

## SECOND AMENDMENT TO RETAIL LEASE

THIS SECOND AMENDMENT TO RETAIL LEASE (this “**Second Amendment**”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2017 (the “**Effective Date**”), by and between the CITY OF CORAL GABLES, a Florida municipal corporation, (“**Landlord**”), and JUNKANOO CREW, INC., a Florida corporation d/b/a Ortanique on the Mile, (“**Tenant**”).

### WITNESSETH:

**WHEREAS**, Landlord and Tenant entered into that certain Retail Lease, dated as of September 1, 2016, as amended by that certain Amendment to Retail Lease dated October 28, 2016, (as amended, the “**Lease**”) relating to the lease of certain premises located at 278 Miracle Mile, Coral Gables, Florida 33134 (the “**Premises**”), as such Premises are more particularly described in the Lease;

**WHEREAS**, Tenant acknowledges that Tenant is currently in default under the Lease for failure to pay Base Rent (as defined in the Lease), common area maintenance, real estate taxes and assessments, insurance together with all other items or charges defined as “**Rent**” under the Lease (collectively, the “**Past Due Rent**”) in the amount of \$111,313.30 (the “**Past Due Rent Amount**”);

**WHEREAS**, in connection with the aforementioned default, Tenant has requested and Landlord has agreed to amend the Rent (as defined in the Lease) in order to require Tenant to pay Percentage Rent (as defined herein) in an amount sufficient to repay all Past Due Rent within three (3) years of the date hereof, as more particularly set forth herein; and

**WHEREAS**, Tenant and Landlord desire to further amend the Lease to (i) confirm that Tenant is in default under the terms of the Lease for failure to timely pay Tenant’s proportionate share of insurance, real estate taxes and assessments in accordance with the terms of the Lease, and (ii) confirm Landlord’s option to retake possession of the Premises and/or terminate the Lease, as more particularly set forth herein.

**NOW, THEREFORE**, for and in consideration of the mutual premises, and for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, paid by the parties hereto to one another, the receipt and sufficiency of which are acknowledged by the parties hereto, the parties for themselves and their successors and assigns hereto hereby covenant and agree as follows:

1. **Incorporation of Recitals.** The above recitals are true and correct and are incorporated herein as if set forth in full.

2. **Defined Terms.** All capitalized terms not defined in this Second Amendment shall have the same meanings as set forth in the Lease. All references in the Lease and herein to the term “**Lease**” shall mean the Lease as amended by this Second Amendment.

3. **Percentage Rent To Repay Past Due Rent Amount.** (A) Article IV, Section B of the Lease is hereby deleted in its entirety and replaced with the following:

## **B. Percentage Rent**

Tenant acknowledges that Tenant is currently in default under the terms of this Lease for failure to pay Rent due under the Lease (the "Past Due Rent") in the amount of \$111,313.30 (the "Past Due Rent Amount"), which Past Due Rent Amount shall be repaid to Landlord as Percentage Rent (as defined herein), as more particularly set forth herein. Tenant further acknowledges and agrees that Tenant shall continue to be in default under the terms of the Lease until such time as the Past Due Rent Amount is fully repaid to Landlord in accordance with the terms hereof.

In addition to Base Rent, Tenant agrees to pay Landlord an amount equal to the greater of (i) twenty percent (20%) of Gross Sales (as defined herein) in excess of \$110,000.00 or (ii) \$2,000.00 (the "Percentage Rent"), on a monthly basis. Percentage Rent shall be due and payable until the earlier of (i) the date that Tenant has paid Percentage Rent in an amount equal to the Past Due Rent Amount, or (ii) \_\_\_\_\_, 2020 (the "Repayment Date"). Notwithstanding the foregoing, Tenant may pay a higher amount of monthly Percentage Rent in order to repay the Past Due Rent Amount on a more expedited basis. In the event that Percentage Rent has not been paid in an amount equal to the Past Due Rent Amount on or before the Repayment Date, then within ten (10) days following the Repayment Date, the remaining balance of the Past Due Rent Amount shall be due and payable as follows: Tenant shall pay to Landlord an amount equal to (i) the Past Due Rent Amount less (ii) the aggregate amount of Percentage Rent paid by Tenant as of such Repayment Date. In the event that Tenant fails to timely pay to Landlord any Percentage Rent hereunder, the entire remaining balance of the Past Due Rent Amount shall be immediately due and payable to Landlord together with interest thereon at the default rate together with any administrative charge in accordance with the terms of Section C hereof.

As used herein, the term "Gross Sales" means the gross amount charged for all sales made or services rendered on or from the Premises for each month, including, without limitation, any rent or other sum received by Tenant from licensees or concessionaires. Each sale shall be valued at the actual sales price charged the customer and reported in full in the month in which the sale occurs, even if the sale is a credit or installment sale or if full payment is not received at the time of the sale.

On or before the 15<sup>th</sup> day of each month, Tenant shall submit to Landlord a monthly statement (the "Monthly Statement"), certified by a responsible financial officer of Tenant, showing the amount of Gross Sales for the preceding calendar month. Notwithstanding anything to the contrary contained in this Lease, Percentage Rent shall be due and payable on the 5<sup>th</sup> day of the following month after delivery of the Monthly Statement during the Term, which Percentage Rent shall be applicable to the immediately preceding month, until such time as Tenant has repaid the Past Due Rent Amount in accordance with the terms of this Section C, without notice or grace period.

In the event that Tenant fails to timely pay to Landlord any Percentage Rent hereunder, Landlord may, upon written notice to Tenant, retake possession of the Premises without terminating this Lease, whereupon Tenant shall immediately and voluntarily

vacate the Premises and Tenant shall continue to be liable for the Past Due Rent Amount together with any Rent or other amounts due under the Lease.

Tenant shall keep accurate records of its Gross Sales, credits, refunds and allowances, including copies of all applicable sales tax reports and cash register tapes, in accordance with Tenant's obligation to maintain all records, books of account and other materials pursuant to the terms of Article XLVII hereof. Such records shall be open to inspection and audit by Landlord or its accountants. If any audit discloses a deficiency in payment of Percentage Rent, Tenant shall immediately pay Landlord the deficient amount, together with interest thereon at the default rate from the date when such Percentage Rent should have been paid and any administrative charge in accordance with the terms of Section C below. If a discrepancy of three percent (3%) or more of the Gross Sales is uncovered as a result of any audit, Tenant shall reimburse Landlord for the cost of the audit (including any applicable travel costs), in addition to the deficiency in Percentage Rent, within five (5) business days of written demand therefore. If a discrepancy of ten percent (10%) or more of the Gross Sales is uncovered as a result of any audit, in addition to the foregoing, Landlord shall have the right to terminate this Lease upon ten (10) days' written notice to Tenant.

(B) The first sentence of Article IV, Section C of the Lease is hereby deleted in its entirety and replaced with the following:

"Any payments due to Landlord other than Base Rent and Percentage Rent shall be paid within thirty (30) days of the date billed to Tenant."

4. **Insurance, Taxes and Assessments.** Tenant acknowledges and agrees that Tenant is responsible to pay Tenant's proportionate share of any insurance, taxes and assessments, and any business improvement district assessments within thirty (30) days after receipt of an invoice therefore in accordance with the terms of Article X and Article XIV of the Lease. As of the date hereof, Tenant is in default for failure to pay such invoiced sums, which sums constitute a portion of the Past Due Rent Amount. In the event that Tenant fails to timely pay such amounts following an invoice therefore from Landlord, the entire remaining balance of the Past Due Rent Amount shall be immediately due and payable to Landlord together with interest thereon at the default rate together with any administrative charge in accordance with the terms of Article IV, Section C hereof.

5. **Option to Retake Possession; Early Termination by Landlord.** (A) Article XXIII is hereby amended to include the following as the last paragraph thereof:

Notwithstanding anything to the contrary contained herein, Tenant acknowledges that Tenant is currently in default under the terms of this Lease and shall remain in default until such time as the Past Due Rent is fully repaid to Landlord. As such, Tenant acknowledges and agrees that at any time during the continuance of such default by Tenant, Landlord may (i) upon written notice to Tenant, retake possession of the Premises without terminating the Lease, whereupon Tenant shall immediately and voluntarily vacate the Premises and Tenant shall continue to be liable for the Past Due Rent Amount together

with any Rent or other amounts due under the Lease, and/or (ii) otherwise exercise any of Landlord's rights and remedies under the Lease, at law or in equity.

(B) Article II is hereby amended to include the following as the last paragraph thereof:

Notwithstanding anything to the contrary contained herein, Tenant acknowledges that Tenant is currently in default under the terms of this Lease and shall remain in default until such time as the Past Due Rent is fully repaid to Landlord. As such, Tenant acknowledges and agrees that at any time during the continuance of such default by Tenant, Landlord may, in addition to any other rights and remedies available to Landlord hereunder, terminate this Lease upon at least six (6) months' written notice to Tenant.

6. **Ratification.** Except as modified by this Second Amendment, all of the terms, covenants and conditions of the Lease are confirmed and approved and shall remain in full force and effect.

7. **Counterparts.** This Second Amendment may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document. This Second Amendment may be executed by each party upon a separate copy, and one or more execution pages may be detached from one copy of this Second Amendment and attached to another copy in order to form one or more counterparts. Signature pages exchanged by facsimile or electronic transmission shall be fully binding.

The parties below have caused this Second Amendment to Retail Lease to be executed under seal as of the date and year first above written.

WITNESSES

**LANDLORD:**

AS TO LANDLORD:

**CITY OF CORAL GABLES,**  
a Florida municipal corporation

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

Address:

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

Name: Cathy Swanson-Rivenbark

Title: City Manager

Date: \_\_\_\_\_

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

Address:

Approved for Form and Legal Sufficiency:

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

Name: Craig E. Leen

Title: City Attorney

Date: \_\_\_\_\_

Attestation of Signatures:

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

Name: Walter Foeman

Title: City Clerk

Date: \_\_\_\_\_

[Signature Page Follows]

WITNESSES

AS TO TENANT:

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

Address:

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

Address:

**TENANT:**

**JUNKANOO CREW, INC.**, a Florida  
corporation d/b/a Ortanique On The Mile

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

Name:

Title:

Date: \_\_\_\_\_