for the current calendar year will vary from its estimate by more than ten percent (10%), Landlord, by written notice to Tenant (which notice shall include a reasonably detailed description of the reason for the revised estimate), will revise its estimate for such year, and subsequent payments by Tenant for such year will be in an amount so that by the end of such year Tenant will have paid a total sum equal to such revised estimate.

6.3 Statement: Within 120 days after the close of each calendar year or as soon after such 120-day period as practicable, Landlord will deliver to Tenant a statement of amounts of Operating Expense Rent payable under this Lease for such calendar year. If such statement shows an amount owing by Tenant that is more than the estimated payments for such calendar year previously made by Tenant, Tenant will pay the deficiency to Landlord within thirty (30) days after delivery of the statement. If the total of the estimated monthly installments paid by Tenant during any calendar year exceeds the actual Operating Expense Rent due from Tenant for such calendar year and provided no Event of Default by Tenant exists, such excess shall, at Landlord's option, be either credited against payments next due hereunder or refunded by Landlord to Tenant, or if such adjustment occurs at the expiration of the Term, Landlord shall refund Tenant's overpayment within thirty (30) days after Tenant vacates the Premises in full accordance with this Lease. The payment and reimbursement obligations set forth in this **Section 6.3** shall survive the expiration or termination of this Lease.

6.4 Proration: If for any reason, other than a continuing Event of Default, this Lease terminates on a day other than the last day of a calendar year, the amount of Operating Expense Rent payable by Tenant applicable to the calendar year in which such termination occurs will be prorated on the basis which the number of days from the commencement of such calendar year to and including such termination date bears to three hundred sixty-five (365).

6.5 Audit Rights: Tenant has the right, exercisable no more than once each calendar year and in each case within six (6) months of receipt of the statement required by **Section 6.3**, on reasonable notice and at a time mutually and reasonably acceptable to Landlord and Tenant, provided such date is between thirty (30) and sixty (60) days after Tenant delivers to Landlord the notice, to cause an audit to be performed by a certified public accountant, working on a non-contingency fee basis, at Tenant's sole cost and expense, of Landlord's operations and/or books and records pertaining to Operating Expense Rent for the preceding calendar year (but only for such preceding calendar year) at Landlord's offices located in the Miami-Dade County area. In the event such audit reveals that Landlord has overstated Operating Expense Rent, within thirty (30) days after demand therefore by Tenant accompanied by Tenant's commercially sufficient verification of such overcharges and paid invoices delivered and accepted by Landlord (Landlord specifically retaining the right to challenge the results of Tenant's audit), Landlord will reimburse Tenant for all overcharges, and if Landlord has overstated Operating Expense Rent by more than five percent (5%), and provided no Event of Default by Tenant exists, Landlord will reimburse Tenant for the reasonable and actual out-of-pocket costs and expenses of such audit and verification incurred by Tenant.

## 7. USE OF PREMISES:

7.1 Quiet Enjoyment: Tenant shall, and may at all times during the Term, peacefully have, hold, and enjoy the Premises, without disturbance from Landlord, subject to the other terms hereof, provided that Tenant timely pays the Rent within any applicable notice and grace period, and timely performs all of Tenant's covenants and agreements herein contained (subject to applicable notice and/or grace periods). This covenant and all other covenants of Landlord shall be binding upon Landlord and its successors only with respect to breaches occurring during its or their respective periods of ownership of Landlord's interest hereunder.

7.2 Use Restrictions: Tenant will use and occupy the Premises for the Permitted Use specified in **Section 1** and for no other use or purpose. Tenant shall comply with the Rules and Regulations set forth in **Schedule 6** hereto, as same may be modified from time to time. Furthermore, Tenant shall not suffer or permit the Premises or any part of them to be used in any manner, or suffer or permit anything to be done in or brought into or kept in the Premises, which would in any way: (i) violate any Legal Requirements or the Master Declaration; (ii) cause injury to the Project or any part thereof; (iii) constitute a public or private nuisance; (iv) alter the appearance of the exterior of the Project or of any portion of the interior other than the Premises pursuant to the provisions of this Lease; (v) involve the use, generation, storage or disposal of Hazardous Substances, or (vi) use any portion of the Premises for purposes which will increase the existing rate of insurance upon the Project, or cause cancellation of insurance policies covering the Project. If Landlord's Insurance rates increase (including if Shared Facilities Manager's insurance rates increase and a portion of such increase is charged to Landlord) because of Tenant's activities, Tenant shall pay the difference (or the amount charged by Shared Facilities Manager) to Landlord within fifteen (15) days of written demand by Landlord, which written demand shall be delivered together with reasonable documentation that the increase is the result of Tenant's activities.

(a) In addition, Tenant agrees to use and maintain the Premises in compliance with all Legal Requirements, from time to time, in force which shall affect (i) Tenant's use of the



Premises, or (ii) the manner or conduct of Tenant's business or operation of Tenant's installations, equipment or other property therein, or any cause or condition created by or at the instance of Tenant, and Tenant shall pay all the costs, expenses, fines, penalties and damages which may be imposed upon Landlord by reason of or arising out of Tenant's failure to fully and promptly comply with and observe such laws or which Landlord may incur as a result of Tenant's breach of the above covenants. Tenant shall give prompt notice to Landlord of any notice Tenant receives of the violation of any Legal Requirements with respect to the Premises or the use or occupancy thereof.

(b) All personal property placed or moved into the Premises shall be at the risk of Tenant or other owner and Landlord shall not be liable for any damage to personal property, or to Tenant, arising from the bursting or leaking of water pipes or otherwise from any act or omission of any cotenant or occupant of the Project or of any other person, unless such damage is caused by the gross negligence or willful misconduct of Landlord.

7.3 Continuous Operation: Tenant will not leave the Premises unoccupied or vacant and will continuously conduct and carry on in the Premises the Permitted Use during the Term, subject to the terms and conditions set forth below

(a) Upon completion of the Tenant Improvements, Tenant agrees to promptly open the Premises and remain in continuous operation during the Hours of Operation with its Premises adequately illuminated.

(b) Anything contained herein to the contrary notwithstanding, Tenant shall be permitted to be closed (each, a "**Permitted Closure**"): (i) during the period Tenant is actively making repairs to or remodeling the Premises and during periods when Tenant is taking inventory, provided that Tenant diligently pursues completion thereof; (ii) when materially affected by casualty, condemnation or force majeure (as defined in **Section 37**), provided, however, that after Landlord has completed Landlord's repair and restoration obligations in connection therewith, Tenant diligently pursues to completion Tenant's repair and restoration obligations, if any, in connection therewith; (iii) intentionally omitted; (iv) when operating would violate any Legal Requirement, criminal or civil, or subject Tenant or its employees to a fine or penalty, whether criminal or civil in nature; or (v) during transition to a permitted assignee, subtenant or franchisee, not to exceed thirty (30) days.

(c) Project Hours: Landlord may at any time and from time to time modify the Project hours and/or designate additional Project hours. Landlord, in its sole discretion, shall have the right to reduce or eliminate operating hours on any or all of the following holidays: New Year's Eve, New Year's Day, Easter Sunday, Thanksgiving Eve, Thanksgiving Day, Christmas Eve, Christmas Day, Labor Day, Memorial Day, and the Fourth of July.

7.4 Trade Name; Tenant's Name: N/A.

7.5 Prohibited Uses: In addition, and not by way of limitation of the restrictions on Tenant's use of the Premises set forth herein, Tenant shall not use or permit the use of the Premises in any manner that violates the Master Declarations or any of the uses listed on **Schedule 7** or **Schedule 8**.

7.6 Outdoor Area: N/A.

## 8. PARKING:

8.1 Tenant's Parking Rights: Portions of the Parking Element are and will be made available for the non-exclusive use by Tenant and its invitees on a "first-come, first-served basis". Tenant's invitees shall have the option to self-park in the Parking Element or use valet parking services for the Retail Element. Only automobiles and pickup trucks will be permitted within the Parking Element. The owner of the Parking Element (which as of the date of this Lease is not Landlord) reserves the right to establish parking charges and elect whether to (and the terms applicable to) provide for parking ticket validation by Tenant.

8.2 Control Over Parking: Tenant and its employees and authorized representatives will park their cars only in areas specifically designated for that purpose by Landlord, Shared Facilities Manager and/or the owner or operator of the Parking Element. Within five (5) days after written request by Landlord, Tenant will furnish to Landlord the license numbers assigned to its cars and the cars of all of its authorized representatives and employees. If Tenant or its authorized representatives or employees fail to park their cars in the designated parking areas, Landlord may charge Tenant, as and for liquidated damages, \$30.00 per each day or partial day for each car parked in area other than those designated, in addition to any other measures and/or penalties reasonably imposed by the Shared Facilities Manager, and/or the owner or operator of the applicable Parking Element, so long as Tenant has received prior notice as to such other measures and/or penalties. Tenant will not park or permit the parking of any vehicles adjacent to loading areas so as to interfere in any way with the use of such areas. The owner of the Parking Element shall have the right, in its sole discretion, to designate parking spaces for the exclusive use of a particular tenant or particular tenants, and will have the right to institute reasonable procedures and/or methods to enforce such rights.

8.3 Parking Ratio: Landlord shall directly or indirectly obtain and maintain throughout the Term for the benefit and use of the Project's tenants, customers and invitees the right to use a sufficient number of parking spaces in order for the Project to meet applicable Legal Requirements.

8.4 Valet Parking: Landlord shall provide, or cause the Shared Facilities Manager or the owner of one or more of the Parking Elements to provide, a valet parking operation (the "**Valet Parking Operation**") to serve the invitees of Tenant and customers and invitees of other tenants and occupants of the Project. The Valet Parking Operation: (i) shall be provided during Tenant's business hours (or longer) at a rate comparable to that charged by other Class A office buildings, restaurants and retail establishments in Coral Gables, to Tenant's invitees and the other customers and invitees of the Project that use the Valet Parking Operation, and (ii) at least one (1) of the designated areas for pick-up and drop-off shall be located in the area shown on **Schedule 11** attached hereto. The operator of the Valet Parking Operation shall carry liability and property insurance coverage in amounts and coverages reasonably determined by Landlord or the Shared Facilities Manager or the owner of the applicable Parking Element. The Valet Parking Operation shall be provided as an option for Tenant's invitees and such invitees shall also be permitted to self-park their vehicles in the Parking Element(s) instead of utilizing the Valet Parking Operation.



## 9. SIGNS:

9.1 Exterior Signage: Subject to Tenant: (i) complying with all applicable Legal Requirements, (ii) obtaining all necessary approvals, permits and consents from the applicable governmental authorities, and (iii) obtaining Landlord's prior reasonable approval to the Plans and Specifications (as defined in **Schedule 3**) with respect to such signage, Tenant shall have the right to install the maximum signage allowed by the applicable Legal Requirements on the exterior of the Premises ("**Exterior Signage**"). The cost of design, fabrication, installation, removal and governmental approvals (collectively, "**Signage Costs**") for the Exterior Signage shall be at Tenant's sole cost and expense.

(a) Landlord shall review and approve the Plans and Specifications for the Exterior Signage prior to submission to any governmental authority and shall also have the right to approve any changes to the Plans and Specifications, which approval shall not be unreasonably withheld, conditioned, or delayed. The Exterior Signage shall not create any structural issues for the Project and shall be of a design, color scheme and type consistent with the appearance of the Project as determined by Landlord and all signs, decorations and advertising media shall conform to the sign criteria attached as **Schedule 9**. Landlord may designate a uniform type of sign for the Project to be installed and paid for by Tenant. At Tenant's request, Landlord shall reasonably cooperate with Tenant in connection with Tenant obtaining any necessary permits, approvals and consents for the Exterior Signage; however, Tenant shall reimburse Landlord for any reasonable costs incurred by Landlord in connection with such cooperation. Tenant shall be responsible for maintaining, repairing and insuring the Exterior Signage throughout the Term and any extension thereof.

(b) Tenant shall, at its sole cost and expense, also be responsible for removing the Exterior Signage upon termination of the Term and restoring any damage caused by the removal of the same. If Tenant fails to timely remove the Exterior Signage, Landlord shall have the right, but not the obligation to remove the same, restore any damage caused thereby, and charge Tenant, as Additional Rent hereunder, the cost of the removal and the restoration, plus a ten percent (10%) administrative fee.

(c) Tenant's inability to obtain the necessary permits, approvals or consents for the Exterior Signage shall not entitle Tenant to terminate this Lease, seek a reduction in Rent or obtain any other concessions from Landlord. The parties acknowledge that the Tenant's ability to install the Exterior Signage is at Tenant's sole risk. The obligations of Tenant under this **Section 9** of the Lease shall survive any expiration or termination hereof.

(d) In addition, Tenant shall not, without Landlord's prior written consent make any changes to or paint the store front; or install any exterior lighting, decorations or paintings; or erect or install any other signs, banners, window or door lettering, placards, decorations or advertising media of any type visible from the exterior or interior of the Premises. All signs, decorations and advertising media shall conform to the sign criteria attached as **Schedule 9**. Landlord may designate a uniform type of sign for the Project to be installed and paid for by Tenant. For all Tenant signs, at the end of the Term or upon termination of Tenant's right to possess the Premises, or upon the removal or alteration of a sign for any reason, Tenant shall repair, paint, and/or replace the building fascia surface where signs are attached.

## 10. ASSIGNMENT AND SUBLETTING; ENCUMBRANCE:

10.1 Prohibition: Due to the favorable economic terms of this Lease Tenant shall not assign this Lease or sublet any portion of the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion. Tenant shall not be permitted to have any other governmental office, agency or quasi- governmental entity or agency use the Premises as the Premises shall be used exclusively for the Permitted Use. Furthermore, Tenant shall not permit any leasehold, inventory or other financing that may encumber Tenant's rights under this Lease or any personal property or FF&E of Tenant located in the Premises, without first obtaining the prior written consent of Landlord. Landlord may condition such consent upon the lender of tenant entering into an agreement with Landlord regarding conditions for removal of such personal property and/or FF&E and other reasonable Landlord protections.

### 10.2 Consent Process:

(a) If Tenant requests Landlord's consent to an assignment of this Lease or subletting of all or part of the Premises, Tenant shall give Landlord thirty (30) days' prior written notice thereof, specifying the material terms of the proposed subletting or assignment (a "**Notice of Proposed Transfer**"). Such Notice of Proposed Transfer shall, in addition to Landlord's right to consent or withhold consent as set forth above, give Landlord the right to recapture the portion of the Premises subject to the proposed assignment or sublease, by providing written notice to Tenant (a "**Recapture Notice**") within thirty (30) days of Landlord's receipt of the aforementioned Notice of Proposed Transfer from Tenant.

(1) Landlord's consent to, or waiver of the right to recapture, with respect to any prior sublease or assignment shall not be deemed a consent to, or waiver of the right to recapture, with respect to any future sublease or assignment.

(2) If Landlord elects its option to recapture, Tenant's obligations under this Lease with respect to the Premises or portion thereof shall be deemed to have expired and shall cease as of the effective date of the proposed assignment or sublease, and confirmed by Landlord in its Recapture Notice to Tenant of its exercise of the foregoing right to recapture.

(3) If Landlord recaptures the Premises or portion thereof, the Landlord shall be deemed to have recaptured such space for the remaining Term and any extensions thereof even if the proposed sublease was for less than the entire Term.

(b) In connection with each request by Tenant for Landlord consent to any assignment or sublease, Tenant shall pay to Landlord, on demand as Additional Rent, an administrative fee of \$2,500.00 as of the first Lease Year, which amount shall increase by three percent (3%) each Lease Year, to reimburse Landlord for the administrative costs associated with the request for Landlord's consent to the assignment or sublease. Notwithstanding the foregoing, in no event shall an assignment of this Lease or sublet of all or a part of the Premises be permitted during the first three (3) Lease Years.

10.3 No Profit: All cash or other consideration received by Tenant as the proceeds of any assignment or sublease of Tenant's interest in this Lease and/or the Premises, whether consented to by Landlord or not, shall be paid to Landlord, notwithstanding the fact that such proceeds exceed the Rent due hereunder, unless retention of such funds is in violation of any Governmental Requirements or Landlord agrees to the contrary in writing, and Tenant hereby assigns all rights it might have or ever acquire in any such proceeds to Landlord. This covenant and assignment shall benefit Landlord and its successors in ownership of the Project and shall bind Tenant and Tenant's heirs, executors, administrators, personal representatives, successors and assigns. Any assignee, subtenant or purchaser of Tenant's interest in this Lease, by occupying the Premises and/or assuming Tenant's obligations hereunder, shall be deemed to have assumed liability to Landlord for all amounts paid to persons other than Landlord in consideration of any such sale, assignment or subletting, in violation of the provisions hereof.

## 11. MAINTENANCE, REPAIRS, ALTERATIONS:

11.1 Tenant's Obligations: At Tenant's sole cost, Tenant will comply with all Legal Requirements applicable to its use of the Premises. The commencement or pendency of any state or federal court abatement proceeding affecting the use of the Premises shall, at the option of the Landlord, be deemed a breach thereof. Except as otherwise set forth in **Section 3.1**, Tenant has agreed to accept the Premises upon delivery after completion of Landlord's Work in its "AS IS" condition without any representation or warranty of any kind, so long as Landlord's Work is completed in accordance with **Schedule 3**. Upon entry into the Premises and Tenant's delivery (or deemed delivery) of the Tenant Acceptance Letter, Tenant acknowledges that the Premises are in good order and repair.

(a) Tenant shall, at Tenant's expense, be responsible for all repairs required to the Premises, except those set forth in **Section 11.5** which are the responsibility of Landlord, and at all times, maintain the Premises in good and safe condition, including plate glass, sprinkler, utilities, electrical wiring, plumbing and HVAC installations and any other systems or equipment upon the Premises and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted.

(b) As part of its air conditioning maintenance obligation, Tenant shall enter into an annual contract with an air conditioning repair firm which is licensed to repair air conditioning units in the State, and fully insured (to Landlord's reasonable satisfaction). No later than thirty (30) days prior to the Rent Commencement Date and annually thereafter, Tenant shall deliver to Landlord a copy of the air conditioning maintenance contract and proof that the annual premium for such contract has been paid (and, at Landlord's request, proof of insurance). Such air conditioning maintenance firm shall (i) regularly service the air conditioning unit(s), changing belts, filters and other parts as required, (ii) perform emergency and extraordinary repairs on the air conditioning units, and (iii) keep a detailed record of all services performed at the Premises and prepare a yearly report to be furnished to Landlord promptly at the end of each calendar year.

11.2 Limitations: Tenant may not make any improvements or alterations to the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Tenant may make any improvements or alterations to the Premises if they are nonstructural, do not affect any building system, cannot be

seen from the exterior of the Premises, and otherwise comply with all Legal Requirements and the following provisions of this **Section 11**. Prior to the commencement of any repair, improvement, or alteration, Tenant shall give Landlord at least two (2) Business Days written notice in order that Landlord may post appropriate notices to avoid any liability for liens. All repairs, improvements or alterations will be made by a licensed and insured contractor consented to by Landlord and performed in a good and workmanlike manner. All materials used shall be of a quality comparable to or better than those in the Premises and shall be in accordance with Plans and Specifications approved by Landlord.

(a) Tenant will not place or suffer to be placed or maintained on the exterior of the Premises or in any part of the Project any sign, advertising matter or any other thing of any kind, and will not place or maintain any decoration, letter or advertising matter on the glass of any window or door of the Premises or interior sign visible from outside the Premises without first obtaining Landlord's prior written approval. Tenant will, at its sole cost and expense, maintain such sign, decoration, lettering, advertising matter or other thing as may be permitted hereunder in good condition and repair at all times. Under no circumstances shall Tenant be permitted to place hand-lettered advertising on the exterior of the Premises or any glass of any window or door of the Premises.

(b) Tenant will not paint or decorate any part of the exterior of the Premises, or any part of the interior visible from the exterior thereof, without first obtaining Landlord's written approval. All articles, and the arrangement, style, color and general appearance thereof, in the interior of the Premises including, without limitation, window displays, signs, and fixtures, shall be in keeping with the character and standards of the improvements within the Project, as determined by Landlord. Landlord reserves the right to require Tenant to correct any nonconformity at Tenant's sole cost, provided Landlord had not previously approved such nonconformity pursuant to the terms of this Section (except that in the event the nonconformity is required to be corrected by applicable Legal Requirements, Tenant shall be responsible for the cost of same).

11.3 Liens: Tenant will pay all costs of construction done by it or caused to be done by it on the Premises as permitted by this Lease. Tenant will keep the Project free and clear of all construction, mechanic's, materialman's, laborer's and supplier's liens, resulting from construction done by or for Tenant. The interest of Landlord in the Premises and the Project shall not be subject to liens for improvements made by Tenant. Any lien filed by any contractor, materialman, laborer or supplier performing work for Tenant shall attach only to Tenant's interest in the Premises.

(a) Tenant agrees to indemnify, defend and hold harmless Landlord from and against any and all costs and liabilities (including reasonable attorneys' fees and expenses) and any and all construction, mechanic's, materialman's, laborer's or supplier's liens arising out of or pertaining to any improvements or construction done by Tenant. All persons and entities contracting or otherwise dealing with Tenant relative to the Premises or the Project are hereby placed on notice of the provisions of this **Subsection 11.3(a)**, and Tenant shall further notify in writing such persons or entities of the provisions of this **Subsection 11.3(a)** prior to commencement of any Tenant Work (as defined in **Schedule 3**) in the Premises.

(b) If any construction, mechanic's, materialman's, laborer's or supplier's lien is ever claimed, fixed or asserted against the Premises or any other portion of the Project in connection with any such Tenant Work, Tenant shall, within ten (10) days after receipt by Tenant of notice of such lien, discharge same as a lien either by payment or by posting of any bond as permitted by law. If Tenant shall fail to discharge any such lien, whether valid or not, within ten (10) days after receipt of notice from Landlord, Landlord shall have the right, but not the obligation, to discharge such lien on behalf of Tenant and all out of pocket costs and expenses incurred by Landlord associated with the discharge of the lien, including, without limitation, reasonable attorneys' fees, shall constitute Additional Rent hereunder and shall be immediately due and payable by Tenant.

(c) Landlord, at its option, may record a Notice of Landlord pursuant to Section 713.10 Florida Statutes.

**11.4 Surrender of Premises:** On the last day of the Term hereof or on any earlier termination, Tenant shall surrender the Premises to Landlord in good condition, ordinary wear, tear and casualty excepted, and clear and free of debris. Tenant shall repair any damage to the Premises occasioned by the installation or removal of Tenant's trade fixtures, furnishings and equipment. Any of Tenant's property remaining in the Premises after the expiration or earlier termination of this Lease shall be deemed abandoned by Tenant, and Landlord, in addition to all other rights and remedies it may have, shall have the right to keep in place and use all of such property in the Premises and/or remove any or all of such property from the Premises, which may then be disposed of, or stored at the cost of and for the account of Tenant. Landlord shall not be responsible for the care or safekeeping of any such property and Tenant waives any claim against Landlord relating thereto. The provisions of this **Section 11.4** shall survive the expiration or earlier termination of this Lease.

**11.5 Landlord Maintenance and Repairs:** Landlord will (or will cause the Shared Facilities Manager to) maintain the roof, foundations, and exterior walls of the Premises (except any plate glass or any entrance/exit door to the Premises) and utility lines (other than those exclusively serving the Premises) outside the exterior walls of the Premises, and the grease trap(s) serving the Premises on a non-exclusive basis (if any); provided that in each case Landlord shall have received prior written notice of the necessity of such repairs from Tenant.

(a) Landlord will use commercially reasonable efforts to cause Other Owners and/or the Shared Facilities Manager to maintain the roof, foundations, utility lines, exterior walls, Common Areas and Parking Element to the extent that they are located outside of the Retail Element of the Premises (except any plate glass or any entrance/exit door to the Premises); provided that Landlord becomes aware of the need for such maintenance. Notwithstanding the foregoing, if any such repair is required by reason of Tenant's failure to comply with any of Tenant's obligations in this Lease or the negligence of Tenant or any of Tenant's agents, concessionaires, officers, employees, licensees, customers, burglar or vandal, or other person using the Premises with or without the consent of Tenant or anyone authorized by Tenant, or the result of Tenant's acts or the installation of its equipment and property, Tenant shall, at its expense, promptly make such repairs.

(b) Tenant shall promptly give Landlord written notice of any damage to the Premises requiring repair by Landlord. In no event shall Landlord be liable for any damages resulting from any such damage, unless caused by Landlord's gross negligence or willful misconduct. Tenant hereby grants to Landlord such licenses and easements in and over the Premises or any portion or portions thereof as shall be reasonably appropriate for the installation or maintenance of mains, conduits, pipes, or other facilities to serve the Project or any part thereof. Landlord will have the right to enter the Premises at any reasonable time to inspect the condition thereof, to make necessary repairs or improvements.

(c) Tenant acknowledges that Landlord has applied (or may apply) for Leadership in Energy and Environmental Design ("LEED"™) under the Green Building Rating System™ of the U.S. Green Building Council ("USGBC") for the base Building improvements (the "**LEED Certification**"). Landlord makes no representation or warranty to Tenant that any LEED Certification obtained for the base Building improvements shall continue during the entire Term. To the extent that the USGBC changes the requirements for the particular level of LEED certification which was or may be achieved for the Building as of the Lease Commencement Date, Landlord shall not be obligated to upgrade, retrofit, or otherwise modify or alter the construction of the Building or modify or alter any particular Building system(s) in order to comply with such revised requirements. Further, Landlord makes no representation or warranty that the Building and Building systems, having attained a particular level of LEED Certification and/or having incorporated other so called "green" or "sustainable" design elements, will cause any energy savings, efficiencies, carbon impact reductions, or other matters with respect to the LEED Certification or use of other green or sustainable design elements for the Building. Landlord shall not be required to impose on Tenant or any other tenant of the Building, requirements for Tenant or other tenants to comply with any certification requirements under the USGBC's Green Building Rating System or other green or sustainable design elements. In addition, Tenant acknowledges that Landlord has made no representation or warranty with respect to any level of LEED certification for the Tenant Improvements (as defined in the Construction Rider), all of which if desired by Tenant shall be the sole and exclusive responsibility of Tenant, at Tenant's expense.

11.6 Trash: Tenant shall keep any garbage, trash, rubbish or other refuse in containers (safe from rodents and other vermin) within the interior of the Premises, and shall deposit such trash, on a daily basis, only in designated receptacles provided by Landlord (or Shared Facilities Manager) or Landlord's (or Shared Facilities Manager's) trash removal agent, hereinafter collectively referred to as the "**trash receptacles**". If Tenant fails to comply with the terms of this **Section 11.6** on two or more occasions during the Term (as confirmed by written notice from Landlord to Tenant), then for the third and each subsequent failure, Tenant shall pay a fee to Landlord in the amount of \$200.00 per day (for each day Tenant is in violation of this provision), within ten (10) days after written notice from Landlord.

(a) Tenant will utilize trash collection and related services performed by a third party entity designated by Landlord (or Shared Facilities Manager), provided the cost and/or charges of such designated third party entity do not exceed the market rate for comparable services by other service providers within the City of Coral Gables suburban market area. Landlord (or Shared Facilities Manager) shall arrange for the collection of trash from the trash receptacles, and Tenant shall pay a portion of the costs thereof as provided in this **Section 11.6**. Tenant's Percentage



Share of trash removal expense (the "**Trash Removal Charge**") shall include the cost of leasing the trash containers or receptacles and the cost of trash removal.

(b) At Landlord's option, the Trash Removal Charge shall be calculated by (i) multiplying such Landlord's trash removal costs (whether incurred directly or indirectly by Landlord) by Tenant's Percentage Share, or (ii) estimating the tonnage of trash generated by Tenant, provided, however, that Tenant may dispute the charge under the foregoing **Section 11.6(b)(ii)** if Tenant provides evidence reasonably satisfactory to Landlord that the actual trash generated is less than that estimated by Landlord. At Landlord's option, Tenant's Trash Removal Charge shall be payable (X) to Landlord as Additional Rent (either as a portion of Tenant's Percentage Share of Operating Expenses or as a separate assessment, as determined by Landlord), or (Y) directly to the third party designated trash collection servicer when such Trash Removal Charge shall be due and payable.

(c) In addition, Tenant shall comply with all Legal Requirements regarding the collection, sorting, separation and recycling of waste products, garbage, refuse and trash, including any Rules and Regulations of Landlord with respect thereto. Tenant shall pay the costs associated with recycling in conformity with Tenant's Trash Removal Charge set forth above.

**12. ENTRY AND INSPECTION:** Tenant shall permit Landlord or Landlord's agents to enter upon the Premises at reasonable times upon written notice (which notice may be given my email) for the purpose of inspecting the same, performing any services required of Landlord hereunder and showing the Premises to potential and existing mortgagees and purchasers and prospective tenants of other space in the Project. Notwithstanding the foregoing, Landlord is not required to give notice to Tenant if Landlord must enter the Premises because of an emergency or for the provision of janitorial services. Tenant will permit Landlord at any time within one hundred eighty days (180) days prior to the expiration of this Lease, to place upon the Premises any usual "To Let" or "For Lease" signs, and permit potential tenants to inspect the Premises. In exercising any such rights, Landlord shall use commercially reasonable efforts to minimize any interference with the operation of Tenant's business at the Premises.

**13. INDEMNIFICATION:**

13.1 Indemnity by Tenant: Tenant agrees to and shall indemnify, defend and hold Landlord and its employees and agents harmless from and against any and all claims, demands, losses, damages, costs and expenses (including reasonable attorneys' fees and expenses) or death of or injury to any person or damage to any property whatsoever (i) arising out of the negligence or willful misconduct of Tenant or its employees, agents or contractors, or Tenant's breach or default under this Lease, unless caused by the gross negligence or willful misconduct of Landlord or its employees, agents or contractors, and (ii) arising out of the use of the Premises and/or the Outdoor Area by Tenant, its agents, employees, customers, guests and invitees. Landlord shall not be liable to Tenant for any damage by or from any act or negligence of any co-tenant or other occupant of the Project or by any owner or occupant of adjoining or contiguous property. The provisions of this **Section 13.1** shall survive the expiration or earlier termination of this Lease.

13.2 Indemnity by Landlord: Landlord agrees to and shall indemnify, defend and hold Tenant and its employees and agents harmless from and against any and all claims, demands,

losses, damages, costs and expenses (including reasonable attorneys' fees and expenses) or death of or injury to any person or damage to any property whatsoever arising out of the negligence or willful misconduct of Landlord or its employees, agents or contractors, or Landlord's breach or default under this Lease, unless caused by the gross negligence or willful misconduct of Tenant or its employees, agents or contractors. The provisions of this **Section 13.2** shall survive the expiration or earlier termination of this Lease.

**14. TENANT'S INSURANCE:** At all times during the Term, Tenant shall, at its sole expense, procure and maintain the following types of insurance coverage:

14.1 Commercial General Liability: Commercial general liability insurance with limits of not less than Five Million Dollars (\$5,000,000.00) per occurrence for bodily injury and property damage, One Million Dollars (\$1,000,000.00) for any one person or organization for personal and advertising injury, Nine Million Dollars (\$9,000,000.00) general aggregate, and Two Million Dollars (\$2,000,000.00) products completed operations aggregate covering: (i) property/operations liability; (ii) host liquor liability, (iii) products/completed operations liability; (iv) personal and advertising injury liability; (v) independent contractors liability; and (vi) broad form contractual liability. Tenant's policy shall be primary and non-contributory to any other insurance available to Landlord with respect to claims arising from Tenant's use and occupancy of the Premises and it shall be endorsed to add Landlord, Shared Facilities Manager and such other parties as identified by Landlord to Tenant, as additional insureds.

14.2 Plate Glass: Insurance on all plate or tempered glass in or enclosing the Premises, for the replacement cost of such glass.

14.3 Commercial Property Insurance: Commercial property insurance covering at replacement cost value the following property that is owned by, held by, or the legal responsibility of Tenant including but not necessarily limited to: (i) inventory; (ii) furniture, unattached fixtures, and equipment; (iii) improvements and betterments that are the responsibility of the Tenant; and (iv) any other property in which the Tenant retains the risk of loss including, but not limited to, electronic data processing equipment and employee personal property. Each policy shall provide coverage against those perils that are commonly included in an "all risk" or special causes of loss form, with no exclusions or other limitations of coverage for wind and hail. Coverage for the perils of earthquake and flood shall be added by endorsement at Landlord's request. Notwithstanding the provisions set forth in **Section 14.12** or any other provision in this Lease to the contrary, the Tenant shall have the right, but not the obligation, to self-insure the foregoing property that is owned, held by, or the legal responsibility of Tenant pursuant to **Section 14.14** of this Lease consistent with the manner of self-insurance for Tenant's other leased spaces in the City.

14.4 Boiler & Machinery: N/A.

14.5 Business Income: N/A

14.6 Employer's Liability/Workers' Compensation: Employer's liability insurance covering statutory workers compensation benefits and employers liability coverage with limits of One Million Dollars (\$1,000,000.00) each accident for bodily injury and One Million Dollars (\$1,000,000.00) each employee and policy limit for bodily injury by disease.

14.7 Automobile Liability Insurance: Automobile liability insurance covering the maintenance and operations of any automobile or automotive equipment, whether such auto is owned, hired or non-owned. Tenant shall maintain insurance with a combined single limit for bodily injury and property damage of One Million Dollars (\$1,000,000.00) for each accident. Such insurance shall insure Tenant against any and all claims for bodily injury, including death resulting therefrom, and damage to the property of others caused by accident and arising from Tenant's operations under this Lease and whether such operations are performed by Tenant, Tenant's invitees, or by any one directly or indirectly employed by any of them. Tenant's policy shall be primary and non-contributory to any other insurance available to Landlord and it shall be endorsed to add Landlord as an additional insured.

14.8 Liquor Liability Insurance: N/A

14.9 Umbrella Liability Insurance: N/A.

14.10 Other Insurance: Such other insurance and in such amounts as may be required by Landlord against other insurable hazards as at the time are commonly insured against by prudent owners of comparable Projects in the area in which the Project is located.

14.11 Increases in Coverage: Landlord shall have the right, from time to time, to adjust the amounts of coverage required by this **Section 14** to such amounts as at the time are commonly required by prudent owners of comparable Projects in the area in which the Project is located.

14.12 Form of Insurance/Companies: All insurance provided for in this **Section 14**, except for such insurance that the Tenant elects to carry under a self-insurance program pursuant to **Section 14.14**, shall be in a form satisfactory to Landlord and carried with insurance companies reasonably acceptable to Landlord that are licensed or authorized to do business in the State of Florida, are in good standing with the Department of Insurance in the State of Florida and have a current rating issued by A.M. Best Company of not less than A-:VII, and/or whose claim paying ability is rated no lower than A by Standard & Poor's Ratings Service and A2 by Moody's Investors Service. Insurance coverage shall be written as primary policy coverage and not contributing with or excess of any coverage, which Landlord may carry, Landlord's lender shall be named as Additional Insured with respect to Commercial General Liability and Automobile Liability, including any Umbrella or Excess policies. Tenant shall furnish Landlord at the inception of this Lease (a) a Certificate of Insurance evidencing that all such insurance is in effect and that Landlord will be given at least thirty (30) days prior written notice of cancellation or non-renewal, and (b) proof that premiums have been paid by Tenant. Not later than fifteen (15) days prior to the expiration of any insurance policy, evidence of renewals or replacements of such policy shall be delivered to Landlord, together with proof of payment of the associated premiums. In the event Tenant shall fail to procure any contract of insurance required under the terms hereof or any renewal of or replacement for any contract of insurance that is expiring or has been canceled, Landlord may, but shall not be obligated to, procure such insurance on behalf of Tenant and the cost thereof shall be payable to Landlord as Additional Rent within ten (10) days following written demand therefor. This **Section 14.12** shall remain subject to the Tenant's right and authority to self-insure as set forth under **Section 14.14** below.

14.13 Subrogation: Notwithstanding anything to the contrary contained in this Lease, Landlord and Tenant (i) each waive all rights of recovery and causes of action which either party has or which may arise hereafter against the other covered or coverable by commercial general liability insurance or for which either party may be reimbursed by commercial general liability insurance, and (ii) shall each obtain from their respective insurers under all policies of commercial general liability insurance maintained by either of them at any time during the term hereof insuring or covering the Premises, a waiver of all rights of subrogation which the insurer of one party might otherwise have, if at all, against the other party.

14.14 Self-Insurance. Under Section §768.28 of the Florida Statutes, the state and its agencies and subdivisions are authorized to be self-insured, enter into risk management programs, or purchase liability insurance for whatever coverage they may choose, or to have any combination thereof, in anticipation of any claim, judgment which they may be liable to pay pursuant to this **Section 14**. It is understood and agreed that the Tenant is a qualified self-insured governmental entity, and as such shall evidence insurance or self-insurance subject to the limitations of liability as set forth under Section §768.28 of the Florida Statutes for any insurance required to be procured and maintained under **Section 14.3** of this Lease.

## 15. LANDLORD'S INSURANCE:

15.1 All Risk: Landlord (or its principals naming Landlord as an additional insured) and/or Shared Facilities Manager shall, as part of the Operating Expenses, maintain fire and extended coverage insurance on the Project and the Premises (which may include vandalism and malicious mischief coverage) and such endorsements as Landlord or Shared Facilities Manager may require or is otherwise reasonably consistent with other similarly situated Projects in an amount not less than the full replacement value thereof (which may be exclusive of foundations), or in such amounts as any mortgagee of Landlord shall require, with such deductibles as shall be determined by Landlord or Shared Facilities Manager from time to time. Landlord (or its principals naming Landlord as an additional insured) or Shared Facilities Manager also reserve the right to provide the insurance required hereunder as part of a blanket policy. All insurance premiums paid for by Landlord or Shared Facilities Manager in connection with the Project shall be passed through to the tenants of the Project, including Tenant, as part of the Operating Expenses, and payments for losses thereunder shall be made solely to Landlord or Shared Facilities Manager or Landlord's or Shared Facilities Manager's mortgagee as their interests shall appear. In the event of blanket insurance, Shared Facilities Manager shall reasonably allocate the portion of the blanket premium to the Operating Expenses for the Project.

15.2 Liability: Shared Facilities Manager shall, as part of the Operating Expenses, maintain a policy or policies of commercial general liability insurance with respect to the Common Areas and the activities thereon in such amounts as or Shared Facilities Manager or any mortgagee of or Shared Facilities Manager may require.

15.3 Other: Landlord or Shared Facilities Manager may purchase insurance for windstorm, flood, plate glass, sign, automobile, sinkhole, business income, Rent loss, liquor liability, terrorism, earthquake and such other insurance which Landlord or Shared Facilities Manager or any mortgagee of Landlord or Shared Facilities Manager may require in their sole discretion and with such deductibles as Landlord or Shared Facilities Manager may desire. The

costs of all such insurance shall be part of the Operating Expenses. Landlord or Shared Facilities Manager may hereafter raise or lower such coverage in such amounts as may, from time to time, be prudent to Landlord or Shared Facilities Manager within its or their sole discretion or as Landlord's or Shared Facilities Manager's mortgagee may require. For purposes of this Lease, "**Landlord's Insurance**" shall include the cost of all coverages incurred directly by Landlord or indirectly as a result of insurance costs incurred by Shared Facilities Manager.

## **16. UTILITIES AND SERVICES:**

16.1 Standards: Landlord will provide, at points in or near the Premises, the facilities necessary to enable Tenant to obtain for the Premises water, electricity, telephone, cable, internet, gas and/or sanitary sewer service, as necessary for the Permitted Use, including, without limitation, those items listed on the Technical Infrastructure and IT Plans attached hereto as **Schedule 12** to this Lease. As part of Tenant Work, at its cost, Tenant shall install all utility lines within the Premises, and install meters as necessary such that Tenant's electrical, water/sewer, gas, telephone, cable, satellite, internet and all other utility usage in or to the Premises is separately metered, and Tenant shall pay the cost of all such usage with respect to the Premises directly to the applicable utility provider. Tenant shall be responsible for the cost of utilities beginning on the Delivery Date.

(a) Tenant shall not at any time over burden or exceed the capacity of the mains, feeders, ducts, conduits, or other facilities by which such utilities are supplied to, distributed in or serve the Premises. If Tenant desires to install any equipment which shall require additional utility facilities or utility facilities of a greater capacity than the facilities provided by Landlord, such installation shall be subject to Landlord's prior written approval of Tenant's Plans and Specifications therefor. If Landlord approves such installation and if Landlord provides such additional facilities to accommodate Tenant's installation, Tenant agrees to pay Landlord, on demand, the cost for providing such additional utility facilities or utility facilities of greater capacity.

(b) Landlord shall have the option to supply such utilities to the Premises. If Landlord shall elect to supply such utilities to the Premises, Tenant will purchase its requirements for such service tendered by Landlord, and Tenant will pay Landlord, within ten (10) days after mailing by Landlord to Tenant of statements therefor, at the applicable rates determined by Landlord from time to time which Landlord agrees shall not be in excess of the public utility rates for the same service and for the same usage, if applicable. If Landlord so elects to supply such utilities, Tenant shall execute and deliver to Landlord, within ten (10) days after request therefor, any documentation reasonably required by Landlord to effect such change in the method of furnishing of such utilities.

16.2 Temporary Interruption: Landlord reserves the right, without any liability to Tenant and without affecting Tenant's covenants and obligations hereunder, to stop or interrupt or reduce any of the services listed in this **Section 16** or to stop or interrupt or reduce any other services, required of Landlord under this Lease, whenever and for so long as may be necessary, by reason of (i) Unavoidable Delays, (ii) the making of repairs or changes which Landlord is required by law or is permitted by this Lease to make or in good faith deems necessary, (iii) difficulty or excessive expense in securing proper supplies of fuel, steam, water, electricity, or (iv) any other

cause beyond Landlord's reasonable control, whether similar or dissimilar to the foregoing. Landlord does not warrant that the services provided for in this Lease will be free from interruption or stoppage resulting from the above causes, and specifically no reduction, interruption or stoppage of any such services for any reason, shall ever be construed as an eviction of Tenant nor shall the same cause any abatement of the Rent payable hereunder or in any manner relieve Tenant from any of Tenant's obligations hereunder, and in any event, Landlord shall not be liable for any loss, cost or damage, direct or consequential, of any nature arising in connection with interruption or stoppage of any of such services or for any damage to persons or property resulting therefrom; provided, however, Landlord agrees to use reasonable diligence to resume the service or to cause the same to be resumed.

16.3 Security: Landlord (and, as applicable, Shared Facilities Manager and the owner of the Parking Element) shall have no obligation to provide any security whatsoever for the Premises, the Project and/or Tenant's business therein. Tenant does hereby acknowledge and agree that it shall provide and be solely responsible for its own security, at Tenant's sole cost and expense, as may be required for the operation of Tenant's business within the Premises and Landlord shall have no liability to any Tenant and its employees, agents or invitees for losses due to theft or burglary, or for damages done by unauthorized persons in the Premises, the Parking Element, or the Project or for any injury, trauma or other harm to any person, and neither shall Landlord be required to insure against any such losses. Tenant shall be responsible for all repairs and replacements of damage and/or destruction of the Premises necessitated by burglary or attempted burglary, or any other illegal or forcible entry into the Premises. Notwithstanding the foregoing, Tenant acknowledges and agrees Shared Facilities Manager may, but will not be required to, adopt and provide security services for the Project from time to time. Tenant shall cooperate fully in any efforts of Landlord and/or Shared Facilities Manager to maintain security in the Project and shall follow all Rules and Regulations promulgated by Landlord and/or Shared Facilities Manager with respect thereto. However, any security services that are voluntarily undertaken by Landlord and/or Shared Facilities Manager may be changed or discontinued from time to time in Landlord's and/or Shared Facilities Manager's sole and absolute discretion, without liability to any Tenant and its employees, agents or invitees. If security is provided, the cost of the security services will be included in Operating Expenses. Tenant and its employees, agents or invitees waive any claims it may have against Landlord arising out of any security services provided by Landlord, or the inadequacy or absence thereof, specifically including Landlord's negligence with respect to the providing or failure to provide such services.

16.4 Release of Landlord: Neither Landlord nor any Other Owner nor Shared Facilities Manager shall be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage which may be occasioned by or through the acts or omissions of persons occupying space adjoining, adjacent to or connecting with the Premises or any other part of the Project, or otherwise, or for any loss or damage resulting to Tenant, or those claiming by, through or under Tenant, or its or their property, from the breaking, bursting, stoppage or leaking of electrical cable and wires, and water, gas, sewer or steam pipes or from theft or burglary, unless caused by Landlord's gross negligence or willful misconduct. To the maximum extent permitted by law, Tenant agrees to use and occupy the Premises and to use such other portions of the Project as Tenant is herein given the right to use, at Tenant's own risk.

## **17. CONDEMNATION:**

17.1 Condemnation of the Premises. If the whole or substantially the whole of the Project or Premises should be taken for any public or quasi-public use, by right of eminent domain or otherwise or should be sold in lieu of condemnation, then this Lease shall terminate as of the date when physical possession of the Project and/or Premises is taken by the condemning authority.

17.2 Partial Condemnation. If less than the whole or substantially the whole (but at least twenty-five percent (25%)) of the Project or the Premises is thus taken or sold, Landlord (whether or not the Premises are affected thereby) may, at its option, terminate this Lease by giving written notice thereof to Tenant; in which event this Lease shall terminate as of the date when physical possession of such portion of the Project or the Premises is taken by condemning authority. If this Lease is not terminated upon any such taking or sale, and if the Premises are affected, the Base Rent payable hereunder shall be diminished by an equitable amount, and Landlord shall, to the extent Landlord deems feasible, restore the Project and, if affected, the Premises to substantially their former condition, but such work shall not exceed the scope of the work done by Landlord in originally constructing the Project and installing any work, if constructed by Landlord pursuant to **Schedule 3** in the Premises, nor shall Landlord in any event be required to spend for such work an amount in excess of the amount received by Landlord as compensation for such taking.

17.3 Amounts Awarded. All amounts awarded upon a taking of all or any part of the Project or Premises shall belong to Landlord (or, as applicable, Other Owners and/or the Shared Facilities Manager), provided that Tenant shall not be entitled to and expressly waives all claims to any such compensation. All sums which may be payable on account of any condemnation shall belong solely to the Landlord (or, as applicable, Other Owners and/or the Shared Facilities Manager), and Tenant shall not be entitled to any part thereof; provided however, that Tenant shall be entitled to retain any sum awarded to it for its trade fixtures or moving expenses, provided that such Tenant award shall not reduce Landlord's award.

**18. TRADE FIXTURES:** Any and all improvements made to the Premises during the Term hereof shall, unless Landlord requests their removal, belong to the Landlord without compensation, allowance or credit to Tenant, except movable trade fixtures of the Tenant which can be and are removed without defacing the Premises or any portion of the Project. Tenant shall be directly responsible for taxes upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises or by the cost or value of any leasehold improvements made in or to the Premises by or for Tenant other than the initial improvements to be installed at Landlord's expense regardless of whether title to such improvements is in Tenant or Landlord.

## **19. DESTRUCTION OF PREMISES:**

19.1 Termination or Repair. If the Premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give prompt written notice thereof to Landlord if Landlord does not otherwise have actual knowledge thereof.

(a) In case the Building or the Retail Element shall be so damaged that substantial alteration or reconstruction of same shall, in Landlord's sole opinion, be required

(whether or not the Premises shall have been damaged by such casualty), or in the event any mortgage of Landlord's interest in the Project should require that the insurance proceeds payable as a result of a casualty be applied to the payment of the mortgage debt, or in the event of any material uninsured loss to the Project, Landlord may, at its option, terminate this Lease by notifying Tenant in writing of such termination within ninety (90) days after the date of such casualty.

(b) If Landlord does not elect to terminate this Lease as a result of such casualty, Landlord shall commence and proceed with reasonable diligence to restore the Landlord's Work, except that Landlord's obligation to restore shall not require Landlord to spend for such work an amount in excess of the insurance proceeds actually received by Landlord as a result of the casualty. Tenant shall be responsible for the restoration of the Tenant's Work at its sole cost (provided, however, that Tenant shall be entitled to utilize the proceeds of casualty insurance procured by Tenant to pay such costs).

(c) Notwithstanding anything to the contrary contained in this **Section 19**, Landlord shall not have any obligation whatsoever to repair, reconstruct, or restore the Premises when the damage resulting from any casualty contained under this **Section 19** occurs during the last twelve (12) months of the Term, and in such event, Tenant shall have the right to terminate the Lease set forth in **Section 19.3**.

19.2 Abatement of Rent: Landlord shall not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting in any way from such casualty damage or the repair thereof; except that, subject to the previous provisions of this Lease and of the next sentence, Landlord shall allow Tenant a fair diminution of Rent during the time and to the extent the Premises are unfit for occupancy and Tenant fails to open for business in the Premises or damaged portion thereof. If the Premises or any other portion of the Project is damaged by fire or other casualty resulting from the fault or negligence of Tenant or any of Tenant's agents, contractors, employees, or invitees, the Rent hereunder shall not be diminished during the repair of such damage, and, additionally, Tenant shall be liable to Landlord for the cost of the repair and restoration of the Project caused thereby to the extent such cost and expense is not covered by insurance proceeds.

19.3 Last Year of Term: If any material damage or destruction occurs to the Premises (or the Building materially impairing use of the Premises) during the last year of the Term, Tenant may terminate the Lease upon written notice to Landlord within thirty (30) days after the occurrence of the damage or destruction.

## **20. HAZARDOUS SUBSTANCES:**

20.1 Tenant's Responsibilities: At its own expense, Tenant will procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for Tenant's use of the Premises. Tenant will not cause or permit any Hazardous Substance to be brought upon, kept or used in or about the Project by Tenant, its agents, employees, contractors or invitees without the prior written consent of Landlord except for the routine cleaning supplies that may be deemed Hazardous Substances provided such Hazardous Substances are stored, used and removed in compliance with all Legal Requirements and Environmental Laws. Tenant will cause any and all Hazardous Substances brought upon the



Premises by Tenant to be removed from the Premises and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes. Tenant will, in all respects, handle, treat, deal with and manage any and all Hazardous Substances in, on, under or about the Premises in total conformity with all applicable Environmental Laws and prudent industry practices regarding management of such Hazardous Substances. Upon expiration or earlier termination of the Term, Tenant will cause all Hazardous Substances placed on, under or about the Premises by Tenant or at Tenant's direction to be removed and transported for use, storage or disposal in accordance and compliance with all applicable Environmental Laws. Tenant will not take any remedial action in response to the presence of any Hazardous Substances in or about the Premises or the Project, nor enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Substances in any way connected with the Premises without first notifying Landlord of Tenant's intention to do so and affording Landlord ample opportunity to appear, intervene or otherwise appropriately assert and protect Landlord's interests with respect thereto.

20.2 Indemnification: If the Premises or the Project become contaminated in any manner or otherwise become affected by any release or discharge of a Hazardous Substance, in both instances for which Tenant is legally liable, Tenant shall immediately notify Landlord of the release or discharge of the Hazardous Substance, and Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the Project or the Premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, reasonable attorneys' fees and expenses, consultant fees and expert fees) arising during or after the Term and arising as a result of such contamination, release or discharge caused by Tenant or for which Tenant is legally liable. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal or restoration mandated by federal, state or local agency or political subdivision. This provision of this **Section 20.2** shall survive termination of this Lease.

**21. EVENTS OF DEFAULT:** If any one or more of the following events (each an "**Event of Default**") occurs, such occurrence constitutes a breach of this Lease by Tenant:

21.1 Abandonment/Vacation: Tenant abandons or vacates the Premises or removes furniture, fixtures or personal property from the Premises, except in the normal course of business;

21.2 Rent: Tenant fails to pay any Rent as and when the same becomes due and payable; provided, however, Tenant shall be entitled to a single five (5) day grace period one time during the Term;

21.3 Other Sums: Tenant fails to pay any Additional Rent, other sum or charge payable by Tenant hereunder as and when the same becomes due and payable, and such failure continues for more than fifteen (15) days after Landlord gives written notice thereof to Tenant;

21.4 Other Provisions: Tenant fails to perform or observe any other agreement, covenant, condition or provision of this Lease to be performed or observed by Tenant as and when performance or observance is due (or immediately if the failure involves a Hazardous Condition),

and such failure continues for more than thirty (30) days after Landlord gives written notice thereof to Tenant, or if the default does not involve a hazardous condition and cannot be reasonably cured within said thirty (30) day period and Tenant fails promptly to commence with due diligence and dispatch the curing of such default within said thirty (30) day period or, having so commenced, thereafter fails to prosecute or complete with due diligence and dispatch the curing of such default, provided such cure does not take more than ninety (90) days in the aggregate. "**Hazardous Condition**" shall be (i) as defined or applied by Legal Requirements or (ii) creating an imminent threat (X) to life or safety of individuals, or (Y) of damage to property;

21.5 Insolvency: Tenant or Guarantor, if any (i) files or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction; (ii) is the subject of involuntary bankruptcy, insolvency, or similar proceedings and said proceedings shall not be dismissed or vacated within thirty (30) days after a petition for such proceedings is filed; (iii) makes an assignment for the benefit of its creditors; or (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property;

21.6 Receiver: A court or governmental authority of competent jurisdiction, without consent by Tenant or Guarantor, if any, enters an order appointing a custodian, receiver, trustee or other officer with similar powers with respect to Tenant or Guarantor, if any, or with respect to any substantial power of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up or liquidation of Tenant, or if any such petition is filed against Tenant or Guarantor, if any, and such receivership or petition is not dismissed within sixty (60) days;

21.7 Attachments: This Lease or any estate of Tenant hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within sixty (60) days;

21.8 Assignment/Sublease: Tenant assigns this Lease or subleases all or any portion of the Premises in violation of the terms and conditions of **Section 10**.

## **22. REMEDIES OF LANDLORD UPON DEFAULT:**

22.1 Termination: Upon the occurrence of an Event of Default under this Lease by Tenant, Landlord may, at its option, terminate the Lease and repossess the Premises pursuant to the laws of the State and recover from Tenant as damages:

(a) the unpaid Rent and other amounts due at the time of termination, plus interest thereon at the Default Rate from the due date until paid;

(b) the present value of the balance of the Rent for the remainder of the Term after termination, less the present value of the fair market value rental of the Premises for said period [both determined by applying a discount rate of the Wall Street Journal Prime Rate; but in no event (e.g., if the present value of the fair market value rental of the Premises exceeds the resent

value of the balance of the Rent for the remainder of the Term after termination) will Landlord owe any money to Tenant]; and

(c) any other amount necessary to compensate Landlord for all actual damages incurred by Landlord as a result of Tenant's failure to perform its obligations under the Lease, including, without limitation, the cost of recovering the Premises.

**22.2 Landlord's Options:** Landlord may, in the alternative to terminating this Lease pursuant to **Section 22.1**, (i) continue this Lease in effect, as long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all its rights and remedies under the Lease, including the right to recover the Rent as it becomes due under the Lease; (ii) terminate Tenant's right of possession (but not this Lease) and repossess the Premises pursuant to the laws of the State, in which event Landlord may, but shall be under no obligation to do so (except to the extent required by the laws of the State), relet the Premises for the account of Tenant (any such lease, "**Lease for Tenant's Account**") for such rent and upon such Terms as shall be satisfactory to Landlord; and/or (iii) exercise any and all other rights and remedies available to Landlord at law or in equity. Without limiting the foregoing:

(a) For the purpose of such reletting Landlord is authorized by Tenant to decorate or to make any repairs, changes, alterations or additions in or to the Premises that may be necessary or convenient, at Tenant's expense.

(b) Tenant shall also be responsible for (i) unpaid Rent and other amounts due through the date that Landlord recovers possession of the Premises, (ii) Rent for the period that the Premises are vacant (after Landlord recovers possession), and (iii) all costs of re-letting, including, without limitation, brokerage commissions and reasonable attorneys' fees.

(c) Tenant shall be liable for any deficiency resulting in the event that the rental actually received by Landlord pursuant to the Lease for Tenant's Account (less (X) Landlord's cost of reletting, and (Y) any allowance or other cash benefit provided to the tenant under the Lease for Tenant's Account) is less than the Rent and all other payments herein provided for the unexpired balance of the Term (determined as of the effective date of the Lease for Tenant's Account), provided, however, that Landlord shall use commercially reasonable efforts to relet the Premises. In no event (e.g., if Landlord receives more rent pursuant to the Lease for Tenant's Account than would be owed by Tenant for the unexpired balance of the Term) will Landlord owe any money to Tenant.

(d) Notwithstanding Landlord's election of any of the remedies set forth in this **Section 22.2**, if the applicable Event of Default continues, Landlord may, at any time thereafter, elect to terminate the Lease pursuant to **Section 22.1**.

**23. SECURITY DEPOSIT; PREPAID RENT:** N/A.

**24. LIEN FOR RENT:** Tenant hereby grants to Landlord a lien and security interest on all furnishings, equipment, fixtures, inventory, accounts receivable, licenses and other personal property of any kind of Tenant now or hereafter placed in or upon the Premises, and such property shall be and remain subject to such lien and security interest of Landlord for payment of all Rent

and other sums agreed to be paid by Tenant herein. The provisions of this **Section 24** relating to such lien and security interest shall constitute a security agreement under and subject to the laws of the State so that Landlord shall have and may enforce a security interest on all property of Tenant now or hereafter placed in or on the Premises, in addition to and cumulative of the Landlord's liens and rights provided by law or by the other Terms and provisions of this Lease. Landlord may file, and Tenant agrees (as necessary) to execute, as debtor, such financing statement or statements and other documents as Landlord may now or hereafter request. Notwithstanding the above, Landlord shall neither sell nor withhold from Tenant, Tenant's business records and Landlord's lien rights shall not apply with respect to any property that is leased to Tenant. Under no circumstances whatsoever shall Landlord ever be liable hereunder for consequential damages or special damages.

**25. LIMITATION ON LANDLORD'S PERSONAL LIABILITY:** Landlord shall not be in default of this Lease unless Landlord shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Lease for a period of thirty (30) days after written notice thereof from Tenant (a "**Landlord Default**"); provided, however, that if the term, condition, covenant or obligation to be performed by Landlord is of such nature that the same cannot reasonably be performed within such thirty (30) day period, Landlord shall not be in default hereunder if Landlord commences such performance within said thirty (30) day period and thereafter diligently undertakes to complete the same, provided that in no event shall the period be extended more than one hundred and twenty (120) days from the date of written notice by Tenant of the Landlord Default.

25.1 Tenant's Remedies. Upon the occurrence of a Landlord Default which continues beyond the applicable notice and cure period, Tenant shall have the option (subject to the terms and limitations of **Section 25.2**), to pursue any and all remedies available at law or in equity including without limitation, the right to sue for damages, and the right to seek an injunction, which remedies shall be construed to be cumulative and non-exclusive.

25.2 Limitation on Landlord's Liability. Anything contained in this Lease to the contrary notwithstanding, Tenant specifically agrees to look solely to Landlord's interest in the Project (and the rents, income and proceeds therefrom) for the recovery of any judgment from Landlord, it being agreed that Landlord (and any officers, shareholders, partners, members, managers, directors or employees, affiliates, subsidiaries or parents of Landlord) shall never be personally liable for any such judgment.

25.3 Assignment of Landlord's Obligations. Landlord shall have the right to transfer and assign, in whole or in part, all its rights and obligations under this Lease and Premises, and in such event and upon such transfer, Landlord shall be released from any further obligations hereunder, and Tenant agrees to look solely to such successor in interest of Landlord for the performance of such obligations.

**26. LANDLORD'S RESERVED RIGHTS:** Without notice and without liability to Tenant, Landlord (and as applicable, Other Owners and/or Shared Facilities Manager) shall have the right to (i) sell the Project (or any portion(s) thereof) and with respect to a sale by Landlord, Landlord may assign this Lease, the Security Deposit (if any) and Prepaid Rent (if any) to the purchaser, and upon such assignment Landlord shall be released from all of its obligations under this Lease and

Tenant agrees to attorn to such purchaser, or any other successor or assign of Landlord through foreclosure or deed in lieu of foreclosure or otherwise, and to recognize such person as successor Landlord under this Lease; (ii) change the name or street address of the Project; (iii) install and maintain signs on the Project; (iv) except as expressly set forth to be contrary in this Lease, lease any space in the Project to any prospective tenant for any lawful purpose; and (v) change the appearance, size, composition, number, arrangement or location of the Common Areas, provided that the result of such changes shall not materially interfere with Tenant's use of the Premises. Landlord, Other Owners and the Shared Facilities Manager shall also have those rights described in **Schedule 10** attached hereto.

**27. ATTORNEYS' FEES:** If there is any legal action or proceeding between Landlord and Tenant to enforce any provision of this Lease or to protect or establish any right or remedy of either Landlord or Tenant hereunder, the unsuccessful party to such action or proceeding will pay to the prevailing party all costs and expenses, including reasonable attorneys' fees at all tribunal levels (including allocated costs of Landlord's in-house attorney), incurred by such prevailing party in such action or proceeding and in any appearance in connection therewith, and if such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees will be determined by the court handling the proceeding and will be included in and as a part of such judgment.

**28. WAIVER:** No failure of Landlord to enforce any term hereof shall be deemed to be a waiver. The failure of Landlord to insist at any time upon the strict performance of any covenant or agreement contained herein or to exercise any option, right, power, or remedy contained in this Lease shall not be construed as a waiver or a relinquishment thereof for the future. No payment by Tenant or receipt by Landlord of a lesser amount than the applicable Rent payment due under this Lease shall be deemed to be other than on account of the earliest amount due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease provided.

**29. SEVERABILITY:** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Term hereof, then it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of both parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there shall be added as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable. The inadvertent failure to attach any exhibit (or schedule or addendum) described in this Lease to the fully executed version hereof shall not render this Lease invalid, incomplete, or ineffective in any way. Upon notice from one party to the other and within a reasonable time after receipt of such notice, Landlord and Tenant shall cooperate in good faith to provide any missing information regarding such missing exhibit, and shall both append the missing exhibit to their respective fully executed original of the Lease.

**30. NOTICES:** All notices or other communications required or permitted hereunder must be in writing, and be (a) personally delivered (including by means of professional messenger service), (b) sent by overnight courier, with request for next Business Day delivery, or (c) sent by registered

or certified U.S. mail, postage prepaid, return receipt requested, to the addresses set forth in **Section 1**. All notices (i) sent by U.S. mail will be deemed received three (3) days after the date of mailing, and (ii) personally delivered or sent by overnight courier will be deemed received upon receipt, or refusal to accept delivery, or inability to deliver due to a change of address of which no notice was given to the other party. Either party may change its notice address(es) by given the other party notice as provided herein.

**31. TIME:** Time is of the essence with respect to the performance of all obligations under this Lease.

**32. SUCCESSORS AND ASSIGNS:** This Lease is binding upon and inures to the benefit of the assigns and successors in interest of Landlord and is binding upon and inures to the benefit of Tenant and Tenant's successors and, to the extent assignment may be approved by Landlord hereunder, Tenant's assigns. Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed. Nothing contained in this Lease shall be construed so as to confer upon any other party the rights of a third party beneficiary except rights contained herein for the benefit of a mortgagee of Landlord.

**33. SUBORDINATION:** This Lease and all rights of Tenant shall be subject and subordinate to any and all mortgages, security agreements, or like instruments resulting from any financing, refinancing, or collateral financing (including renewals or extensions thereof), and to any and all ground leases, made or arranged by Landlord of its interests in all or any part of the Retail Element, the Building, or the Project, from time to time in existence against the Retail Element, Building or the Project, whether now existing or hereafter created. Such subordination shall not require any further instrument to evidence such subordination. .

**34. ESTOPPEL CERTIFICATE:** Tenant shall at any time upon not less than twenty (20) days prior written notice from Landlord execute, acknowledge and deliver to Landlord a factually correct statement in writing: (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect), the amount of any Security Deposit, and the date to which the Rent and other charges are paid in advance, if any; (b) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed; and (c) containing such other information as Landlord, its lender and/or a prospective purchaser may reasonably request. Any such statement may be conclusively relied upon by a prospective purchaser or encumbrancer to the Premises. At Landlord's option, and after written notice from Landlord and an additional ten (10) day period to provide such estoppel, Tenant's failure to deliver such statement within such time shall be a material breach of this Lease or shall be conclusive upon Tenant: (i) that this Lease is in full force and effect, without modification, except as may be represented by Landlord; (ii) that there are no uncured defaults in Landlord's performance; and (iii) that not more than one month's Rent has been paid in advance or such failure may be considered by Landlord as a default by Tenant under this Lease. Any such statement may be conclusively relied upon by a prospective purchaser or lender.

**35. FINANCIAL STATEMENTS:** N/A.

**36. JOINT AND SEVERAL LIABILITY; WAIVER OF SPECIAL DAMAGES:** In the event that more than one person or entity executes the Lease as Tenant, all such persons and entities shall be jointly and severally liable for all of Tenant's obligations hereunder. Each of Landlord and Tenant, as between themselves, hereby waives the right to seek or collect punitive, special or consequential damages from the other.

**37. FORCE MAJEURE:** In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, inability to procure labor or materials, failure of power, restrictive governmental laws or regulations, riots, terrorism, insurrection, war, fire or other casualty or other reason of a similar nature beyond the reasonable control of the party delayed in performing work or doing the act required under the terms of this Lease, then performance of such act shall be excused for the period of the delay and the period from the performance of any such act shall be extended for a period equivalent to the period of such delay (any such delay is herein referred to as an "**Unavoidable Delay**").

37.1 Epidemic. Any (i) delay in the performance of any construction related obligation (including delay caused by unavailability of labor or materials), or (ii) delay in Tenant's opening for business, or (iii) or interference with Tenant's operations at the Premises, in any case resulting from the outbreak of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or COVID-19 or other virus which has been deemed an epidemic by the county or state or by the US federal government (an "**Epidemic**"), shall be considered an Unavoidable Delay, and shall not be considered to be a consequence of the affected party's failure to exercise reasonable diligence. For clarity purposes, the parties agree that all construction obligations and opening and continuous operations requirements are subject to delay or extension as a result of such Unavoidable Delays.

37.2 Monetary Obligations. The terms of this **Section 37** shall not be applicable to Tenant's obligations to pay Rent or any other sums, money, costs, charges or expenses required to be paid by Tenant hereunder; i.e., delays or failures to perform on the part of Tenant resulting from its lack of funds shall not be deemed to be Unavoidable Delays, and no Unavoidable Delay shall excuse Tenant's obligation to pay Rent.

**38. RECORDING:** Tenant shall not record this Lease, or any memorandum or short form thereof, without the written consent and joinder of Landlord, which may be withheld in Landlord's sole discretion. Notwithstanding the foregoing, upon the request of Landlord, Tenant shall execute a recordable short form or memorandum of lease in form reasonably acceptable to Landlord, and Landlord may record same in its sole discretion.

**39. BROKERS:** Landlord and Tenant each represent and warrant one to the other that except as set forth in **Section 1.16**, neither of them has employed any broker in connection with the negotiations of the terms of this Lease or the execution thereof. Landlord and Tenant hereby agree to indemnify and to hold each other harmless against any loss, expense, or liability (including, without limitation, reasonable attorneys' fees and costs, before, after and during trial, at all levels of appeals, and in bankruptcy) with respect to any claims for commissions or brokerage fees arising from or out of any breach of the foregoing representation and warranty. Landlord shall pay any commissions payable to Landlord's Broker pursuant to separate agreement, and if a Tenant's Broker is expressly identified in **Section 1.16**, then Landlord shall, at its election, pay to Tenant's

Broker directly or cause Landlord's Broker to pay any commissions payable to Tenant's Broker pursuant to a separate agreement between Landlord's Broker and Tenant's Broker.

**40. ENTIRE AGREEMENT:** The foregoing, together with all Exhibits and Schedules attached hereto, constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties.

**41. GOVERNING LAW:** This Lease shall be construed in accordance with the laws of the State of Florida. Exclusive venue in any legal proceeding related to or arising out of this Lease shall be in Miami-Dade County, Florida, and Tenant submits to personal jurisdiction and venue in such forum.

**42. WAIVER OF THE RIGHT TO TRIAL BY JURY:** LANDLORD AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT LANDLORD OR TENANT MAY HERINAFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS LEASE OR THE LEASED PREMISES WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE.

**43. BANKRUPTCY:** Landlord and Tenant understand that, notwithstanding certain provisions to the contrary contained herein, a trustee or debtor in possession under the United States Bankruptcy Code may have certain rights to assume or assign this Lease. Landlord and Tenant further understand that, in any event, Landlord is entitled under the United States Bankruptcy Code to adequate assurances of future performance of the provisions of this Lease. The parties agree that, with respect to any such assumption or assignment, the term "adequate assurance" shall include at least the following:

43.1 Net Worth. In order to assure Landlord that the proposed assignees will have the resources with which to pay all Rent or other sum payable by Tenant pursuant to the provisions of this Lease, any proposed assignee and its guarantor each must have, as demonstrated to Landlord's satisfaction, a net worth (as defined in accordance with generally accepted accounting principles consistently applied) of not less than \$100,000,000.00. It is understood and agreed that the financial condition and resources of Tenant were a material inducement to Landlord in entering into this Lease.

43.2 Experience. Any proposed assignee must have been engaged in the conduct of business for the five (5) years prior to any such proposed assignment, which business does not violate the Permitted Use, and such proposed assignee shall continue to engage in the Permitted Use and will not cause Landlord to be in violation or breach of any provision in any other lease, financing agreement, operating agreement or other agreement relating to the Project. It is understood and agreed that Landlord's asset will be substantially impaired if the trustee in bankruptcy or any assignee of this Lease makes any use of the Premises other than the Permitted Use.

43.3 Assumption. Any proposed assignee of this Lease must assume and agree to be personally bound by the provisions of this Lease.



**44. SURVIVAL:** Anything contained in this Lease to the contrary notwithstanding, the expiration or earlier termination of the Term, whether by lapse of time or otherwise, shall not relieve Tenant or Landlord from any obligations accruing prior to the expiration or termination of the Term, all of which shall survive the same, whether or not same is expressly stated in the particular Section of this Lease, including, without limitation, either party's obligations with respect to: (a) the payment of Rent by Tenant; (b) any provisions of this Lease with respect to indemnities of either party made to the other; and (c) the removal of all property of Tenant required to be removed hereunder and the repair of all damage to the Premises caused by such removal at the expiration or termination of this Lease to the extent required hereunder.

**45. COUNTERPARTS; ELECTRONICALLY TRANSMITTED SIGNATURES:** This Lease may be executed in several counterparts, and/or by the execution of counterpart signature pages which may be attached to one or more counterparts of this Lease, and all so executed shall constitute one agreement binding on all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterpart. In addition, any counterpart signature page of this Lease and/or the stand-alone execution versions of the documents forms of which are attached as Exhibits or Schedules to this Lease, may be executed (and, as appropriate, witnessed and/or notarized) electronically using electronic signature software (e.g. DocuSign or similar software), or similar methods (each a method of "**Electronic Execution**") by any party [in accordance with the Electronic Signatures in Global and National Commerce Act ("**E-Sign Act**"), Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act ("**UETA**") and any applicable state law], wherever such party is located, and may be delivered by electronic mail, and any such electronic mail transmitted signature pages may be attached to one or more counterparts of this Lease, and such e-mailed signature(s) shall have the same force and effect, and be as binding, as if original signatures executed and delivered in person. The parties (i) consent to the Electronic Execution of this Lease and the use of electronic signatures, (ii) intend to be bound by the signatures delivered via Electronic Execution; (iii) are aware that the other party will rely on such Electronic Execution and electronic signatures; and (iv) waive any defenses to the enforcement of the terms of this Lease based on Electronic Execution or electronic signatures.

**46. CONFIDENTIALITY** Except as expressly required by Florida Statute Chapter 119 for which a valid exception does not exist, Tenant and Landlord agree, on behalf of their respective employees, agents, contractors, consultants, partners, Affiliates, assignees and subtenants, not to disclose the terms of this Lease or the results of any audit of either party's books and records under this Lease to any third party except (i) legal counsel to either party, (ii) any assignee of Tenant's or Landlord's interest in this Lease or any subtenant of Tenant relative to the Premises (or any portion thereof), (iii) as required by applicable law or by subpoena or other similar legal process, or (iv) for financial reporting purposes. Notwithstanding the foregoing, Landlord and Tenant are expressly permitted to issue a press release or similar announcement or marketing materials stating the identity of the Landlord and Tenant, the Project, and the square footage of the Premises. Prior to publication of any press release or similar material which includes more than the identity of the Landlord and Tenant, the Project, and the square footage of the Premises, the party wishing to issue the press release or similar announcement or marketing materials will submit the proposed press release or similar announcement or marketing materials (which shall not include the financial terms of this Lease) to the other party for review and approval, which approval shall not be

unreasonably withheld, delayed or conditioned. **SOVEREIGN IMMUNITY.** Landlord acknowledges that the Florida Doctrine of Sovereign Immunity bars certain claims by Landlord against the Tenant other than claims arising out of this Lease. Specifically, the Landlord acknowledges that it cannot and will not assert any claims against the Tenant, unless the claim is based upon a breach by or obligation of the Tenant pursuant to this Lease. The Landlord acknowledges that this Lease in no way estops or affects the Tenant's exercise of its regulatory authority and Tenant retains the full extent of its sovereign immunity in relation to the exercise of its regulatory authority.

**48. DAYS:** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

**49. OFAC REPRESENTATION:** For purposes hereof, "List" shall mean the Specially Designated Nationals and Blocked Persons List maintained by OFAC and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation, and "OFAC" shall mean the Office of Foreign Assets Control, Department of the Treasury. Each party represents and warrants to the other that (i) each person owning a ten percent (10%) or greater interest in such party is (A) not currently identified on the List, and (B) is not a person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States and (ii) each party has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. Each party shall comply with all requirements of law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect and shall use reasonable efforts to notify the other in writing if any of the foregoing representations, warranties or covenants are no longer true or have been breached or if such party has a reasonable basis to believe that they may no longer be true or have been breached. In addition, at the request of a party, the other party shall provide such information as may be requested by the requesting to determine the other party's compliance with the terms hereof.

**50. 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 and radon testing may be obtained from your county public health unit.

**51. GUARANTOR:** N/A.

**52. RENEWAL OPTION:** Provided no Event of Default has occurred and is continuing as of either (i) as of the date of exercise of a Renewal Option, or (ii) at the date of the commencement of a Renewal Term, and further provided that Tenant has neither done anything nor failed to do anything that, with the passage of time and/or the giving of notice or both, would constitute an Event of Default hereunder, Tenant shall have the right to exercise the Renewal Option specified in **Section 1.19**. During the Renewal Term, all of the terms and conditions of this Lease shall be the same, including, without limitation, the Base Rent set forth in the Lease. Tenant must exercise its Renewal Option, if at all, by furnishing Landlord written notice of such exercise (X) no earlier

than four hundred fifty-five (455) days (i.e., 15 months) before the end of the original Term, and (Y) no later than three hundred sixty-five (365) days before the end of the original Term.

**[SIGNATURE PAGE FOLLOWS]**



Landlord and Tenant have executed this Lease as of the day and year first above written.

**TENANT:**

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

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

Name: Amos Rojas, Jr.

Title: Interim City Manager

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

Name: Cristina M. Suarez

Title: City Attorney

**ATTEST:**

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

Name: Billy Y. Urquia

Title: City Clerk

**LANDLORD:**

**AGAVE PLAZA RETAIL, LLC**, a Florida limited liability company

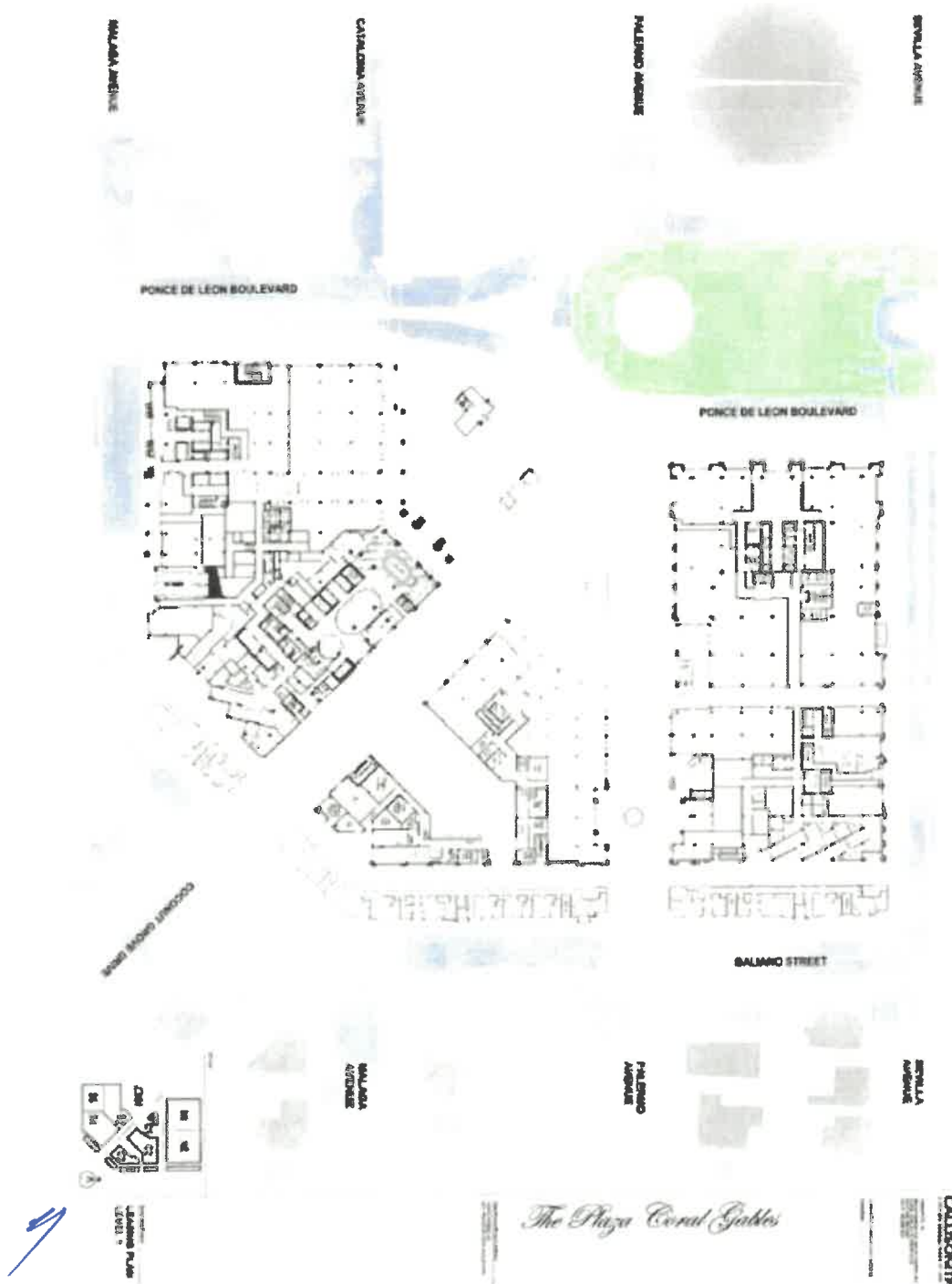
By:  \_\_\_\_\_

Name: Jose Antonio Perez

Title: Manager

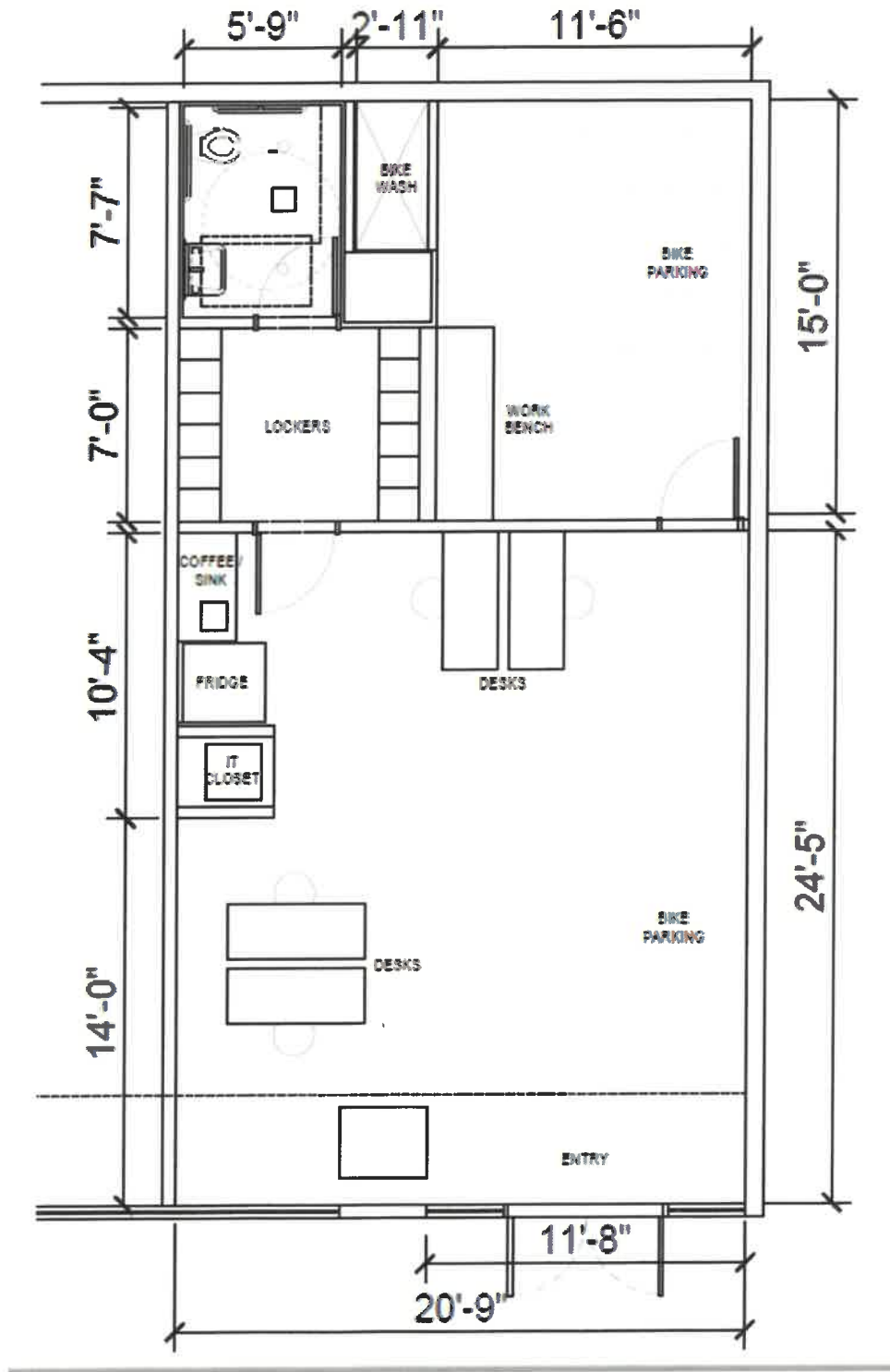
**SCHEDULE 1**

**SKETCH OF GROUND FLOOR OF PROJECT**



**SCHEDULE 2**

**SITE PLAN OF THE PREMISES**



### SCHEDULE 3

#### CONSTRUCTION RIDER

This Construction Rider (a/k/a the "**Work Letter**") is a part of that certain Retail Lease (the "**Lease**") between AGAVE PLAZA RETAIL, LLC, a Florida limited liability company, as "**Landlord**", and CITY OF CORAL GABLES, municipal corporation of the State of Florida, as "**Tenant**", relating to the Premises fully identified in the Lease. Capitalized terms used herein, unless otherwise defined in this Work Letter, shall have the respective meanings ascribed to them in the Lease. For and in consideration of the agreement to lease the Premises and the mutual covenants contained herein and in the Lease, Landlord and Tenant hereby agree as follows:

1. **Landlord's Work.** Landlord shall perform the work identified in **Exhibit A** to this Schedule, at Landlord's sole cost and expense, prior to delivery of the Premises to Tenant. Such work, as more fully detailed in the Working Drawings (as defined and described in **Section 2** below), shall be hereinafter referred to as the "**Landlord Work**".

(a) Not later than ten (10) days after written request by Landlord (which request may not be made prior to the date Landlord makes its submission for the shell building permit for the portion of the Project which includes the Premises), Tenant shall furnish to Landlord such additional plans, drawings, specifications and finish details as Landlord may reasonably request to enable Landlord's architects and engineers to prepare or modify mechanical, electrical and plumbing plans.

(b) All plans, drawings, specifications and other details describing the Landlord Work which have been or are hereafter furnished by or on behalf of Tenant shall be subject to Landlord's approval, which Landlord agrees shall not be unreasonably withheld, conditioned, or delayed. Landlord shall not make any material modifications of the Site Plan of the Premises attached hereto as **Schedule 2** without Tenant's prior written consent and approval, such approval not to be unreasonably withheld, conditioned, or delayed.

(c) Neither the approval by Landlord of the Landlord Work or any other plans, drawings, specifications or other items associated with the Landlord Work nor Landlord's performance, supervision or monitoring of the Landlord Work shall constitute any warranty by Landlord to Tenant of the adequacy of the design for Tenant's intended use of the Premises or its compliance with all applicable Legal Requirements.

2. **Working Drawings.** If necessary for the performance of the Landlord Work, Landlord shall prepare or cause to be prepared final working drawings and specifications for the Landlord Work (the "**Working Drawings**") based on the plans, drawings, specifications and other information furnished by Tenant to Landlord and approved by Landlord pursuant to **Section 1** above and **Exhibit A**. So long as the Working Drawings are consistent with **Exhibit A**, Tenant shall approve (or provide detailed comments to) the Working Drawings within ten (10) Business Days after receipt of same from Landlord by initialing and returning to Landlord each sheet of the Working Drawings or by executing Landlord's approval form then in use, whichever method of approval Landlord may designate.

3. **Performance of the Work.** Landlord shall cause the Landlord Work to be performed using building standard materials, quantities and procedures then in use by Landlord ("**Building Standards**"), except as may be stated or shown otherwise in the Working Drawings.

4. **Substantial Completion.** Landlord shall promptly cause the Landlord Work to be "**substantially completed,**" subject to Unavoidable Delay.

(a) The Landlord Work shall be deemed to be "**substantially completed**" for all purposes under this Work Letter and the Lease when: (a) all of the Landlord Work has been completed in accordance with **Exhibit A** and Working Drawings (as the same may have been modified pursuant to this Work Letter), except for Punch List Items (defined below), and (b) Landlord shall have obtained a Certificate of Occupancy or a temporary Certificate of Occupancy for the base building, Landlord shall have obtained a Certificate of Use or temporary Certificate of Use with respect to Tenant's operations at the Premises and all fire life safety systems, including fire alarms, sprinklers, lighting and ventilation, are in place and in compliance with applicable Legal Requirements.

(b) The term "**Punch List Items**" shall mean details of construction, decoration, and mechanical adjustment which in the aggregate, are minor in character and will not materially interfere with the Tenant's use or enjoyment of the Premises. Landlord agrees to use reasonable diligence to complete all Punch List Items listed in the architect's certificate promptly after substantial completion.

5. **Cost of Landlord Work.** The cost of the Landlord Work, and all permit fees, impact fees, and any other fees due in connection with the Landlord Work, shall be paid for by Landlord. Tenant shall not be liable in any way for any injury, loss, damage, or delay which may be caused by or arise from entry into the Premises by Landlord, its employees, or contractor(s), during the performance of the Landlord Work.

6. **Tenant Work.** Upon Substantial Completion of the Landlord Work and issuance of a building permit for the improvements to be performed by Tenant in the Premises (the "**Tenant Work**"), Tenant shall promptly commence and diligently pursue the completion of the Tenant Work at Tenant's sole cost and expense.

(a) Tenant shall, at Tenant's expense, be responsible for the construction and finish-out of the Premises and for all work necessary to complete the Premises and obtain a final certificate of occupancy for the Premises, beyond the Landlord Work. Unless otherwise agreed to by Landlord in writing, Tenant shall use Building Grade construction methods and materials as determined by Landlord (in its sole discretion) in connection with all of the Tenant Work.

(b) The Tenant Work shall be completed in accordance with the detailed architectural and engineering working drawings and material specifications (the "**Plans and Specifications**"), which shall be prepared at Tenant's expense and shall be in a form and content as necessary to allow Tenant's contractor(s) to obtain all required building permits and approvals.





(i) The Plans and Specifications shall (X) reflect all of the Tenant Work, (Y) be prepared by licensed architects and engineers, and (Z) comply with the provisions of **Exhibit C** attached to this Schedule.

(ii) Tenant shall submit the Plans and Specifications to Landlord for Landlord's approval within thirty (30) days of the Effective Date.

(iii) Landlord shall have ten (10) Business Days after receipt of the Plans and Specifications (or, in the event of modifications, such re-submittal) in which to review and approve the Plans and Specifications or state its objections to same in writing.

(iv) Landlord's approval (except as to structural elements of the Project and building systems, for which approval shall be in Landlord's absolute discretion) shall not be unreasonably withheld, conditioned, or delayed, and any objections shall be reasonable in nature and stated in sufficient detail so as to allow necessary modification by Tenant.

(v) Tenant shall make necessary modifications to the Plans and Specifications and resubmit same to Landlord within fifteen (15) Business Days after receipt of Landlord's objections to Tenant's Plans and Specifications.

(vi) Once accepted by Landlord in final form, the Plans and Specifications may be modified only with Landlord's written approval, which will not be unreasonably withheld, conditioned, or delayed, and Tenant shall be liable for any additional costs incurred as a result of any such change.

(c) Without limiting the foregoing, the Plans and Specifications and the Tenant Work shall comply with the applicable LEED (Leader in Energy & Environmental Design) Requirements set forth in **Exhibit B** with respect to the Tenant Work (Landlord being responsible for compliance with LEED Requirements for the Landlord Work).

## 7. **Contractor(s); Permits; Bond.**

(a) Tenant shall use its own general contractor(s) and subcontractor(s), but shall give due consideration to and use reasonable efforts to use Landlord's contractor. Tenant shall obtain all building permits necessary to complete all of the Tenant Work and shall use commercially reasonable efforts to obtain all such permits as soon as reasonably practicable. Tenant shall bear the cost of all building permits. Landlord shall not be liable in any way for any injury, loss, damage, or delay which may be caused by or arise from entry into the Premises by Tenant, its employees, or contractor(s), during the performance of the Tenant Work.

(b) Tenant's general contractor and all subcontractors shall be licensed as required by the County and State. Landlord shall have the right to disapprove of Tenant's general contractor or any subcontractor if Landlord reasonably believes that such contractor is: (i) not licensed as required by any governmental agency; (ii) not technically qualified or sufficiently staffed to do the Tenant Work; and/or (iii) not financially capable of undertaking or completing the Tenant Work. Tenant shall cause its general contractor to furnish Landlord with an original

certificate of insurance for hazard and liability coverage pursuant to **Subsection (d)**, below. All subcontractors shall be insured in such amounts as Landlord deems commercially reasonable. Tenant (or, at Tenant's option, its general contractor) shall furnish Landlord with the names and addresses of its subcontractors.

(c) Tenant shall advise its contractor(s), subcontractor(s), and material supplier(s) that no interest of Landlord in the Premises, the Building, or the Project shall be subject to liens to secure payment of any amount due for work performed or materials installed in the Premises on Tenant's behalf and Tenant's contract with its general contractor shall include a true and correct copy of **Section 11.3** of the Lease.

(d) Tenant's general contractor shall maintain at all times during the course of the Tenant Work, the following types of insurance:

(1) workers' compensation insurance to cover full liability under workers' compensation laws of the State with employers' liability coverage in limits not less than One Million Dollars (\$1,000,000.00);

(2) comprehensive general liability insurance on an "occurrence" basis for the hazards of operations, elevators and escalators, independent contractors, products and completed operations (for two (2) years after the date of acceptance of the work by Landlord and Tenant), and contractual liability specifically covering the indemnification provision in the construction contract, such comprehensive general liability to include broad form property damage and afford coverage for explosion, collapse and underground hazards, and "personal injury" liability insurance and an endorsement providing that the insurance afforded under the contractor's policy is primary insurance as respects Landlord and Tenant and that any other insurance maintained by Landlord or Tenant is excess and non-contributing with the insurance required hereunder, provided that such insurance may be written through primary or umbrella insurance policies with a minimum policy limit of Five Million Dollars (\$5,000,000.00);

(3) comprehensive automobile liability insurance covering all owned, non-owned, and hired automobiles, such insurance required to be in limits not less than that stated in **Subsection (2)**, above; and

(4) Landlord and Tenant are to be included as an additional insured for insurance coverages required in **Subsections (2) and (3)**, above.

As evidence of all required coverages, Tenant shall provide to Landlord, a certificate of insurance, setting forth the nature of the coverage, the limits of liability, the name of the insurance carrier, policy number, and the date of expiration. Each carrier shall agree to furnish at least ten (10) days prior written notice to Landlord of any cancellation or material change in coverage.

(e) If requested by Landlord, Tenant shall require its contractor(s) to provide performance and payment bond(s) or other risk mitigation measures mutually acceptable to Landlord covering the total value of the Tenant Work. The cost of procuring such bonds shall be borne by Tenant.

8. **Construction of the Tenant Work.**

(a) Tenant shall cause the Tenant Work to be completed in accordance with the Plans and Specifications. Tenant shall use commercially reasonable efforts to obtain a building permit for the Tenant Work as soon as reasonably possible after Landlord's delivery of the Premises to Tenant and Landlord's approval of the Plans and Specifications. Tenant, with Landlord's cooperation, shall cause a Notice of Commencement (or its equivalent) to be filed in the Public Records of Miami-Dade County, Florida, and posted at the job site prior to commencing construction of the Tenant Work. Tenant shall complete the Tenant Work (including satisfaction of all items set forth in **Section 9(a)** hereof) on or before 120 days after the Delivery Date.

(b) Tenant's contractors shall, at Tenant's expense, apply for and obtain all necessary building permits, inspections, and approvals necessary and appropriate to complete the Tenant Work in accordance with the Plans and Specifications and as necessary to obtain a certificate of occupancy (or its equivalent) for the Premises. Tenant shall arrange a meeting prior to the commencement of construction between Landlord and Tenant's contractors for the purpose of organizing and coordinating the completion of the Tenant Work.

(c) Any damage to the Project caused by Tenant, its contractors, subcontractors, or agents shall be repaired by Tenant, at Tenant's expense, in a good and workmanlike manner. If any repaired area does not match the original surface, then the entire surface shall be redone at Tenant's expense to match the original surface. Tenant agrees to indemnify and hold harmless Landlord, its agents, and employees from and against any and all costs, expenses, damage, loss, or liability, including, but not limited to, reasonable attorneys' fees and costs (at all tribunal levels), which arise out of, is occasioned by, or is in any way attributable to the Tenant Work, unless caused by Landlord's gross negligence or willful misconduct. Tenant, at its expense, shall be responsible for the maintenance, repair, and replacement of any and all items constructed by Tenant as part of the Tenant Work, subject to Landlord's maintenance and repair obligations as set forth in the Lease. Moreover, to the extent reasonably needed by Landlord for its repair obligations set forth in the Lease, Tenant will use all reasonable efforts to assign or extend to Landlord the benefit of any manufacturer's warranties with respect to the mechanical, electrical, life/safety, and plumbing systems, and for any other items constructed by Tenant. Tenant shall be responsible for installing temporary meters for electrical and other utilities used in connection with Tenant Work, and shall pay for all utility usage.

(d) Landlord or Landlord's representatives may, at any time, review and inspect the construction activities and performance of the Tenant Work by Tenant's contractor and any subcontractor(s). Tenant agrees to cooperate with Landlord to facilitate such inspections and shall notify Landlord prior to any and all governmental or regulatory inspections of the Work so that Landlord or Landlord's representatives can be present for such inspections.

9. **Allowance for Tenant Work.** N/A.

10. **Lease Provisions.** The terms and provisions of the Lease, insofar as they are applicable to this Work Letter, are hereby incorporated herein by reference. All amounts payable

by Tenant to Landlord hereunder, if any, shall be deemed to be Additional Rent under the Lease and, upon any default in the payment of same, Landlord and Tenant shall have all of the rights and remedies provided for in the Lease.

11. **Miscellaneous.**

(a) This Work Letter shall be subject to the governing law, jurisdiction, and venue provisions set forth in the Lease.

(b) This Work Letter may not be amended except by a written instrument signed by Landlord and Tenant.

(c) Notices under this Work Letter shall be given in the same manner as under the Lease, except that such notices shall be directed to the parties set forth in this Work Letter.

(d) The headings set forth herein are for convenience only and form no substantive or binding part of this Work Letter.

(e) This Work Letter sets forth the entire agreement of Tenant and Landlord regarding the Landlord Work.

(f) Any failure of Tenant to comply with the requirements of this Work Letter shall constitute a non-monetary Event of Default by Tenant under the Lease and Landlord may pursue all remedies available to Landlord under the Lease for same, at law or in equity.



**EXHIBIT A**  
**TO CONSTRUCTION RIDER**

**LANDLORD'S WORK**

1. Landlord at Landlord's sole cost and expense will construct, furnish and equip all minimum base building shell and core (the "**Base Building Condition**") pursuant to The Plaza Coral Gables plans and specs, Building Codes, Governmental Authority regulations, Building Standards, LEED requirements, Landlord's and Tenant's Plans. In addition, Landlord will deliver the Premises with the following Landlord's Work complete:
  - a. Storefront with double door and locking hardware.
  - b. Concrete slab-on grade-exposed polished finish concrete.
  - c. Partition neighboring wall - GWB w/structural studs or 8" CMU block wall (sealed and painted white).
  - d. Standard interior GWB partition dividing Bike work area and locker/toilet area with (3) HM doors and frame.
  - e. Exposed ceiling throughout (except locker and toilet room – ACT or GWB ceilings in these areas).
  - f. Standard commercial fluorescent lights fixtures either attached to ceiling or supported by chains/hangers.
  - g. Minimum required fire sprinkler system (exposed).
  - h. Plumbing and fixtures for (1) bike wash station, (1) toilet, (1) sink.
  - i. Plumbing preparations for (1) coffee/kitchenette sink.
  - j. Infrastructure (conduits) into the space for low voltage/Tele Data.
  - k. Fire alarm system (connected to The Plaza main fire alarm system).
  - l. HVAC unit (heat pump) connected to the development condenser water lines, suspended from ceiling and with flex duct to the various (as required) diffusers.
  - m. Electrical and data outlets in wall (or surface mounted if on CMU wall) as per Architect/Engineer design and coordinated/confirmed during permit set preparation.
  
2. Landlord's Work shall specifically exclude the following:
  - a. Furniture
  - b. IT racks, equipment
  - c. Any millwork, cabinetry except for coffee/sink single counter with basin and water faucet
  - d. Appliances such as coffee makers, refrigerators
  - e. Lockers
  - f. Work benches, tools, etc.
  
3. General Provisions by Landlord:
  - a. Landlord will abide by all Building Codes, as they may apply, which shall include, but not limited to, any Federal, State, County, City codes and regulations as well as utility company criteria; the Florida Building Code, all volumes including

Accessibility, Energy Conservation and High Velocity Hurricane Zone (HVHZ), State of Florida Health Department regulations, Miami-Dade County Department of Environmental and Regulatory Management (DERM) regulations, Miami-Dade County Water and Sewer Department (WASD) regulations, City of Coral Gables Public Works Department, Fire Department, Board of Architects, and Planning & Zoning Department regulations inclusive of 'Mediterranean Village PAD' zoning code, or any other Governmental Authority regulation and all collectively as Code or Codes.

- b. Landlord will obtain all required permits, inspections, approvals, licenses, and certificate of occupancy and pay applicable fees, including impact fees, taxes, bonds, insurance for all Landlord's Work shown on the Landlord's Plans.
- c. Landlord will provide temporary utilities, enclosures and construction barricades for all work shown on the Landlord's Plans.
- d. Landlord's Work will be in good usable condition when completed and work to be free from defects in workmanship and material for one (1) year from date of acceptance by Tenant.
- e. Landlord's Work will be coordinated with the work being performed by the Tenant and other tenants in the building.
- f. The Premises will be delivered to Tenant in a broom swept condition free of Hazardous Substances, except for routine cleaning and construction supplies that may be deemed Hazardous Substances provided such Hazardous Substances are stored, used and removed in compliance with all Legal Requirements and Environmental Laws.
- g. Landlord will repair to original condition any damages to Premises, Common areas, Exterior Areas, or Shared Facilities as a result of Landlord's Work.
- h. Landlord will repair any fireproofing damaged during Landlord's Work.
- i. Landlord will repair any insulation damaged during Landlord's Work.
- j. Landlord will provide sound and vibration isolation, as necessary for Landlord's Work.
- k. A certificate of occupancy or temporary certificate of occupancy or its equivalent with respect to Landlord's Work for the shell of the Premises will be obtained by Landlord prior to commencement of Tenant's Work.



**EXHIBIT B**  
**TO CONSTRUCTION RIDER**

**LEED REQUIREMENTS**

1. Mechanical Systems:

- (a) All tenant-installed new mechanical cooling equipment must contain zero CFC-based refrigerants to comply with LEED Energy & Atmosphere Prerequisite 3 for fundamental refrigerant management. All HVAC equipment provided shall comply with LEED Energy & Atmosphere Credit 4 for enhanced refrigerant management.
- (b) HVAC / mechanical design shall:
  - (i) Meet the minimum requirements of Sections 4 through 7 of ASHRAE Standard 62.1-2007, Ventilation for Acceptable Indoor Air Quality (with errata but without addenda) and ASHRAE Standard 90.1 2016 Energy Standard for Buildings Except Low-Rise Sections 5.4,6.4,7.4,8.4, 9.4 and 10.4.
  - (ii) Include water source heat pumps (WSHPs) with a minimum (cooling mode) efficiency of 13 SEER to serve the retail space. WSHPs shall connect into the existing condenser piping provided within the space.
  - (iii) Meet the requirements of ASHRAE Standard 55-2004, Thermal Comfort Conditions for Human Occupancy (with errata but without addenda). Demonstrate design compliance in accordance with the Section 6.1.1 documentation.

2. Electrical Systems:

- (a) Newly installed lighting power density may not exceed (i) 1.06 watts/s.f. in the retail fit-out, and (ii) requirements of applicable code. All lighting shall be controlled by occupancy sensors.

3. Plumbing Performance and Fixtures:

- (a) Toilets shall be 1.28 gallons per flush (GPF) or less.
- (b) Urinals shall be 0.125 GPF or less.
- (c) Lavatories shall be sensor type 0.1 gallons per cycle (GPC) or less.
- (d) Kitchen / Breakroom sinks shall be 1.0 GPM or less.
- (e) Showers shall be 1.5 GPM.

4. Architectural:

- (a) R-13 insulation is required in exterior furred out walls.



**EXHIBIT C**  
**TO CONSTRUCTION RIDER**

**TENANT'S WORK**

Tenant at Tenant's sole cost and expense will construct, furnish and equip all improvements to the Premises that are not Landlord's Work and pursuant to all Building Codes, Governmental Authority regulations, Building Standards, LEED requirements, Landlord's and Tenant's Plans.

General Provisions by Tenant:

- (a) Tenant's design consultants will have reviewed Premises, site conditions, Shared Facilities and routing to exterior louvers prior to preparing Tenant's Plans.
- (b) Tenant's Plans will include all Governmental Authority permitted drawings, specifications, data, supplemental information, shop drawings, addenda, and revisions and will meet Building Codes, Building Standards and LEED Requirements. Prior to construction start, Tenant's Plans shall have been reviewed and approved by Landlord's Shared Facilities Manager as outlined in The Plaza Coral Gables Building Standards Volume 2: Retail and Restaurant Tenant Design Criteria.
- (c) Tenant will abide by all Building Codes, as they apply, which shall include, but not limited to, any current Federal, State, County, City codes and regulations as well as utility company criteria; the Florida Building Code, all volumes including Accessibility, Energy Conservation and High Velocity Hurricane Zone (HVHZ), State of Florida Health Department regulations, Miami-Dade County Department of Environmental and Regulatory Management (DERM) regulations, Miami-Dade County Water and Sewer Department (WASD) regulations, City of Coral Gables Public Works Department, Fire Department, Board of Architects, and Planning & Zoning Department regulations inclusive of 'Mediterranean Village PAD' zoning code, or any other Governmental Authority regulation and all collectively as Code or Codes.
- (d) Tenant will obtain all required permits, inspections, approvals, licenses, certificate of occupancy and pay applicable fees, including impact fees, taxes, bonds, and insurance premiums for all Tenant's Work shown on the Tenant's Plans.
- (e) Tenant will provide temporary utilities, enclosures and construction barricades for all work shown on Tenant's Plans.
- (f) Tenant's Work will be coordinated with the work being performed by the Landlord and other tenants in the building.
- (g) Tenant will obtain and abide by Building Rules & Regulations for construction as provided from Shared Facilities Manager. Rules may include work hours and noise limitations.
- (h) Tenant understands that parking location, loading and access may be limited.



- (i) Tenant's Work shall be in good usable condition when completed and free from defects in workmanship and material for one (1) year from date of acceptance by Landlord.
- (j) Tenant will not install or use Hazardous Substances, except for routine cleaning and construction supplies that may be deemed Hazardous Substances provided such Hazardous Substances are stored, used and removed in compliance with all Legal Requirements and Environmental Laws.
- (k) Tenant will repair to original condition any damages to Common areas, Exterior Areas, or Shared Facilities as a result of Tenant's Work.
- (l) Tenant will repair any fireproofing damaged during Tenant's Work.
- (m) Tenant will repair any insulation damaged during Tenant's Work.
- (n) Tenant will provide sound and vibration isolation as necessary.
- (o) Tenant will obtain a certificate of occupancy prior to occupying the Premises for business.

**SCHEDULE 4**



N/A

**SCHEDULE 5**

**TENANT ACCEPTANCE LETTER**

This declaration is hereby attached to and made part of the Retail Lease dated \_\_\_\_\_ entered into by and between **AGAVE PLAZA RETAIL, LLC**, a Florida limited liability company, as Landlord, and **CITY OF CORAL GABLES**, a municipal corporation of the State of Florida, as Tenant.

1. The undersigned, as Tenant, hereby confirms as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ the following:
2. Tenant has accepted possession of the Premises on \_\_\_\_\_, \_\_\_\_\_ and is currently able to occupy the same.
3. The Rent Commencement Date, as defined in the Lease, is \_\_\_\_\_.
4. The Expiration Date of the Lease is \_\_\_\_\_.
5. All alterations and improvements required to be performed by Landlord pursuant to the terms of the Lease to prepare the entire Premises for Tenant's initial occupancy have been satisfactorily completed, except for the following:  
  
\_\_\_\_\_
6. As of the date hereof, Landlord has fulfilled all of its obligations under the Lease required up to this date.
7. The Lease is in full force and effect and has not been modified, altered, or amended, except pursuant to any instruments described above, if any.
8. There are no offsets or credits against Base Rent or Additional Rent, nor has any Base Rent or Additional Rent been prepaid except as provided pursuant to the Terms of the Lease.
9. Tenant has no notice of any prior assignment, hypothecation, or pledge of the Lease or any Rent due under the Lease.

TENANT:

\_\_\_\_\_

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

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

Title: \_\_\_\_\_

## SCHEDULE 6

### RULES AND REGULATIONS

1. In the event of any conflict between the terms of these Rules and Regulations (as same may be modified from time to time) and the express provisions of the Lease, the express, applicable provisions of the Lease shall control. Landlord reserves the right, without the approval of Tenant, to rescind, add to and amend any rules or regulations, to add new rules or regulations and to waive any rules or regulations with respect to any tenant or tenants, in each case in Landlord's reasonable discretion. Tenant shall provide a copy of these rules and regulations to each of its employees to facilitate compliance with these standards.
  
2. The sidewalks, walks, plaza entries, corridors, ramps, staircases and elevators of the Project shall not be obstructed, and shall not be used by Tenant, or the employees, agents, servants, visitors or invitees of Tenant, for any purpose other than ingress and egress to and from the Premises. No skateboards, roller skates, roller blades or similar items shall be used in or about the Project.
  
3. No freight, furniture or other large or bulky merchandise or equipment of any description will be received into the Project or carried into the elevators, if any, except in such a manner, during such hours and using such elevators and passageways as may be approved or designated by Landlord, and then only upon having been scheduled in advance. Any hand trucks, carryalls, or similar equipment used for the delivery or receipt of merchandise or equipment shall be equipped with rubber tires, side guards and such other safeguards as Landlord shall reasonably require. Although Landlord or its personnel may participate or assist in the supervision of such movement, Tenant assumes financial responsibility for all risks as to damage to articles moved and injury to persons or public engaged or not engaged in such movement, including any equipment, property or personnel of Landlord damaged or injured in connection with carrying out this service for Tenant, except in the case of Landlord's gross negligence or willful misconduct in its rendering of such services.
  
4. Landlord shall have the right to prescribe the weight, position and manner of installation of safes or other heavy equipment which shall, if reasonably considered necessary by Landlord, be installed in a manner which shall insure satisfactory weight distribution. All damage done to the Project by reason of a safe or any other article of Tenant's equipment being on the Premises shall be repaired at the expense of Tenant. The time, routing and manner of moving safes or other heavy equipment shall be subject to prior approval by Landlord, which shall not be unreasonably withheld or delayed.
  
5. Only persons authorized by Landlord will be permitted to furnish newspapers, ice, drinking water, towels, barbering, shoe shining, janitorial services, floor polishing and other similar services and concessions in the Project, and only at hours and under regulations fixed by Landlord.
  
6. Tenant, or the employees, agents, servants, visitors or invitees of Tenant, shall not at any time place, leave or discard any rubbish, paper, articles or object of any kind whatsoever outside the doors of the Premises or in the corridors or passageways of the Project.

7. Tenant shall not place, or cause or allow to be placed, any sign, placard, picture, advertisement, notice or lettering whatsoever, in, about or on the exterior of the Premises or Project, except in and at such places as may be designated by Landlord and consented to by Landlord in writing. Any such sign, placard, advertisement, picture, notice or lettering so placed without such consent may be removed by Landlord without notice to and at the expense of Tenant. All lettering and graphics on doors and windows shall conform to the building standard prescribed by Landlord.

8. Unless approved as part of Tenant's initial Tenant Work, Tenant shall not place, or cause or allow to be placed, any satellite dish, communications equipment, computer or microwave receiving equipment, antennae or other similar equipment about or on the exterior of the Premises or Project. Any such equipment so placed may be removed by Landlord without notice to and at the expense of Tenant.

9. Canvassing, soliciting or peddling in the Project is prohibited and Tenant shall cooperate reasonably to prevent same.

10. Landlord shall have the right to exclude any person from the Project, and any person in the Project will be subject to identification by employees and agents of Landlord. If Tenant desires additional security service for the Premises, Tenant shall have the right (with advance written consent of Landlord, which shall not be unreasonably withheld or delayed) to obtain such additional service at Tenant's sole cost and expense. Tenant shall keep doors to unattended areas locked and shall otherwise exercise reasonable precautions to protect property from theft, loss or damage. Landlord shall not be responsible for the theft, loss or damage of any property or for any error with regard to the exclusion from or admission to the Project of any person. In case of invasion, mob, riot or public incitement, the Landlord reserves the right to prevent access to the Project during the continuance of same by taking measures for the safety of the tenants and protection of the Project and property or persons therein.

11. Only workmen employed, designated or approved by Landlord may be employed for repairs, installations, alterations, painting, material moving and other similar work that may be done in or on the Project.

12. Tenant shall not bring or permit to be brought or kept in or on the Premises or Project any inflammable, combustible, corrosive, caustic, poisonous, or explosive substance, or cause or permit any odors to permeate in or emanate from the Premises, or permit or suffer the Project to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Project by reason of light, radiation, magnetism, noise, odors and/or vibrations. Firearms shall be permitted to be brought on to the Premises and used by Police officers as part of their official duties. All firearms shall be kept on the person of each officer or stored in a secure gun locker.

13. Tenant shall not mark, paint, drill into, or in any way deface any part of the Project or the Premises. No boring, driving of nails or screws, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Tenant shall not install any resilient tile or similar floor covering in the Premises, except with the prior approval of Landlord, which approval shall not be unreasonably withheld or delayed.

14. No additional locks or bolts of any kind shall be placed on any door in the Premises and no lock on any door therein shall be changed or altered in any respect. Tenant shall not make duplicate keys. All keys shall be returned to Landlord upon the termination of this Lease and Tenant shall give to Landlord the explanations of the combinations of all safes, vaults and combination locks remaining with the Premises. Landlord may at all times keep a pass key to the Premises. All entrance doors to the Premises shall be left closed at all times and left locked when the Premises are not in use.

15. Tenant shall give immediate notice to Landlord in case of known theft, unauthorized solicitation or accident in the Premises or in the Project, or of known defects therein or in any fixtures or equipment, or of any known emergency in the Project.

16. Tenant shall not use the Premises or permit the Premises to be used for photographic, multilith or multigraph reproductions, except in connection with its own business and not as a service for others without Landlord's prior written permission.

17. No animals or birds shall be brought or kept in or about the Project, with the exception of guide dogs accompanying visually handicapped persons.

18. No awnings, draperies, shutters or other interior or exterior window coverings that are visible from the exterior of the Premises may be installed by Tenant without Landlord's prior written consent.

19. Tenant shall not place, install or operate within the Premises or any other part of the Project any engine or machinery, or conduct mechanical operations therein, without the written consent of Landlord.

20. No portion of the Premises or any other part of the Project shall at any time be used or occupied as sleeping or lodging quarters.

21. Tenant shall at all times keep the Premises neat and orderly.

22. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein. The expenses of any breakage, stoppage or damage, resulting from the violation of this rule shall be borne by the tenant who (or whose employees or invitees) shall have caused such damage.

23. All tenant modifications resulting from alterations or physical additions in or to the Premises must conform to all applicable building and fire codes. Tenant shall obtain written approval from the management office, which approval by the management office shall not be unreasonably withheld, prior to commencement of any such modifications and shall deliver as built plans to the management office upon completion.

24. Tenant agrees to place all indoor potted plants requiring water within a container capable of collecting any water overflow, such containers to be approved and/or supplied by Landlord, at Tenant's sole expense. Tenant agrees to use caution so that indoor plants do not damage or soil the Premises.

25. Tenant shall not park (and shall insure that Tenant's employees, agents, and invitees do not park) in any reserved parking space other than those reserved parking spaces, if any, specifically assigned to Tenant. Any vehicle improperly parked, or parked in any unauthorized parking area in the Project, shall be towed at the vehicle owner's expense and without further or additional notice.

26. Persons using the parking areas do so at their own risk. Landlord specifically disclaims all liability, except when caused solely by its gross negligence or willful misconduct, for any personal injury incurred by users of the parking areas, their agents, employees, family, friends, guests or invitees, or as a result of damage to, theft of, or destruction of any vehicle or any contents thereof, as a result of the operation or parking of vehicles in the parking areas.

27. Smoking Policy. Smoking is prohibited within the Premises, and within 25 feet of building entrances and air intakes. Designated smoking areas are provided on site.

28. Green Cleaning Policy. Tenant is required to comply with the requirements of LEED EB:O+M v2009 IEQp3 Green Cleaning Policy for the Building. Tenant's vendors must coordinate with Landlord's facility management team.

29. Integrated Pest Management Policy, Erosion Control, and Landscape Management Plan. Tenant is required to comply with Landlord's integrated pest management policy for the Building. Tenant's vendors must coordinate with Landlord's facility management team.

30. Sustainable Purchasing Policy. Tenant is required to comply with Landlord's "Sustainable Purchasing Policy" for ongoing consumables and durable goods, as provided to Tenant and as may be modified from time to time.



## SCHEDULE 7


### PROHIBITED USES

No portion of the Premises shall be operated, in whole or in part as (i) a sales office or showroom for automobiles or other vehicles or boats, (ii) a "package" liquor store or an establishment serving alcoholic beverages for on premises consumption (other than in connection with a restaurant), (iii) a funeral parlor or other death industry related business or any medical industry related facility, (iv) a massage parlor or "strip" club or establishment featuring nude or semi-nude live entertainment (but excluding Massage Envy and similar concepts), (v) a discotheque, dance studio or dance hall, (vi) a bingo hall, gambling casino or establishment, (vii) a skating rink, (viii) an off-track betting establishment, (ix) an adult book or adult video store or peep show (live or otherwise) or store selling or exhibiting pornographic materials or exhibiting or offering "X rated", not rated and/or "adult only" inventory for display, sale or rental, (x) a so-called "flea market", "second hand", "used goods" or "surplus" store, (xi) a gun range or gun shop or other establishment selling fire arms or ammunition, (xii) a junkyard or stockyard, (xiii) a coin operated laundry, central laundry or an on-site dry cleaning plant or facility, (xiv) a store selling drug or "head shop" paraphernalia (as opposed to a typical drug store such as CVS or Walgreens), (xv) a facility offering tattoo or body piercing (other than ear), (xvi) a warehouse or storage facility ("mini", "self" or otherwise), (xvii) an industrial or manufacturing facility, (xviii) a fireworks store, (xix) a gymnasium, karate, health spa or exercise studio or similar type business, (xx) medical facilities, (xxi) general office space, (xxii) a pawn shop, (xxiii) fortune telling, (xxiv) political or governmental offices other than the bike patrol station, (xxv) a military recruitment office, (xxvi) an automobile parts and/or tire sales store, or (xxvii) any business or use which emits offensive odors, fumes, dust or vapors, is a public or private nuisance, emits loud noise or sounds which are objectionable, creates fire, explosive or other hazard, or creates risk of environmental damage; it being understood that ordinary restaurant cooking odors shall not be considered offensive odors.



## SCHEDULE 8

### EXISTING EXCLUSIVES

1. "Bowling or bocce or banquet services; provided, however, that nothing herein will prohibit (i) any hotel within the Project from offering banquet services, or (ii) any restaurant from having private events or providing off-site catering services."
2. Barber shop or discount salon catering to men (such as Great Clips, Supercuts, Sports Clips, and similar chains) for haircuts; provided, however, that nothing herein will prohibit (i) the Hotel from offering salon, barber shop or other spa services, or (ii) Landlord from leasing space in the Project to a full-service beauty salon.
3. Operation of an eyelash salon.
4. A café, restaurant, or similar establishment whose primary business is the sale of crepes.
5. A cantina-style full-service Mexican restaurant.
6. A sandwich shop primarily selling Cuban sandwiches.
7. A fitness studio offering combinations of boxing exercise workouts, together with the sale of related items.
8. A facial bar offering a variety of facial, skin and body treatments with related retail sales of skin care products.
9. A store selling gelato, which may include ancillary related items such as pastries, coffee, and non-alcoholic beverages.
10. A restaurant whose primary business is the sale of Peruvian ceviche.
11. A fitness studio offering high intensity interval workouts utilizing cardio machines and strength and functional training equipment (i.e., free weights, pull sleds, resistance bands, battle ropes), together with the sale of related items.
12. A full-service health optimization center providing health-enhancing technology, such as cryotherapy, infrared sauna, float tanks, cold plunges, pulsed electromagnetic fields treatments, hyperbaric oxygen and low-level light therapy/LED beds, among other related technology, and health-enhancing services, such as naturopathic medical treatments, intravenous therapy/vitamin injections, hormone therapy, and stem cell treatments, among other related health services. 

**SCHEDULE 9**

**SIGN CRITERIA**

[TO BE PROVIDED BY LANDLORD]

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## SCHEDULE 10

### RESERVED RIGHTS

1. Tenant expressly acknowledges and agrees (i) that the Project and/or portions thereof (which may or may not include the Retail Element in which the Premises are located) are or will be under construction, (ii) that the Project, the Premises, and the Retail Element in which the Premises are located, are intended to be constructed substantially as set forth in the sketch of the Project (**Schedule 1**) and the Site Plan (**Schedule 2**), but may vary reasonably in size, location, and layout, and (iii) no such variance will constitute a breach of Landlord's obligations under the Lease or give Tenant a right to terminate the Lease or give Tenant a cause of action against Landlord, any Other Owner or Shared Facilities Manager, provided that the final Premises conforms substantially with the Plans and Specifications and the Landlord Work as approved by Tenant. Without limiting the foregoing, Tenant acknowledges and agrees that not all of the Elements may be constructed prior to or concurrently with the Retail Element (or at all), as long as (in addition to the Retail Element), a Parking Element is constructed which provides sufficient parking to meet Legal Requirements.

2. Landlord, the Other Owners, and/or the Shared Facilities Manager further reserve the right to make alterations and/or additions to and to build or cause to be built additional stories on the Building in which the Premises are situated and to add any buildings adjoining the Premises or elsewhere in the Project, whether before or after or concurrently with construction of the Retail Element.


3. Tenant expressly acknowledges and agrees that portions of the Project other than the Retail Element are not owned by Landlord. However, the Parking Element(s) for the benefit and use of the Project's tenants, customers and invitees will contain a sufficient number of parking spaces in order for the Project to meet applicable Legal Requirements.

4. Tenant acknowledges that construction of and within the Project may produce loud noises, dust and debris and Tenant agrees that construction by Landlord, Other Owners and/or Shared Facilities Manager shall not constitute an eviction, actual or constructive, or a disturbance of Tenant's business, use, occupancy or quiet enjoyment of the Premises, and Tenant agrees to waive any action, claim or defense Tenant may or shall have against Landlord, any affiliate of Landlord, any Other Owner, and Shared Facilities Manager based upon, related to or arising from such construction.

(a) Without limiting the generality of the foregoing, Tenant acknowledges that Landlord, Other Owners and/or Shared Facilities Manager may, each in its sole discretion, at all times, and from time to time throughout the Term, without incurring any liability to Tenant and without it constituting an eviction: (i) install, maintain, use, repair and replace pipes, ducts, conduits and wires leading through the Premises and serving other parts of the Project, (ii) add additional tenants, retail shops, buildings, parking facilities anywhere in the Project (as may be expanded in accordance with this Subsection), (iii) renovate the Project (such renovation shall include, but not be limited to, the right to erect scaffolding, alter the configuration of all interior and exterior portions of the Common Areas); (iv) change the size and layout of the Project; (v)

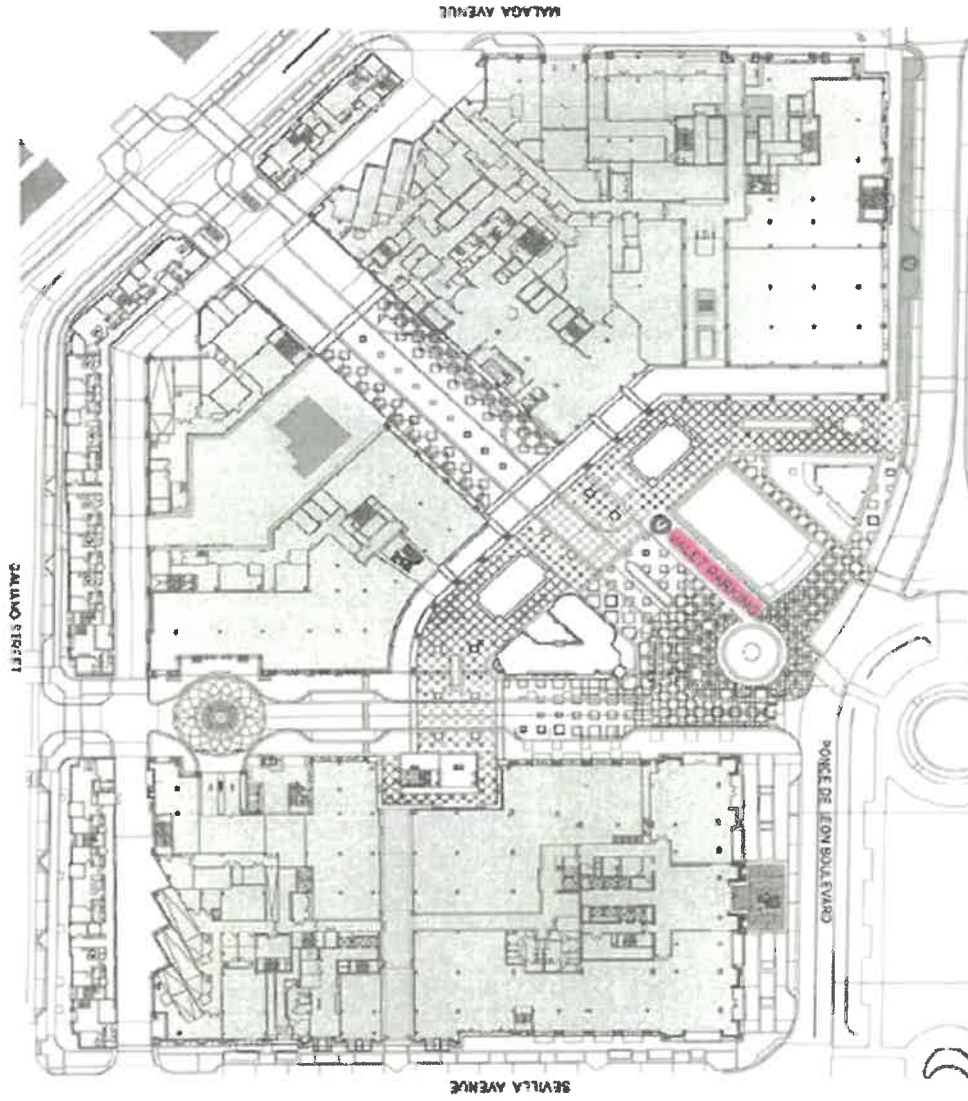
build and/or demolish structures and buildings, expand and/or alter the parking facilities, relocate existing buildings and structures; and (vi) install or move columns, pipes, and utility lines. Landlord shall use reasonable efforts (which shall not include any obligation to employ labor at overtime rates) to avoid unreasonable disruption of Tenant's business during any renovation performed by Landlord, except in the case of an emergency. Once Landlord commences any such renovation, Landlord shall diligently pursue such renovation to completion. Any addition or reduction of the Floor Area of the Retail Element resulting from Landlord's actions provided for above, shall result in recalculating Tenant's Percentage Share in accordance with **Section 1** above.

(b) Landlord shall have the right (i) to change the Retail Element's street address upon ninety (90) days' prior notice, (ii) to grant to any person or entity the exclusive right to conduct any business or render any service in or to the Retail Element, provided such exclusive right shall not operate to prohibit Tenant from using the Premises for the purpose set forth in **Section 7**, (iii) to retain at all times master keys or passkeys to the Premises, and (iv) to place such signs, notices or displays as Landlord reasonably deems necessary or desirable upon the roof and exterior of the Retail Element.

(c) Shared Facilities Manager shall have the right (i) to change the Project's name without notice, (ii) to change the Project's street address, and (iii) to place such signs, notices or displays as Shared Facilities Manager reasonably deems necessary or desirable upon the roof and exterior of the Project. 

**SCHEDULE 11**

**VALET DROP-OFF AREA**



## SCHEDULE 12

### TECHNICAL INFRASTRUCTURE AND IT PLANS

Infrastructure to be Provided by Landlord:

1. IT Closet
  - a. One 2" overhead utility conduit to connect Bike Patrol area to the Plaza area Tele/Data room (services to be contracted by tenant)
  - b. One quad 110 Volt 20amp dedicated circuit
  
2. Network/Power Drops locations that provision the following (Note Conduits + boxes to be surface mounted if on existing CMU/concrete walls and recessed if on new GWB partitions):
  - a. Five 3 /4" conduits from drop (each terminated in a 2 gang box) to IT Closet-locations TBD by both parties at permit drawing review.
  - b. Five duplex 110 volt outlets. Locations TBD by both parties at permit drawing review.
  - c. TV drops from IT closet to locations TBD by both parties at permit drawing review.
  
3. Camera locations (CCTV)
  - a. Two round telecommunication boxes mounted in the ceiling with 3 /4" conduit terminated at the IT Closet
  
4. Intercom (emergency call box)
  - a. Two gang boxes mounted in the wall at 48" from the floor with 3 /4" conduit terminated at the IT Closet. Locations TBD by both parties at permit drawing review
  
5. Access Control
  - a. One gang box surface mounted in the inside wall at 48" from the floor with 3/4" conduit terminated at the IT Closet if card I to be furnished and installed by tenant.

Double Door entrance, as-is. Any modifications to existing doors by Tenant. Landlord conceptually pre-approves Tenant installing double doors that (i) have an electrified crash bar with alarmed rim exist device, (ii) have a way to be locked at all times or be provisioned with an electrified crash bar, and (iii) have certified hinges and path or conduits (to IT cabinet) through door frame for low-voltage cables.

All conduits to be provisioned with pull strings. 